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Page 116

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| | 20 | 21 | 22 | 23 | 24 | |
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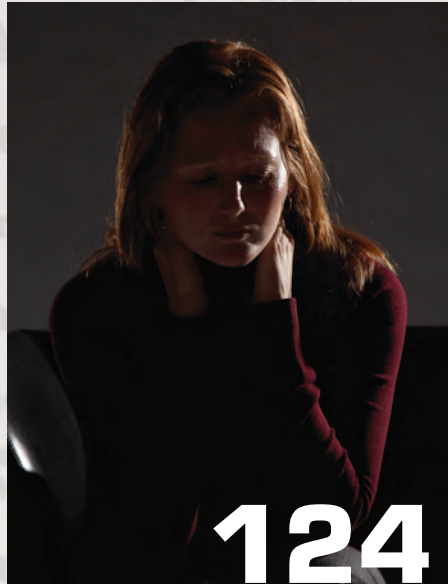
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108



124

The Alabama Lawyer

March 2015 | Vol. 76, No. 2



129




On The Cover

A passage from an early version of Magna Carta


FEATURES


- 102** Note from the Editor: Honk if you have a copy of the Magna Carta!
- 103** Profiles of Alabama's Lawyer-Legislators
By Ted Hosp and Suzi Edwards
- 108** Exclusive Legislation Does Not Mean Exclusive Jurisdiction—State-Court Jurisdiction over Civil Actions Arising upon Federal Enclaves
By David G. Wirtes
- 116** King John, Magna Carta and the Origins of English Legal Rights
By Paul M. Pruitt, Jr.
- 124** Living in Darkness
- 129** Law Day 2015
Magna Carta: Symbol of Freedom under Law

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ADVERTISERS

ABA Retirement Funds94

ABA TechShow.....101

Alabama Crime Victims' Compensation Commission145

AlaServe, LLC.....93

Attorneys Insurance Mutual of the South86

Bama By Distance111

Cain & Associates Engineers.....113

Phillip G. Cantrell Expert Witness.....136

CLE Alabama.....88

Cumberland School of Law93

Davis Direct.....135

J. Forrester DeBuys, III.....112

Freedom Court Reporting.....147

Gilsbar148

Insurance Specialists, Inc.....97

Jackson Thornton131

LawPay115

The LAWyer128

The Locker Room119

National Academy of Distinguished Neutrals87

Professional Software Corporation114

Upchurch Watson White & Max133



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COLUMNS



92 President's Page

Attorneys Uniquely Qualified to Contribute to Alabama Legislature

96 Executive Director's Report

New Security Enhancements for Your Alabama State Bar

98 Important Notices

Notice of Election and Electronic Balloting

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

Local Bar Award of Achievement

J. Anthony "Tony" McLain Professionalism Award

Pro Bono Awards

Position Available: Director of Finance, Alabama State Bar

126 Opinions of the General Counsel

Withdrawal Allowed when Client Refuses to Cooperate with Or Follow Advice of Attorney

130 The Appellate Corner

138 Memorials

140 Disciplinary Notices

142 Legislative Wrap-Up

2015 Legislative Session

144 About Members, Among Firms

146 Young Lawyers' Section

ABA, MPLCs and CLE

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Alabama State Bar members are encouraged to submit articles to the editor for possible publication in *The Alabama Lawyer*. Views expressed in the articles chosen for publication are the authors' only and are not to be attributed to the *Lawyer*, its editorial board or the Alabama State Bar unless expressly so stated. Authors are responsible for the correctness of all citations and quotations. The editorial board reserves the right to edit or reject any article submitted for publication.

The *Lawyer* does not accept unsolicited articles from non-members of the ASB. Articles previously appearing in other publications are not accepted.

All articles to be considered for publication must be submitted to the editor via email (ghawley@joneshawley.com) in Word format. A typical article is 13 to 18 letter-size pages in length, double-spaced, utilizing endnotes and not footnotes.

A brief biographical sketch and a recent color photograph (at least 300 dpi) of the author must be submitted with the article.



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Attorneys Uniquely Qualified to Contribute to Alabama Legislature

On behalf of the Alabama State Bar and me, *thank you* to our Alabama lawyer-legislators. Your leadership is vital to the continued success of Alabama. Other articles in this issue of *The Alabama Lawyer* discuss the 800th anniversary of Magna Carta, the creation of which was an early step toward citizens being able to guarantee their own rights, and helped us along the path to representative government.

Despite a common misconception, very few of our representatives—our Alabama legislators—are lawyers. Numbers have been declining for many years,¹ and there are several reasons

for this. It is a large personal and financial sacrifice. Lawyer-legislators balance practice and family commitments with long hours working at the statehouse. For most, the pay they receive for serving as a legislator does not make up for their loss of time in practice.² After adding long campaigns, and attacks from media and challengers, the thought of becoming a legislator loses much of its appeal. With a long regular session, committees meeting throughout the rest of the year and special sessions being called to deal with emerging issues, the concept of a part-time legislature itself may be outdated.

Attorneys play an important role in the Alabama Legislature. A legislator is a lawmaker, and lawyers are uniquely qualified, by virtue of their education and work background, to contribute in a positive way to the quality of the Alabama Legislature. The training they received in law school makes them particularly suited for the job. Their education on the Rule of Law, statutory construction and constitutional dictates gives them expertise on writing and interpreting laws, and helps them draft more effective legislation. Because of their training and expertise, our Alabama lawyer-legislators are often sought out by other legislators for their opinions or for assistance in drafting or interpreting legislation. Our lawyer-legislators are particularly helpful on the Judiciary Committee, and other key committees. With issues this legislative session to include court fees and costs, prison reform and other matters touching on the administration of justice and the courts, our Alabama lawyer-legislators will be called upon often to provide insight and advice.

We also have a number of lawyers working in other key roles in our state government, including lawyers in legislative



staff positions, such as **Patrick Harris**, secretary of the Alabama Senate; **Jerry Bassett**, with the Legislative Reference Service; and **Norris Green**, director of the Legislative Fiscal Office. These lawyers assist our leaders and make them more effective. Our thanks go to these colleagues as well.



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In the 2015 legislative session, there will also be an emphasis on court fees and costs, and on adequately funding our courts. A recent study by the Public Affairs Research Council of Alabama ("PARCA"), the PARCA Court Cost Study (available at <https://www.alabar.org>), demonstrates a lack of uniformity of court costs in fees across the state, problems with collections of court costs and fees and the inadequacy of using costs, fees and fines to fund the court system. The courts must be adequately funded, but the current system is archaic and illogical. As PARCA found, we need to focus "on improving the economy and efficiency of collection efforts and reducing exorbitant charges." Our courts are collecting and disbursing half of what they collect to city and county governments and a multiplicity of other government entities but receive only half of the revenue it generates. A commitment to improving judicial funding is needed, and as the PARCA study states, this commitment will require an overhaul of the court cost system. Our lawyer-legislators bring with them a particularly useful set of

skills and understanding of these issues. They are needed in our statehouse, and they are appreciated by a grateful bar.

The 2015 Annual Meeting is at The Grand Hotel in Point Clear, July 15-18. Mark your calendars, bring the family and enjoy the networking—see you there! | **AL**

Endnotes

1. Since 1982, the number of lawyers in the Alabama Legislature has dropped from 16 members in the senate and 11 members in the house to seven members of 35 in the senate and 11 of 105 members in the house.
2. Robert J. Derocher, "Keeping a Presence in the Statehouse: Bars Must Work Harder as Number of Lawyers in Office Declines," *The Bar Leader*, volume 33 number 1 (American Bar Association Sept./Oct. 2008) ("I've had many lawyers tell me that when their firms adopted hourly billing, it made them realize how valuable their time was," says Keith Norman, longtime executive director of the Alabama State Bar. "We also lost a lot of [lawyer-legislators] in Alabama when the legislative session was changed to every year from every two years.").

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New Security Enhancements For Your Alabama State Bar

"Smile! You're on Candid Camera" was the familiar refrain of the television show in the 1960s hosted by Allen Funt. As many of you recall, a hidden camera captured the reaction of unsuspecting people to whacky, unexpected situations. The episodes were humorous and as the program's theme song reminded the television audience, "It's fun to laugh at yourself as other people do."

Recently, the state bar completed the installation of cameras around the exterior of the bar building and grounds. Our plan was not to capture unsuspecting people in the "Candid Camera" sense, but to enhance the security of the state bar building. This was one of several security enhancements made to the facilities.

Commissioner **Rocky Watson** of Ft. Payne was asked by former state bar President **Anthony Joseph** to work with the state bar staff to review security needs and implement measures to enhance the safety of the facilities. After engaging the assistance of a security consultant and considering the consultant's recommendations, we moved forward to implement many of those. They included improved exterior lighting, (including the state bar's three parking areas), digital cameras covering

the exterior of the building and parking areas and controlled front door access. This third enhancement will mean that the front door of the building will remain locked during operating hours and those wanting to enter will be required to identify themselves before gaining entry.

We realize that controlled access to the building is likely to be inconvenient for lawyers using one of the conference rooms for a client meeting, a deposition or a mediation or for those attending a bar committee meeting. The staff will do its best to keep the disruptions to a minimum.

Fortunately, we have had very few security problems and the ones we have experienced have been minor. Nevertheless, the Board of Bar Commissioners wanted to tighten the security of the bar building which has been the case for most of the buildings in the Capital Complex. Under Commissioner Watson's leadership, we will continue to study other possible security enhancements that could be phased in over time. We hope everyone will keep their sense of humor as we all adjust to the "new normal." Just remember, "Smile! You're on Candid Camera." | [AL](#)



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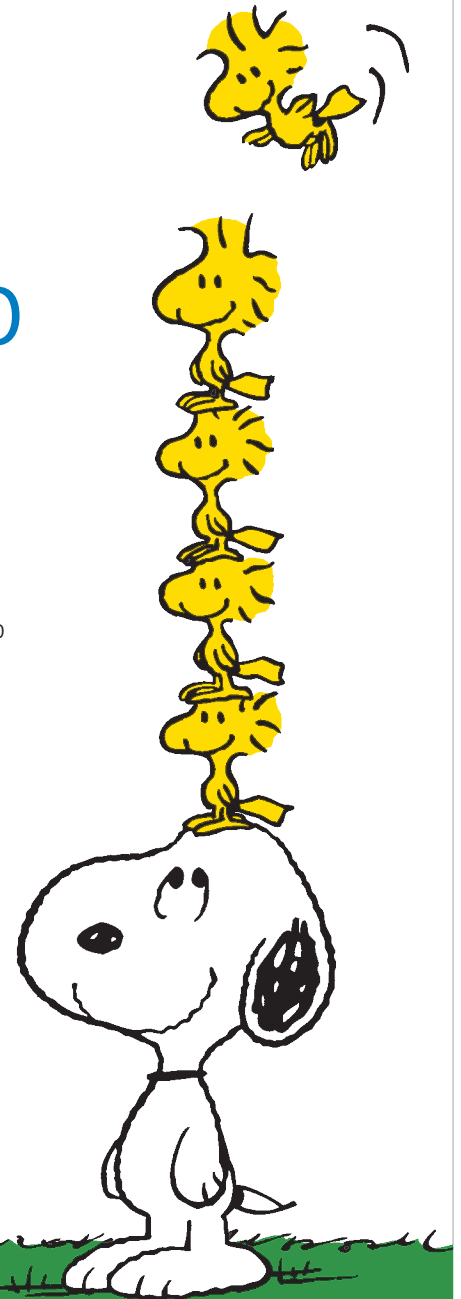
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Notice of Election and Electronic Balloting

Notice is given here pursuant to the *Alabama State Bar Rules Governing Election and Selection of President-elect and Board of Bar Commissioners*.

Bar commissioners will be elected by those lawyers with their principal offices in the following circuits:

| | |
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| 4th Judicial Circuit | 15th Judicial Circuit, Place 6 |
| 6th Judicial Circuit, Place 2 | 16th Judicial Circuit |
| 9th Judicial Circuit | 18th Judicial Circuit, Place 2 |
| 10th Judicial Circuit, Place 1 | 20th Judicial Circuit |
| 10th Judicial Circuit, Place 2 | 23rd Judicial Circuit, Place 2 |
| 10th Judicial Circuit, Place 5 | 24th Judicial Circuit |
| 10th Judicial Circuit, Place 8 | 27th Judicial Circuit |
| 10th Judicial Circuit, Place 9 | 29th Judicial Circuit |
| 12th Judicial Circuit | 38th Judicial Circuit |
| 13th Judicial Circuit, Place 2 | 39th Judicial Circuit |

Additional commissioners will be elected for each 300 members of the state bar with principal offices therein. New commissioner positions for these and the remaining circuits will be determined by a census on March 1, 2015 and vacancies certified by the secretary no later than March 15, 2015. All terms will be for three years.

Nominations may be made by petition bearing the signatures of five members in good standing with principal offices in the circuit in which the election will be held or by the candidate's written declaration of candidacy. **Nomination forms must be received by the secretary no later than 5:00 p.m. on the last Friday in April (April 24, 2015).**

Nomination forms may be sent to:

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elections@alabar.org
Fax (334) 261-6310

It is the candidate's responsibility to ensure the secretary receives the nomination form by the deadline.

As soon as practical after May 1, 2015, members will be notified by email with a link to the Alabama State Bar website that includes an electronic ballot. *Members who do not have Internet access should notify the secretary in writing on or before May 1 requesting a paper ballot.* A single written request will be sufficient for all elections, including run-offs and contested president-elect races during this election cycle. **Ballots must be voted and received by the Alabama State Bar by 5:00 p.m. on the third Friday in May (May 15, 2015).**

At-Large Commissioners

At-large commissioners will be elected for the following place numbers: 1, 4 and 7. **Petitions for these positions which are elected by the Board of Bar Commissioners are due by April 1, 2015.**

Election rules and petitions for all positions are available at <https://www.alabar.org>.

William D. “Bill” Scruggs, Jr. Service to the Bar Award

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the William D. “Bill” Scruggs, Jr. Service to the Bar Award **through April 15, 2015.**

Nominations should be prepared on the appropriate nomination form available at <https://www.alabar.org> and mailed to:

Keith B. Norman, executive director
Alabama State Bar
P.O. Box 671, Montgomery AL 36101

The Bill Scruggs Service to the Bar Award was established in 2002 to honor the memory of and accomplishments on behalf of the bar of former state bar President Bill Scruggs. The award is not necessarily an annual award. It must be presented in recognition of outstanding and long-term service by living members of the bar of this state to the Alabama State Bar as an organization.

Nominations are considered by a five-member committee which makes a recommendation to the Board of Bar Commissioners with respect to a nominee or whether the award should be presented in any given year.

Local Bar Award of Achievement

The Alabama State Bar Local Bar Award of Achievement recognizes local bar associations for their outstanding contributions to their communities. Awards will be presented during the Alabama State Bar’s 2015 Annual Meeting at the Grand Hotel Marriott Resort & Spa in Point Clear.

Local bar associations compete for these awards based on their size—large, medium or small.

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

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

To be considered for this award, local bar associations must complete and submit an award application by June 1, 2015. Applications may be downloaded from <https://www.alabar.org> or obtained by contacting Christina Butler at (334) 269-1515 or christina.butler@alabar.org.

J. Anthony “Tony” McLain Professionalism Award

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the J. Anthony “Tony” McLain Professionalism Award through **April 15, 2015.** Nominations should be prepared on the appropriate nomination form available at <https://www.alabar.org> and mailed to:

Keith B. Norman, executive director
Alabama State Bar
P. O. Box 671, Montgomery 36101

The purpose of the J. Anthony “Tony” McLain Professionalism Award is to honor the leadership of Tony McLain and to encourage the emulation of his deep devotion to professionalism and service to the Alabama State Bar by recognizing outstanding, long-term and distinguished service in the advancement of professionalism by living members of the Alabama State Bar.

Nominations are considered by a five-member committee which makes a recommendation to the Board of Bar Commissioners with respect to a nominee or whether the award should be presented in any given year.

Pro Bono Awards

The Alabama State Bar Pro Bono and Public Service Committee is seeking nominations for the Alabama State Bar Pro Bono awards. Nomination forms can be obtained by contacting:

Linda L. Lund, director
Volunteer Lawyers Program
Alabama State Bar
P.O. Box 671
Montgomery AL 36101
(334) 269-1515
linda.lund@alabar.org

The Alabama State Bar Pro Bono awards recognize the outstanding pro bono efforts of attorneys, mediators, law firms and law students in the state. The award criteria includes but is not limited to: the total number of pro bono hours or complexity of cases handled, impact of the pro bono work and benefit for the poor, particular expertise provided or particular need satisfied, successful recruitment of other attorneys for pro bono representation and proven commitment to delivery of quality legal services to the poor and providing equal access to legal services.

Nominations must be postmarked by **April 1, 2015** and include a completed Alabama State Bar Pro Bono awards nomination form to be considered by the committee.

Position Available: Director of Finance, Alabama State Bar

General Description

The director of finance provides both operational and programmatic support to the organization. The director of finance supervises the accounting and finance department and is the chief financial spokesperson for the organization. The director of finance reports directly to the executive director and must work with others on all operational matters as they relate to organizational management, financial and budget management, cost benefit analysis and organizational needs forecasting.

Required Knowledge, Skills and Abilities

- Not-for-profit accounting in accordance with U.S. Generally Accepted Accounting Principles, U.S. Generally Accepted Governmental Accounting Principles (as applicable) and compliance requirements (as applicable);
- Design and maintenance of financial internal controls consistent with the COSA (Committee on Sponsoring Organizations) framework;
- General office software, particularly the Microsoft Office Suites and Microsoft/Great Plains software, (or other similar not-for-profit general ledger software), accounting and financial software and databases;

Ability to:

- Create and assess financial statements and budget documents;
- Recognize and be responsive to the needs of the Executive Director, officers and governing board of the organization;
- Supervise staff, including regular progress reviews and plans for improvement;
- Communicate effectively in both written and verbal form.

Education and Experience

Education:

- Completion of a bachelor's degree in accounting at an accredited college or university;
- Completion of a master's degree in accounting at an accredited college or university preferred, but not required;
- Certified Public Accountant (CPA) preferred, but not required.

Experience:

- Five to seven years of financial experience and management experience with the day-to-day financial operations of an organization, or equivalent experience;
- Experience or exposure to governmental accounting and finance environment preferred, but not required;
- Experience or exposure to internal audit or external audit responsibilities preferred, but not required;
- Any equivalent combination of education and experience determined to be acceptable.

Location

The finance department and its staff are located in the Alabama State Bar building in Montgomery, Alabama. The director must operate the department from this location.

Salary and Benefits

The salary will be commensurate with experience. Benefits include participation in the State Employees' Health Insurance Program and the Retirement Systems of Alabama.

Application

Submit a resume with a cover letter of no more than two pages explaining why you would like this position and why you are qualified for it to:

Keith B. Norman
Executive Director
Alabama State Bar
P. O. Box 671
Montgomery, AL 36101-0671

The deadline for applications is April 1, 2015. | [AL](http://alabar.org)

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Gregory H. Hawley
ghawley@joneshawley.com



Honk if you have a copy of the Magna Carta!

The inspiration behind the cover story of this issue occurred at *The Alabama Lawyer* Editorial Board meeting last July. Someone mentioned that the 800th anniversary of Magna Carta would take place in 2015. Board member **Marc Ayers** volunteered that he had a copy of Magna Carta in his office at Bradley Arant. By coincidence, we have a copy in our law firm, too. Inspired by that meeting, the Editorial Board sought an article about the history and development of Magna Carta.

Special thanks to Marc, to Keith Norman, to former **University of Alabama School of Law Interim Dean Bill Brewbaker** and to former **Chief Justice Drayton Nabers**, whose advice ultimately led to our author, **Paul Pruitt**, director of the Bounds Library, UA School of Law.

For those who would like a deeper understanding of the history and significance of Magna Carta to the Anglo-American legal system, you might be interested in attending events sponsored by the American Bar Association taking place in London and Runnymede in June of this year. The anniversary date is June 19, 2015. Here is a link with more information: http://www.americanbar.org/content/dam/aba/events/meetings_travel/2015_london_brochure.authcheckdam.pdf.

For those with less time to spare, we hope you enjoy the article by Paul Pruitt. For lawyers who want to gaze upon Magna Carta, but who may not want to spring for air fare to London, feel free to call upon Marc Ayers (mayers@abac.com) or me. | [AL](#)

PROFILES OF ALABAMA'S LAWYER-LEGISLATORS

By Ted Hosp and Suzi Edwards



Pictured above, left to right, are Rep. Matt Fridy, Rep. Tim Wadsworth, Rep. Isaac Whorton, Rep. Bill Poole, Rep. Paul Beckman, Rep. Juandalynn Givan, Rep. Chris England, Rep. Marcel Black, Rep. Jim Hill, Rep. David Faulkner and Rep. Mike Jones.

The March issue coincides with the 2015 session of the Alabama Legislature. We members of the Alabama State Bar appreciate the importance of having lawyers serve in the legislature. As practicing lawyers, we can also appreciate the personal and professional sacrifices that lawyer-legislators endure when they spend several months in Montgomery during the session. We hope you enjoy the profiles of current lawyer-legislators. Please thank them for their service when you see them.

—Editorial Board

House of Representatives

Representative Paul Beckman¹

House District 88
Autauga and Elmore counties
Elected to the House in 2010
Committees: Judiciary,
Constitution, Campaigns &
Elections (vice chair)
Admitted: 1994

Rep. Paul Beckman was elected to represent Alabama's 88th District in November 2010, and was reelected to a second term in 2014. Rep. Beckman

graduated from Florida State University and received his law degree from the Jones School of Law in 1994. He is a partner with Capouano, Beckman & Russell in Prattville. His practice focuses on bankruptcy, debtor-creditor law, commercial law and business law. He and his wife, Linda, a retired captain in the United States Air Force, live in Prattville and have one son.

Representative Marcel Black²

House District 3
Colbert, Lauderdale and Lawrence counties

Elected to the House in 1990
Committees: Judiciary, Ethics &
Campaign Finance, Financial
Services (ranking minority member)
Admitted: 1975

Rep. Marcel Black has represented the 3rd District of Alabama in the house of representatives, encompassing Colbert, Lauderdale and Lawrence counties since 1990. He graduated from the University of Alabama and the university's school of law. He practices in Tuscumbia with Black & Hughston. He and his wife have two children, including a son, Edgar, who is a lawyer, and five grandchildren.

Representative Chris England³

House District 70
Tuscaloosa County
Elected to the House in 2006
Committees: Judiciary, Public Safety
& Homeland Security
Admitted: 2002

Rep. Chris England first took office in 2006, and has represented District 70 in Tuscaloosa County since then. He has not faced primary or general election opposition in any of his three terms since first running in 2006. Rep. England is a graduate of Howard University and the University of Alabama School of Law. He serves as an associate city attorney for the City of Tuscaloosa. He and his wife, Shea, have three children.

Representative David Faulkner

House District 46
Jefferson County
Elected to the House in 2014
Committees: Judiciary, Financial
Services, Insurance, Jefferson
County Legislation
Admitted: 1994

Rep. David Faulkner practices with Christian & Small of Birmingham, where he has been a partner since 2001. He has a broad civil trial practice focusing on defending premises liability, products liability, personal injury, fraud and commercial litigation. He was first elected to the house in November 2014 to represent District 46 in Jefferson County, which includes major parts of Mountain Brook, Homewood and Hoover. He replaces fellow attorney and former Rep. Paul DeMarco, who did not run for re-election to the house. "I think being an attorney has prepared me well for serving as a state representative, and I believe that I will be able to use my experience from practicing law for the last 20 years to help me better represent the people of this state and of my district. I am thrilled to help the people of Hoover, Homewood and Mountain Brook in District 46." Rep. Faulkner spends most of his free time with Nancy, his wife of 17 years, and his three children, all of whom he has

coached in various youth sports. Faulkner previously served as president of the Mountain Brook Chamber of Commerce, and currently serves as the chamber's general counsel. He is a graduate of the University of Alabama (cum laude) and the university's school of law where he was a member of the National Moot Court Team.

Representative Matt Fridy

House District 73
Shelby County
Elected to the House in 2014
Committees: Judiciary, Health
Admitted: 2001

Rep. Matt Fridy is a freshman member of the house of representatives and represents newly-relocated District 73, which was moved from Montgomery to Shelby County due to shifting populations. Rep. Fridy is a graduate of the University of Montevallo and the Cumberland School of Law (magna cum laude), where he served as an editor of the *Cumberland Law Review*. Rep. Fridy practices with Wallace, Jordan, Ratliff & Brandt where he focuses on appellate and corporate litigation, constitutional law and campaign finance. "As an attorney with a practice that focuses heavily on appellate litigation, I am keenly aware that the precise wording of a statute, its plain language, is incredibly important. The bench and bar deserve clarity in the law, and I hope to work with my colleagues in the legislature to craft legislation that is clear on its face and free of ambiguity and unintended consequences." After law school, he clerked for the Hon. Edwin Nelson, United States District Judge for the Northern District of Alabama. He has served as an adjunct professor of business law at his alma mater. He and his wife, Kimberly, have four children and live in Montevallo.

Representative Juandalynn Givan

House District 60
Jefferson County
Elected to the House in 2010
Committees: Judiciary,
Constitution, Campaigns &

Elections, Jefferson County
Legislation
Admitted: 2004

Rep. Juandalynn Givan is the owner of Givan & Associates in Birmingham as well as That Girl, Inc. She has represented District 60, which includes the Birmingham area cities and neighborhoods of Forestdale, Ensley, Pratt City, Gardendale, Fultondale and Southside since 2010, and was re-elected in 2014 with 76.5 percent of the vote. She began her political career as a cabinet member for Mayor Richard Arrington, Jr. in Birmingham where she had responsibility for capital projects and development in the City Center. She is a graduate of Miles College and Miles School of Law. In addition to her law practice, she currently serves as the director of institutional development at Miles. Among her numerous awards and recognitions are 2014 NAACP Woman of the Year.

Representative Jim Hill, Jr.

House District 50
St. Clair County
Elected to the House in 2014
Committees: Judiciary (vice chair),
Ethics & Campaign Finance
Admitted: 1975

Prior to being elected to the house of representatives in November 2014, Rep. Jim Hill served as a judge in St. Clair County for almost 20 years, first as district judge from 1995-2005 and then from 2005 to 2013 as circuit judge. He served as the presiding circuit judge from 2011 until his retirement from the bench. He was elected to hold the seat for District 50 replacing Rep. Jim McClendon, who ran successfully for the Alabama Senate. District 50 is in St. Clair County. Judge Hill is a graduate of Mississippi State University, and received his law degree from Samford University's Cumberland School of Law. Prior to taking the bench, he was in private practice for 20 years. Judge Hill and his wife, Susan, have two children, one of whom, James Hill, III, is also an attorney, admitted in 2005. Rep. Hill is in private practice with his son in Moody. "I am very grateful to have

been put on the Judiciary Committee and to have been chosen as vice chair. I hope that my 40 years as a lawyer will help me in this new role.”

Representative Mike Jones

House District 92
Covington, Coffee and Escambia counties
Elected to the House in 2010
Committees: Judiciary (chair)
Admitted: 1993

Rep. Mike Jones is in his second term representing District 92, having first been elected in 2010. Rep. Jones graduated with honors from Birmingham Southern College and received his law degree from the University of Alabama. Following graduation, he returned home to Andalusia to practice, where he practices today, focusing primarily on family law. A strong believer in public service, he served two terms on the Andalusia City Council before running for the house, a goal of his since he was a teenager. During the organizational session in January, he was named chair of the House Judiciary Committee. He serves as Andalusia city judge, a position he has held since 2008. He and his wife, Kathy, have two children.

Representative Bill Poole

House District 63
Tuscaloosa County
Elected to the House in 2010
Committees: Ways & Means
Education (chair)
Admitted: 2004

Rep. Bill Poole was elected to serve District 63 in 2010 and is serving his second term in the Alabama House of Representatives. His district includes the University of Alabama, portions of both the Tuscaloosa City and Tuscaloosa County school districts and much of the City of Tuscaloosa. Among other roles, Bill currently serves as chair of the House Ways and Means Education Committee and of the Tuscaloosa County Legislation Committee. After serving his first legislative session in 2011, Bill was identi-

fied by veteran lawmakers interviewed by the *Mobile Press-Register* as the top member out of 34 new lawmakers in the house. Bill grew up in the small Black Belt town of Dayton in Marengo County. He is a graduate of the University of Alabama and the university's school of law, and practices in Tuscaloosa with Gilmore, Poole & Rowley. Before attending law school, Rep. Poole served as a staff assistant for the United States House Committee on Ways and Means. He and his wife, Niccole, are the parents of Sally, William and Whittman.

Representative Tim Wadsworth⁴

House District 14
Jefferson, Walker and Winston counties
Elected to the House in 2014
Committees: Children & Senior Advocacy, Local Legislation, Technology & Research
Admitted: 1985

Rep. Tim Wadsworth is a freshman legislator for the 14th District, which includes parts of Winston, Walker and Jefferson counties. He is a graduate of the University of Alabama and Samford University's Cumberland School of Law. His practice focuses on tax general law with offices in Arley and Sulligent. He and his wife, Virginia, have three children. He began his career as a certified public accountant.

Representative Isaac Whorton⁵

House District 38
Chambers and Lee counties
Elected to the House in 2014
Committees: Boards, Agencies & Commissions, Local Legislation, Public Safety & Homeland Security, Lee County Legislation
Admitted: 2006

Rep. Isaac Whorton from District 38 is beginning his first legislative session. Rep. Whorton's district includes portions of Chambers and Lee counties. He graduated from Auburn University and the Jones School of Law. His family has a deep background in education, which he credits for motivating him to

seek office. His grandfather served as the first principal of Valley High School, and his mother taught school in Chambers County for 25 years. He practices in Valley and previously served on the Valley Planning Commission. Rep. Whorton replaced Rep. DeWayne Bridges, who did not seek reelection.

Senate

Senator Greg Albritton⁶

Senate District 22
Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe and Washington counties
Elected to the Senate in 2014 (previously served in the house from 2002 to 2006)
Committees: Agriculture, Conservation & Forestry (vice chair), Constitution, Campaigns & Elections, Judiciary, Transportation & Energy
Admitted: 1995

Having served in the United States military in both the Air Force and the Navy for more than 30 years, Sen. Greg Albritton is now embarking on his second tour of duty in the Alabama State House, having served in the house of representatives from 2002 to 2006. In 2014, Sen. Albritton was elected to serve senate District 22, which includes parts of eight different counties in south Alabama. Sen. Albritton completed his military service in 2005, when he retired as a commander in the U.S. Naval Reserve. He has a solo practice in Evergreen, where he has served as a municipal judge and city attorney. He has also served as the city attorney for Castleberry, Repton and Excel. He is a graduate of Weber State University and the Jones School of Law.

Senator Arthur Orr

Senate District 3
Limestone, Madison and Marshall counties
Elected to the Senate in 2006
Committees: Confirmations,



Pictured above, left to right, are Sen. Arthur Orr, Sen. Tom Whatley, Sen. Hank Sanders, Sen. Phil Williams, Sen. Cam Ward, Sen. Greg Albritton and Secretary of the Senate Patrick Harris. Not pictured is Sen. Rodger Smitherman.

Finance & Taxation Education, Finance & Taxation General Fund (chair), Fiscal Responsibility & Economic Development, Judiciary, Rules, Governmental Affairs, Transportation & Energy
Admitted: 1989

Sen. Arthur Orr graduated from Wake Forest University and the University of Alabama School of Law. Following graduation from law school, Sen. Orr joined the Peace Corps and trained teachers in remote mountain villages in northeastern Nepal. After his service in the Peace Corps, Sen. Orr returned to Alabama to practice with Harris, Caddell & Shanks in Decatur where he became a partner. He returned overseas with Habitat for Humanity to establish a low-cost housing Habitat organization in Bangladesh, and served as attorney for the Asia-Pacific area supporting the Habitat organization in numerous countries. He returned home to the states in 2001, and joined Cook's Pest Control, one of the largest pest control companies in the country,

where he serves as vice president and general counsel. A believer in the team approach to solving problems, in 2009, Sen. Orr sponsored legislation to address Alabama's high dropout rate. As Sen. Orr notes, "With this legislation, the hard work of state Superintendent Tommy Bice and his staff and the dedication of many others across the state, the graduation rate has improved from around 65 percent to approximately 80 percent in just five years." Sen. Orr and his wife, Amy, have two children. He is in his third term representing the 3rd District, which includes parts of Limestone, Madison and Morgan counties.

Senator Hank Sanders

Senate District 23
Autauga, Clarke, Conecuh, Dallas, Lowndes, Marengo, Monroe, Perry and Wilcox counties
Elected to the Senate in 1982
Committees: Banking & Insurance, Education & Youth Affairs, Finance

& Taxation Education, Transportation & Energy
Admitted: 1971

Sen. Hank Sanders has represented Alabama's 23rd District for more than 30 years. He is a graduate of Talladega College and Harvard Law School. He practices in Selma with a focus on civil litigation and governmental law. He believes his most notable case is the Black Farmers' Discrimination Litigation that involved \$1.25 billion. His district includes all or parts of nine counties in the Black Belt region. He notes that in his legislative work "being a lawyer helps me understand the hidden impact of legislation and helps me act accordingly." He and his wife have three children by birth, and four by foster relationship. Sen. Sanders grew up the second of 13 brothers and sisters. In 2004, Sen. Sanders wrote and published a novel, *Death of a Fat Man*, and thinks he would have pursued writing as a career had it not been for the law. He writes a weekly column, "Senate Sketches," detailing his activities

for his constituents, and he appears on three weekly radio programs.

Senator Rodger Smitherman⁷

Senate District
Jefferson County
Elected to the Senate in 1994
Committees: Confirmations,
Constitution, Campaigns &
Elections, Finance & Taxation
Education, Fiscal Responsibility &
Economic Development, Judiciary,
Rules
Admitted: 1989

Sen. Roger Smitherman has represented the 18th District in Jefferson County for 20 years. He is a graduate of the University of Montevallo and received his law degree with honors from Miles Law School where he teaches constitutional law. He also operates his practice in downtown Birmingham. Sen. Smitherman and his wife, Jefferson County Circuit Judge Carol Smitherman (a former Birmingham City Council member), are the parents of four children. Sen. Smitherman has served as a member the Alabama Sentencing Commission and was elected president pro tem of the Alabama Senate from 2009 to 2010.

Senator Cam Ward

Senate District 14
Bibb, Chilton, Jefferson and Shelby counties
Elected to the Senate in 2010 (previously served in the House from 2002 to 2010)
Committees: Confirmations,
Finance & Taxation General Fund,
Fiscal Responsibility & Economic
Development (vice chair), Health,
Judiciary (chair)
Admitted: 1996

Sen. Cam Ward is beginning his second term in the senate representing District 14, having previously served two terms in the house of representatives. Sen. Ward has the distinction of never facing opposition in either his primary or general election in any of the four times he has run for the Alabama State House. In his first term

in the senate, he led the Senate Judiciary Committee, a role he will continue to have in the coming quadrennium. In addition to chairing the Judiciary Committee, Sen. Ward also chairs the Prison Reform Task Force, which has been meeting for several months to find solutions to Alabama's prison crises. In his private capacity, Sen. Ward has represented the Industrial Development Board of Alabaster, as well as several other public corporations. He specializes in economic development. He is a graduate of Troy University and the Cumberland School of Law. He and his wife, Julie, live in Alabaster with their daughter.

Senator Tom Whatley⁸

Senate District 27
Lee, Russell and Tallapoosa counties
Elected to the Senate in 2010
Committees: Agriculture,
Conservation & Forestry (chair),
Banking & Insurance,
Confirmations, Finance & Taxation
Education, Health, Judiciary,
Transportation & Energy, Veterans
& Military Affairs
Admitted: 1999

Sen. Tom Whatley of Auburn was first elected to the senate in 2010. Sen. Whatley grew up on his family's dairy farm in Lee County. He is a graduate of Auburn University and the Jones School of Law. He has served more than 25 years in the United States military, having been deployed overseas multiple times, most recently serving as the diplomatic liaison between the United States Embassy and the Romanian Ministry of Defense from 2005 to 2007. He currently serves as battalion commander of the 167th Special Troops Battalion, holding the rank of lieutenant colonel. He practices in Auburn.

Senator Phil Williams

Senate District 10
Cherokee and Etowah counties
Elected to the Senate in 2010
Committees: Constitution,
Campaigns & Elections, Fiscal
Responsibility & Economic

Development (chair), Judiciary
(vice chair), Governmental Affairs,
Veterans & Military Affairs
Admitted: 2003

Sen. Phil Williams of Gadsden represents Cherokee and Etowah counties as the senator for Alabama's 10th District. Aside from serving as a state senator and practicing law, Sen. Williams has served 27 years as a United States Army officer, currently holding the rank of lieutenant colonel in the Alabama National Guard. Sen. Williams is an Airborne Ranger, and served two combat tours overseas in America's War on Terror: one in Afghanistan and one in Iraq. He was first elected to the senate in 2010, and is beginning his second term in office. He credits his decision to run for office in part to his time in Iraq where he witnessed local Iraqis who ran for office in spite of great risks. "One of those individuals was assassinated for daring to work for his constituents and another barely survived an attempt on his life. I still carry their picture with me daily because of the inspiration I found in their stand." Sen. Williams operates Williams & Associates in Gadsden with a focus primarily on insurance, municipal and corporate defense work. He also serves as the chief operations officer and general counsel for the Tax Credit Processing Center in Gadsden. He and his wife, Charlene, have two children. | [AL](#)

Endnotes

1. We did not receive comments from Rep. Beckman.
2. We did not receive comments from Rep. Black.
3. We did not receive comments from Rep. England.
4. We did not receive comments from Rep. Wadsworth.
5. We did not receive comments from Rep. Whorton.
6. We did not receive comments from Sen. Albritton.
7. We did not receive comments from Sen. Smitherman.
8. We did not receive comments from Sen. Whatley.



Exclusive Legislation Does Not Mean Exclusive Jurisdiction— State-Court Jurisdiction over Civil Actions Arising upon Federal Enclaves

By David G. Wirtes

Enclave Clause

Article I, Section 8, clause 17, of the Constitution of the United States (the “Enclave Clause”) provides:

The Congress shall have Power ... To exercise exclusive Legislation in all Cases whatsoever over [the District of Columbia], and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other need-ful Buildings.

Clause 17 does not of its own force make a federal court the *exclusive* forum for resolving civil disputes arising upon federal enclaves. On the contrary, state courts and federal courts have concurrent jurisdiction over transitory actions arising upon federal enclaves. A recent decision from the Supreme Court of Alabama, *Ex parte U.S. Innovations Group, Inc.*, 141 So.3d 459 (Ala. 2013) (“*Ex parte USIG*”), conclusively establishes this point of law.

Authorities Establishing Concurrent State And Federal Jurisdiction

Prior to *Ex parte USIG*, the Enclave Clause had been construed by the United States Supreme Court¹ and only a few federal

courts of appeal,² district courts³ and state appellate courts⁴ to confer concurrent state and federal jurisdiction to adjudicate civil actions arising upon federal enclaves. Secondary authorities concerning enclave jurisdiction were likewise sparse. The author of a 2011 “Practitioners’ Notes” article asserted: “Research reveals no published law review articles examining the doctrine.” Emily S. Miller, “The Strongest Defense You’ve Never Heard Of: The Constitution’s Federal Enclave Doctrine and Its Effect On Litigants, States, and Congress,” 29 *Hofstra Lab. & Emp. L. J.* 73, 74 n. 11 (2011). Miller overlooked two articles in the *Military Law Review*: Maj. Stephen E. Castlen and Lt. Col. Gregory O. Block, “Exclusive Federal Legislative Jurisdiction: Get Rid Of It!,” 154 *Mil. L. Rev.* 113 (1997); and Capt. Richard T. Altieri, “Federal Enclaves: The Impact of Exclusive Legislative Jurisdiction Upon Civil Litigation,” 72 *Mil. L. Rev.* 55 (1976). The latter article, in 1976, noted that “the emerging trend, which reinterprets the nature of legislative jurisdiction, offers a cure for the existing confusion in the areas of service of process and subject matter jurisdiction.” 72 *Mil. L. Rev.* at 85.

Ex parte USIG Properly Rejected Exclusive Federal- Court Jurisdiction

In the case recently decided by the Supreme Court of Alabama, defendants



argued that the enclave clause, of its own force, makes federal courts the *exclusive* forum for civil actions arising on federal enclaves. The Supreme Court of Alabama disagreed: “a grant of ‘exclusive federal jurisdiction’ over land does not, by itself, indicate an intention to create exclusive federal-court jurisdiction of claims arising on that land.”⁵

Ex parte USIG joins the short list of decisions specifically and squarely holding that a state court has jurisdiction over a civil action arising on a federal enclave. The question was previously so unclear that the defendants in *Ex parte USIG* were emboldened to petition the Supreme Court of Alabama for mandamus on the point despite rulings against them by a United States Magistrate Judge,⁶ two United States District Judges⁷ and the Circuit Court of Madison County, Alabama⁸—and then to apply for rehearing after the Supreme Court of Alabama initially denied the petition without issuing an opinion, and again after it issued its June 28, 2013 opinion on the first rehearing. The Supreme Court of Alabama’s ultimate opinion, issued June 28, 2013, succinctly analyzes the authorities on the subject and demonstrates conclusively the correctness of the holding. This article sets forth and builds upon that analysis in hopes of forestalling similar arguments that the “exclusive Legislation” provision or the “like Authority” provision of the Enclave Clause precludes state-court jurisdiction over transitory actions arising upon federal enclaves.

***Ex parte USIG*— Removed, Remanded and State-Court Jurisdiction Affirmed**

On May 5, 2010, Jerry A. Grimes and James R. Hawke, Jr. were employed by Amtec Corporation and working pursuant to a government contract at Redstone Arsenal, a federal enclave located in Madison County, Alabama. Amtec was using a decanter centrifuge to process and reclaim highly explosive ammonium perchlorate from outdated U.S. Army rocket motors. The centrifuge exploded

with Grimes and Hawke working only a few feet away. They both suffered unsurvivable third-degree burns and explosion injuries and died.

Carolyn Grimes, individually and as administratrix and personal representative of Mr. Grimes, brought a wrongful-death action in the Circuit Court of Madison County against co-employees of his and the entities and individuals who configured and sold the centrifuge to Amtec.⁹ Judy A. Hawke brought a similar action as the administratrix and personal representative of the estate of her deceased husband, Mr. Hawke.¹⁰

Three defendants (“the Ashbrook Simon-Hartley Defendants”) removed the case to federal court.¹¹ They asserted: “The U.S. District Court has original jurisdiction according to ‘federal enclave’ jurisdiction, which is a specific type of federal question jurisdiction ‘arising under’ 28 U.S.C. § 1331.”¹² However, the removal did not have the consent of all defendants, and some expressly objected, as Mrs. Grimes stated in her motion to remand.¹³ In *Hawke*, defendant Jack Dombroski, an employee of U.S. Centrifuge, filed a notice of removal, but it was untimely so Mrs. Hawke also moved to remand.¹⁴

In opposition to the motions to remand, the remaining defendants argued that the enclave clause gives federal courts *exclusive* jurisdiction over actions arising on federal enclaves and thus obviates the need to comply with the unanimity and timeliness requirements of the removal statute.¹⁵ The federal district courts disagreed and granted the motions to remand.¹⁶

Upon remand to the Circuit Court of Madison County, those defendants renewed their arguments for exclusive federal-court jurisdiction over actions arising on federal enclaves, moving to dismiss the state court actions for want of subject-matter jurisdiction. The Madison County Circuit Court denied the motions to dismiss.¹⁷ Defendants then petitioned for a writ of mandamus, arguing that the denials of these motions to dismiss were erroneous. The Supreme Court of Alabama initially denied the petitions without opinions, but after consideration of the defendants’ applications for rehearing, denied the petitions with a scholarly dispositive opinion.¹⁸

Source of Confusion: Two Meanings of “Jurisdiction”

Although the Enclave Clause does not use the word “jurisdiction,” courts have used this word to refer to the clause’s grant to Congress of political authority over the District of Columbia and other lands (such as forts and arsenals) acquired pursuant to the clause by the United States.¹⁹ “It long has been settled that, where lands for such a purpose are purchased by the United States with the consent of the state legislature, the jurisdiction theretofore residing in the state passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.”²⁰

USIG’s argument depended upon a failure to correctly observe the difference between two distinct meanings of the word “jurisdiction.” *Black’s Law Dictionary* gives both definitions:

jurisdiction, n. (14c) 1. A government’s general power to exercise authority over all persons and things within its territory; esp., a state’s power to create interests that will be recognized under common-law principles as valid in other states. New Jersey’s jurisdiction. ... 2. A court’s power to decide a case or issue a decree. The constitutional grant of federal-question jurisdiction.

Black’s Law Dictionary (9th ed. 2009) (emphasis added). Courts are accustomed to using the word “jurisdiction” to mean their “power to decide a case.” It is an appropriate use of the word, and courts sometimes use the word to refer to the “government’s general power to exercise authority.”

The Supreme Court has recognized this dual use of “jurisdiction.” Rejecting a similar attack on state-court jurisdiction over actions arising in areas subject to the Outer Continental Shelf Lands Act, the Court held that the defendant’s argument “confuses the political jurisdiction of a State with its judicial jurisdiction.”²¹ Thus, although courts use the term “jurisdiction” in both senses, this question requires keeping the two different meanings of the word distinct. The Enclave Clause gives the United States power to exercise authority

in federal enclaves as defined therein, i.e., political jurisdiction. It says nothing about the authority of federal or state courts to hear and decide civil actions, i.e., judicial or adjudicative jurisdiction.

Federal Government's Exclusive Political Jurisdiction in Federal Enclaves Does Not Oust State Courts of Judicial Jurisdiction

“The general principle of state-court jurisdiction over cases arising under federal laws is straightforward: state courts may assume subject-matter jurisdiction over a federal cause of action absent provision by Congress to the contrary or disabling incompatibility between the federal claim and state-court adjudication.”²² “It is black-letter law ... that the mere grant of jurisdiction to a federal

court does not operate to oust a state court from concurrent jurisdiction over the cause of action.”²³

Nothing inherent in exclusive federal sovereignty over a territory precludes a state court from entertaining a personal injury suit concerning events occurring in the territory and governed by federal law. Ohio River Contract Co. v. Gordon, 244 U.S. 68 (1917). ... State courts routinely exercise subject-matter jurisdiction over civil cases arising from events in other States and governed by the other States' laws. ... That the location of the event giving rise to the suit is an area of exclusive federal jurisdiction rather than another State, does not introduce any new limitation on the forum State's subject-matter jurisdiction.

Gulf Offshore, 453 U.S. at 481-82 (emphasis added). The Supreme Court thus uses “jurisdiction” in both senses—the first two quotations in this paragraph use the word “jurisdiction” in the sense of a court’s authority to adjudicate a dispute, and the block quotation uses the phrase “exclusive federal jurisdiction” in the sense of political jurisdiction and the phrase “the forum State’s subject-matter jurisdiction” in the

sense of judicial jurisdiction. These statements seem clear and dispositive but the *Grimes* and *Hawke* defendants argued that *Gulf Offshore* did not decide the alleged constitutional question pertaining to the enclave clause because it addressed a Congressional statement of jurisdiction in the Outer Continental Shelf Act.

The argument that the Enclave Clause itself gives federal courts exclusive jurisdiction is contrary to precedent: Federal courts do not even consider the Enclave Clause to give federal courts jurisdiction, much less to give them jurisdiction that is exclusive of state-court jurisdiction. Instead, they deem their jurisdiction over disputes arising on enclaves to be conferred only by the Congressional enactment that confers “federal question” jurisdiction: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”²⁴ In *Mater v. Holley*, the Fifth Circuit held that an action alleging a tort on an enclave “arises under the laws of the United States, within the meaning of 28 U.S.C. § 1331, and therefore should not have been dismissed” by the federal district court for a supposed lack of subject-matter jurisdiction.²⁵

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The federal courts that remanded *Grimes* and *Hawke* expressly or implicitly held that “concurrent state and federal jurisdiction exists.” Magistrate Judge Ott’s Report and Recommendation addresses concurrent jurisdiction expressly:

Consistent with *Mater*, *Akin* [*v. Ashland Chem. Co.*, 156 F.3d 1030 (10th Cir. 1998)], and *Durham* [*v. Lockheed Martin Corp.*, 445 F.3d 1247 (9th Cir. 2006)], this court has federal-question jurisdiction over plaintiff’s claims for personal injuries sustained on Redstone Arsenal, a federal enclave. The more specific issue in addressing plaintiff’s motion to remand, however, is whether this court’s jurisdiction is *exclusive of the state court’s* for this action. Stated another way, this court *must determine* whether concurrent state and federal jurisdiction exists because if concurrent jurisdiction exists, the removing defendants must have followed the procedural requirements for removal outlined in 28 U.S.C. § 1446.²⁶

Magistrate Judge Ott recommended that the action be remanded because the removal did not meet the requirement of § 1446 that all defendants must join in the removal (the “unanimity” requirement). Senior U.S. District Court Judge Robert B. Propst adopted the Report and Recommendation, quoted at length from *Gulf Offshore*, and remanded the action.²⁷

In *Hawke*, U.S. District Court Judge Inge Johnson likewise rejected the arguments that the United States District Court “has exclusive jurisdiction pursuant to 16 U.S.C. § 457 and U.S. Const. Art. I, § 8 cl. 17, because Redstone Arsenal is a ‘federal enclave.’”²⁸

Assuming Redstone Arsenal is within the definition of federal enclave, nothing in that status mandates exclusive jurisdiction in the federal courts. Rather, the federal courts share with state courts jurisdiction of personal injury actions on federal lands. See e.g., *Mater* Exclusive jurisdiction in the sense of exclusive sovereignty does not divest state courts of jurisdiction over personal injury causes of action. See also *Gulf Offshore* The court thus finds this case has been improperly removed.

Because jurisdiction was *not improper in state court*, pursuant to U.S.C. § 1446(b)(1), defendant Dombroski had 30 days from the date he received service of the complaint to file his notice of removal.²⁹


Once the distinction between the two different meanings of “jurisdiction” is acknowledged, it becomes clear that federal courts do not enjoy exclusive adjudicative jurisdiction for actions arising upon federal enclaves.

Other Enclave Cases Address Different Issues and Say Nothing about State Court’s Jurisdiction Over Transitory Cause of Action Arising on Federal Enclave

The cases USIG relied upon addressed *not* whether a state court has jurisdiction over a transitory action arising upon a federal enclave, but other issues, such as whether state law applies to the incident in question. These include *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930) (holding that Arkansas personal property tax did not apply on the enclave); *Western Union Tel. Co. v. Chiles*, 214 U.S. 274 (1909) (holding that the Virginia penalty for failing to deliver a telegram did not apply to failure to deliver a telegram on the enclave); *Palmer v. Barrett*, 162 U.S. 399 (1896) (enforcing a condition in a cession of land that did not come under the enclave clause and thus did not create an enclave); *Chicago R. I. & P. R. Co. v. McGlimm*, 114 U.S. 542 (1885) (holding that the federal land in question was not an enclave created as required by the enclave clause and thus applying the Kansas Railroad Fence Law to the federal land); *Fort Leavenworth R. Co. v. Lowe*, 114 U.S. 525 (1885) (after holding that the federal land was not an enclave governed by the enclave clause, upholding the Kansas reservation of the right to tax railroad property that was a condition of the cession of the land to the federal government); *Allison v. Boeing Laser Technical Services*, 689 F.3d 1234 (10th Cir. 2012) (declining to apply Arizona common law adopted after the creation of the enclave); *Lord v. Local Union No. 2088, Int’l Bach. of Elec. Workers AFL-CIO*, 646 F.2d 1057 (5th Cir. 1981) (declining to apply Florida’s right-to-work law on the enclave); *Commonwealth v. Clary*, 8 Mass. 72 (1811) (holding that the Massachusetts liquor-license law did not apply on the enclave); and *Foley v. Shriver*, 81 Va. 568 (1886) (holding that the state court could not garnish property in the hands of U.S. officers on a federal enclave).

Cases Addressing Whether Federal Courts Have Jurisdiction over Claims Arising on Enclaves

As late as 1952, it was an open question as to whether a *federal* court had jurisdiction over a cause of action arising upon



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an enclave. The United States District Court for the Northern District of Georgia dismissed such an action for lack of federal jurisdiction, but the Court of Appeals for the Fifth Circuit reversed. After discussing the enclave clause and cases interpreting it, the court of appeals concluded: “Upon the principles above cited, we hold that this action arises under the laws of the United States, within the meaning of 28 U.S.C. § 1331, and therefore should not have been dismissed. Existing federal jurisdiction is not affected by concurrent jurisdiction in state courts.” *Mater v. Holley*, 200 F.2d 123, 125 (5th Cir. 1952). Later cases have, citing *Mater* or its progeny, similarly held that a cause of action arising on an enclave is subject to federal-question jurisdiction. *Akin v. Ashland Chem. Co.*, 156 F.3d 1030 (10th Cir. 1998) (denying a motion to remand a claim alleging toxic exposure on an enclave); *Corley v. Long-Lewis, Inc.*, 688 F. Supp. 2d 1315 (N.D. Ala. 2010) (denying a motion to remand); *Professional Helicopter Pilots Ass’n, etc. v. Lear Siegler Services, Inc.*, 326 F.Supp.2d 1305 (M.D. Ala. 2004) (upholding reservations in Alabama’s cession); *Parker v. Main*, 804 F.Supp. 284 (M.D. Ala. 1992) (finding federal-question jurisdiction under the enclave clause); *Federico v. Lincoln Military Housing*, 901 F.Supp. 2d 654 (E.D. Va. 2012) (holding that federal-question jurisdiction may exist even where the state expressly reserved concurrent civil jurisdiction in its cession of the land); cf. *J & L Management Corp. v. New Era Builders, Inc.*, 2009 WL 1707886 (N.D. Ohio 2009) (not reported in Fed. Supp. 2d) (remanding for lack of a substantial federal question despite the fact that some of the performance of the contract signed in Ohio would take place on the federal enclave); *In re Welding Rod Products Liability Litig.*, Case No. 1:03-CV-17000, p. 12, n. 6 (N.D. Ohio Jan. 13, 2005) (“When exposures allegedly occur partially inside and partially outside the boundaries of an enclave[,] an argument [will] surface that the state’s interest increases proportionally, while the federal interest decreases; *Akin [v. Big Three Indus., Inc.]*, 851 F.Supp. 819, 825, n. 4 (E.D. Tex. 1994)”).

Criminal Cases

The USIG defendants also relied on criminal cases, which present an entirely

different question than the issue of civil jurisdiction over transitory actions. Due process requires that a crime be punished only in the jurisdiction in which the crime or at least some portion of it takes place. *Heath v. Jones*, 941 F.2d 1126, 1138 (11th Cir. 1991). Moreover, Congress has provided that “[t]he district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.” 18 U.S.C. § 3231.

Enclave opinions pertaining only to criminal jurisdiction over enclave crimes include *United States v. Unzeuta*, 281 U.S. 138 (1930) (federal court had jurisdiction over murder committed on railroad right-of-way within enclave); *Battle v. United States*, 209 U.S. 36 (1908) (affirming a federal-court conviction for murder on post office land); *Benson v. United States*, 146 U.S. 325 (1892) (affirming a murder conviction in federal court over the defendant’s argument that the portion of the enclave was not used for military purposes and thus was not within the federal court’s jurisdiction); *United States v. Cornell*, 2 Mason 60 (1819); *State ex rel. Laughlin*, 318 S.W. 3d 695 (Mo. 2010); and *State of New Jersey v. Morris*, 68 A. 1103 (N.J. 1908). These opinions have no relevance to the issue of civil jurisdiction over transitory causes of action.

Conclusion

United States district courts have federal-question jurisdiction over transitory civil actions arising upon federal enclaves. If such an action is filed in state court, a timely and procedurally correct notice of removal will almost certainly pass without comment and be upheld. In *Grimes*, the removal was procedurally defective because all defendants did not consent. In *Hawke*, the attempted removal was untimely. Thus, these cases present the unusual situations where defendants improperly removed state court federal-enclave actions, the actions were remanded, but defendants then persisted in challenging the state court’s jurisdiction after remand. It is understandable that there are only a few reported opinions directly addressing the issue of concurrent jurisdiction. Ordinarily, a defendant would either agree to state-court jurisdiction, or effectively remove the action, or, after an ineffective removal, concede that the state court had jurisdiction.

Nevertheless, the law is clear: “Nothing inherent in exclusive federal sovereignty over a territory precludes a state court from entertaining a personal injury suit concerning events occurring in the territory and governed by federal law.” *Gulf Offshore*, 453 U.S. at 481-82. *Accord, Ex parte U.S. Innovations Group, Inc.*, * 4 | AL

Endnotes

1. *Evans v. Cornman*, 398 U.S. 419, 424 (1970) (Persons on enclaves “are subject to the process and jurisdiction of State courts.”); *Ohio River Contract Co. v. Gordon*, 244 U.S. 68, 72 (1917) (“an action for personal injuries being in its nature transitory and susceptible of being brought in any jurisdiction, there is no foundation for the contention that the [state] court had no jurisdiction over the subject-matter of the suit” arising on an enclave).
2. *Stokes v. Adair*, 265 F.2d 662, 666 (4th Cir. 1959) (“This decision does not mean that an action for personal injuries inflicted on a federal reservation may not be tried in a state court. On the contrary, it is settled that actions for personal injuries being transitory in nature may be brought in any jurisdiction in which the defen-

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dant may be impleaded.”); *Mater v. Holley*, 200 F.2d 123, 124 (5th Cir. 1952) (observing that the Supreme Court has permitted state court jurisdiction over tort claims arising out of events on federal enclaves, but that federal courts *also* have jurisdiction over such cases).

3. *Jones v. John Crane-Houdaille, Inc.*, Civil No. CCB-11-2374, 2012 WL 1197391, not reported in F.Supp.2d (D. Md. April 6, 2012) (“That the federal government’s exclusive legislative jurisdiction federalizes state law in a federal enclave does not necessarily lead to exclusive judicial jurisdiction for the federal courts. ... [T]he federal government’s exclusive legislative jurisdiction over a federal enclave in effect federalizes state law for the purpose of creating federal question jurisdiction in federal courts. State courts, however, are courts of general subject matter jurisdiction and may hear claims brought under either state or federal law. Thus, ... if the defendants had not chosen to remove this case to federal court, the case could still have been properly tried in Maryland state court.”); *Sturgeon v. Jackson*, No. EP-10-CV-244-PRM, 2011 WL 3678472 (W.D. Tex. Feb. 9, 2011) (acknowledging *Mater’s* holding that “the Supreme Court has permitted state

court jurisdiction over tort claims arising out of events taking place on federal enclaves but that federal courts also have jurisdiction over such cases”); *Camargo v. Gino Morena Enterprises, L.L.C.*, Ms. EP-10-CV-242-KC Sept. 2, 2010, at 3-4 and n. 3 (W.D. Tex. 2010) (agreeing with *Mater* that the federal government’s “exclusive legislative authority over federal enclaves” does not mean that “federal tribunals have exclusive judicial authority over controversies which arise on such enclaves” (emphasis in original)); *In re Air Crash Disaster at Gander, Newfoundland, on December 12, 1985*, 660 F.Supp. 1202, 1207-08 (W.D. Ky. 1987) (Kentucky state court had subject-matter jurisdiction over claims alleging injuries on Fort Campbell, a federal enclave).

4. *Mendoza v. Neudorfer Engineers, Inc.*, 145 Wash. App. 146, 151, 185 P.3d 1204, 1207 (Wash. App. 2008) (the fact that general laborer plaintiff suffered personal injuries within a federal enclave did not limit a Washington state court’s subject-matter jurisdiction to adjudicate the laborer’s negligence claim: “[E]xclusive jurisdiction in the sense of exclusive sovereignty does not divest state courts of jurisdiction over personal-injury causes of action.”); *Red Top Cab Co. v. Capps*, 270 S.W.2d 273 (Tex. Civ. App. 1954) (Texas state court had subject-matter jurisdiction to adjudicate personal-injury claim stemming from car accident on military base).
5. *Ex parte USIG* at *4.
6. *Grimes v. Amtec Corp.*, No. 5:12-cv-0144-JEO, 2012 WL 3773397 (N.D. Ala. July 30, 2012) (not reported in F.Supp.2d) (Report and Recommendation of Magistrate Judge John E. Ott) (“*Grimes I*”).
7. *Id.*, 2012 WL 3772508 (N.D. Ala. Aug. 28, 2012) (not reported in F.Supp.2d) (Memorandum opinion of Judge Robert B. Propst, “accept[ing], adopt[ing], and affirm[ing] said Report and Recommendation” and expanding upon it) (“*Grimes II*”); *Hawke v. US Centrifuge Systems, L.L.C.*, No. 5:12-cv-01857-IPJ (N.D. Ala. June 28, 2012) (Order of Remand by Judge Inge Prytz Johnson) (“*Hawke I*”); *Hawke v. US Centrifuge Systems, L.L.C.*, No. 5:12-cv-02570-IPJ (N.D. Ala. July 31, 2012) (Order of Remand by Judge Johnson after a second removal of *Hawke*) (“*Hawke II*”).
8. *Grimes v. Amtec Corp.*, No. 47-CV-2011-901678.00, and *Hawke v. U.S. Centrifuge Systems, LLC*, No. 47-CV-2012-900234.00 (consolidat-

ed), Circuit Court of Madison County, Alabama (November 29, 2012 order of Circuit Judge James P. Smith denying motions to dismiss for lack of subject matter jurisdiction) (“*Grimes III*”).

9. *Grimes v. Amtec Corp.*, No. 47-CV-2011-901678.00, Circuit Court of Madison County, Alabama.
10. *Hawke v. U.S. Centrifuge Systems, LLC*, No. 47-CV-2012-900234.00, Circuit Court of Madison County, Alabama.
11. *Grimes v. Amtec Corp.*, N.D. Ala. No. 5:12-cv-01144-JEO, Doc. 1, filed April 17, 2012.
12. *Id.*, p. 3, ¶ 4.
13. *Id.*, Doc. 22, p. 2, ¶ 1.
14. *Hawke I*.
15. *See, e.g., Grimes I*, 2012 WL 3773397 at *7 (“if the theory of exclusive jurisdiction had proved to be correct, the removing defendants would not have needed to comply with the procedural requirements of [28 U.S.C.] § 1446, including obtaining the consent of all the then-served defendants”).
16. *Grimes I, Grimes II, Hawke I and Hawke II*.
17. *See n. 8, supra*.
18. *Ex parte USIG*, 141 So.3d 459 (Ala. 2013).
19. *See, e.g., Lord v. Local Union No. 2088, Intern. Broth of Elec. Workers, AFL-CIO*, 646 F.2d 1057, 1059 (5th Cir. 1981).
20. *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930).
21. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 482 (1981). *Gulf Offshore* answers in principle the question of state-court jurisdiction, although not specifically in the context of federal-enclave causes of actions, as discussed below.
22. *Gulf Offshore*, 453 U.S. at 477-78 (citations omitted).
23. *Id.* at 479.
24. 28 U.S.C. § 1331.
25. *Mater v. Holley*, 200 F.2d at 125.
26. *Grimes I*, 2012 WL 3773397 at * 8 (underlining in original; italics added).
27. *Grimes II*.
28. *Hawke* Order of Remand.
29. *Hawke I* (emphasis added).

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King John, Magna Carta and the Origins of English Legal Rights

By Paul M. Pruitt, Jr.

Prelude

King John: treacherous, tyrannical, mercurial, malicious—the third ruler of the Angevin dynasty.¹ John ruled England and a shrinking number of French provinces from the death of his brother, Richard Coeur de Lion, in April 1199, until his own death in October 1216. One historian observed: “The legend of his awfulness as a person as well as a ruler dates from his own lifetime.” King John may have possessed good qualities—brilliant strategist, firm administrator, fiercely determined—but it was his tyranny that caused English barons to revolt against him. That clash led to a settlement, a peace treaty, Magna Carta. Thus, it was a tyrant king who, forced to deliberate with rebellious nobles, put his seal to Magna Carta, a foundation stone of English and American legal rights.

International Politics and John’s Character

John was clever and unscrupulous, yet he had little success in the 13th century’s Game of Thrones. His rival was the Capetian monarch, Philip II of France. Older than John, Philip viewed the Angevins as a constant threat, for they had acquired, through conquest or marriage, the territories of Normandy,

Brittany, Anjou, Poitiers and Aquitaine. True, they owed Philip homage for these lands, but they were positioned to undermine his power.³ In response, Philip did what he could to divide and conquer. In the 1190s he supported John’s unsuccessful effort to supplant King Richard. In the mid- to late 1190s, Philip warred with Richard, with little success. He was probably relieved to sign a peace treaty with John in 1200.⁴

John’s behavior thereafter—notably his marriage in August 1200 to Isabella of Angouleme, the betrothed of Hugh of Lusignan—led to legal disputes in which Philip, infuriated over John’s refusal to answer charges in person, confiscated all of his French lands.⁵ Dismissing John as a “contumacious” vassal, Philip bestowed upon Arthur of Brittany (John’s nephew) all Angevin lands in France except for Normandy—which Philip wanted.⁶ In the ensuing war, John captured Arthur and then murdered him, allegedly in a drunken rage.⁷ Meanwhile, Philip, this time, made a better showing as a commander. By the fall of 1204, all of Normandy was in French hands, and most of John’s Norman barons had switched sides.⁸

Fearing a French invasion of England, John decreed in January 1205 that he would mobilize his whole kingdom. Ever the fundraiser, John fitted out two expeditions: one to re-take Normandy and one to reinforce his vassals in Poitou and Aquitaine. English barons balked, though, at campaigning in a foreign land, and John was reduced to assisting his southwestern

vassals with mercenary troops. By 1206, when he concluded a two-year truce with Philip, John saw his barons as a dangerous element.⁹ In coming years, as he endured and exploited a religious crisis, he would become a master manipulator of feudal relations.

God, Mammon And Law

In theory, no medieval king could afford to lose the cooperation of the archbishops, bishops and abbots who ruled over the vast landed holdings of the Catholic Church.¹⁰ Richard Coeur de Lion had enjoyed mutually beneficial relations with Hubert Walter, who held overlapping offices, including those of Archbishop (1194-1205), Justiciar (1193-1198), Papal Legate (1195-1198) and Chancellor (1199-1205). John made use of Hubert's talents but resented his prestige. When Hubert died in 1205, John was determined to place one of his familiars upon the arch-episcopal throne; he had already clashed unsuccessfully with the Pope, Innocent III, over a Norman bishopric.¹¹

The monks of Canterbury had the right to elect archbishops, though previous monarchs had exercised considerable influence over their choice. This time it was not so simple. In 1206, the monks hurriedly (and they thought, secretly) sent their own nominee to Rome, but the chosen man blabbed, and John found out. Soon he was sending his own nomination to Rome, after securing his election by the embarrassed monks. Innocent was not impressed. In the end, he summoned more Canterbury monks to Rome and coerced those at his court to elect *his* choice, Stephen Langton, an Englishman who had formerly lectured at the University of Paris. Innocent consecrated Stephen in the summer of 1207, but John refused to receive him, decreeing that anyone calling Stephen "Archbishop" was guilty of high treason. For good measure, the king forced the Canterbury monks into exile.¹²

By March 1208, Innocent placed England under an Interdict.¹³ This ban (a doctrinal atom bomb) involved a suspension of religious services, rites and comforts. Non-offenders suffered alongside transgressors.¹⁴ Unflustered, John continued negotiating while administering church property and revenues through his agents. He retained the support of some clergy and a handful of bishops, and his propagandists spread the word that he was defending the ancient liberties of the English church.¹⁵ Meanwhile, John diverted church funds to assist with his overriding goal—retaking the lost lands. In November 1209, the Pope excommunicated him.¹⁶

Meanwhile, the church was only one of the institutions that John was bending to his awe. The next target, which fit nicely with his family history, was the legal system. John's father, Henry II, had lifted England from the chaos of prolonged civil war¹⁷ by

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adroit use of his powers—most notably via the royal courts, through which he presided over the birth of a "common law" for England. Coordinated by a chief "justiciar," this judicial system included the Exchequer, where sheriffs and crown debtors came to settle accounts; the "Bench," a banc of jurists often sitting at Westminster; the court "Coram Rege," which met in the king's presence to hear pleas of the crown; and shire/county courts often presided over by traveling royal justices.¹⁸

John was interested in the law, and since he was mostly trapped in England, he paid personal attention to the courts.¹⁹ At the time—thanks to the professionalism of judges, and the reliability of writs and procedures—the royal courts were much in demand among small landowners. These litigants knew that royal courts produced

definitive decisions on important matters: rights of seisin and inheritance, location of boundaries, possession of franchises.²⁰ Thus, the king and his judges stood at the intersection of law and bureaucracy, to the benefit of many of his subjects. Wealthier litigants, to be sure, sometimes offered to pay "fines" in order to expedite a case or have it heard *coram rege*. Defendants sometimes offered payment to have a case against them dismissed or delayed.²¹

Yet John's barons, the 200 or so individuals who held lands directly from him, might as well have worn bull's-eyes.²² Not satisfied with receiving church funds on top of conventional revenues, John decided to build up his war chest by tapping into these tenants-in-chief.²³ Consider John's use of the "relief," a payment owed by the heir of an estate to his lord. The amounts varied by the heir's rank—for example, 100 shillings for a knight's "fee." The customary relief for a barony was much higher (£ 100); but Glanvill, the legal authority of the day, admitted that in such matters the barons were at the king's mercy.²⁴ John's demands for baronial relief were often "far in excess of" 100 pounds. Twice in 1210, he burdened heirs with reliefs of 10,000 marks (over £ 6,000). Three years later, he forced John De Lacy to pay 7,000 marks to inherit the "honor" (management) of Pontefract. Historian Ralph Turner observes that no one should be surprised to find these barons among the rebels of 1215.²⁵

Barons, as well as knights and town-dwellers, were probably united in their resentment of other royal policies, too, for John, as early as 1200, had begun to force renewal of all existing charters and franchises. Each demand for payment was backed by the implicit threat that the king might sell the privilege to one of his favorites.²⁶ Then there was "Scutage"—a contribution arbitrarily decreed by the king and paid by those who owed him military service. Henry II and Richard had imposed the Scutage 11 times from 1154 to 1199. John required it 11 times from 1199 to 1215.²⁷ This combination—frequent assessment and harsh enforcement, plus church income—caused royal revenues to skyrocket. Turner estimates that John took in as much as £145,000 per year after

1208, almost *six* times the money available to Richard in 1199!²⁸

To staff his administrative state, John preferred to employ men from the knightly class, like his pliable justice, William Briwerre, or soldiers of fortune like Falkes de Bréauté, a castellan and sheriff known for his brutality.²⁹ Such men served zealously in expectation of advancement.³⁰ From John's standpoint, careerists were preferable to men of noble houses; the latter were more likely to be independent-minded.³¹ The best way to manage highborn persons, John decided, was to trap them, offering them high-priced manors, offices or wardships, knowing that if they accepted, they would fall into his hands. His Court of Exchequer, tasked with judgments regarding crown debts, was a convenient forum for humbling the arrogant, blue-blooded or otherwise. True, this court often allowed its debtors to pay in installments, and John sometimes forgave debts altogether. In other cases, however, the Exchequer forced defaulters to choose between confiscation and borrowing money at high interest from Jewish moneylenders—individuals whose persons and profits were by law completely at the king's mercy.³² In the end, incautious magnates were likely to share the fate of cash-strapped heirs. Most ended up as the king's debtors.³³

That was the way John liked it, but sometimes his paranoia overrode his sense of reality. In 1201, John forgave a debt owed by the father of his close supporter, William de Briouze (or de Braose), the scion of a family of "marcher" (border) lords.

Thereafter, John accepted William's "proffer of 5,000 marks for the vast lordship of Limerick," more than he could pay. So far so good, as De Briouze basked in the king's favor, but soon John began to doubt his friend. Apparently De Briouze knew too much about the death of Arthur of Brittany. Eventually John initiated legal actions, in the course of which he demanded De Briouze's sons as hostages, stripped William of lands and castles and finally outlawed him. The king's men chased him out of England, and then out of Ireland, imprisoning his wife and one of his sons. William died in France in 1211. His wife and son were starved to death at John's orders.³⁴ John was careful to obtain token baronial support for these actions. Yet the barons could not fail to see that nothing was safe—neither lands nor lives—while John was king.

"Plots Have I Laid"³⁵: Magna Carta's Backstory

John was paranoid, but by the time he devastated the De Briouzes, a number of people *were* out to get him. This included a brave minority of barons, who were prepared to oppose him on ideological as well as self-interested grounds. Such nobles were scornful of the bureaucrats and mercenaries who had the king's

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ear. They contrasted their image of John's court, dominated by his *familiares*, with the ethos and familiar procedures of the county and feudal courts. A court of the former type was headed by a sheriff, magnate or royal justice, who presided over an assembly of landholders and other parties entitled to be present. The attendees would hear petitions and accusations, discuss the laws and customs involved and take or defer actions. Feudal courts (courts-baron) were presided over by the lord or his Reeve, and attended chiefly of his vassals, men who expected their interests to be consulted when the lord asked for "aids" (special-occasion taxes) or reliefs.³⁶

To be sure, this template for justice and government was intellectually conservative. Applied to the royal government, it would have forced the king to rule by means of a magnified Shire Moot or baronial court. Not coincidentally, in the early 1200s, a "recension" of the laws of Edward the Confessor (ruled 1042-1066) and Henry I (ruled 1100-1135) was circulating in London; it emphasized a king's duty to obey the laws and consult with his magnates.³⁷ Moreover, the popular literature of the day, particularly the works of the troubadours, promoted a cult of chivalry within which all knights were equal and honorable. King Arthur presided over the round table and King Richard led the Crusade; both fit this image. In contrast, John, murderer of a contemporary Arthur, and John the imposer of arbitrary burdens, did not fit.³⁸ In 1212, a plot to assassinate John was discovered, and one of his barons, Robert Fitzwalter, was forced to flee to France. A northern baron, Eustace de Vesci, fled across the Scottish border.³⁹

It was John's bad luck to have his enemies meet in France. There Fitzwalter spoke with exiled clergy and French officials, and with Pandulf, the Papal Legate. He presented his case so effectively that, by the spring of 1213, Innocent made pardons for Fitzwalter and De Vesci a condition of receiving John back into the fold. Stephen Langton was given power to enforce this provision when he returned to England that summer, after six years of exile, as Archbishop. Langton would prove to be a useful friend to the rebellious barons. It may have been he who eventually directed their attention to a long-neglected document, the coronation oath of 1100 of Henry I, in which that monarch had sworn to uphold the laws of Edward the Confessor. In August, Langton stopped John from leading mercenaries against northern barons who had defied yet another assessment of scutage. The Archbishop's argument: the king should proceed against them through the courts.⁴⁰

The baronial resistance of 1213 was troublesome, but it hardly diminished that year's great royal success: John's escape from the perils of Interdict. He did this by caving-in to Innocent's

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demands. In fact, he offered himself as a vassal to the delighted Pope, who had been preparing to declare John deposed—using a French-led "crusade" as his weapon. The surrender had the effect, wrote Turner, of "suddenly transforming a stubborn enemy into an indulgent friend and a potent protector."⁴¹ Thus, surly barons or no, John had gained breathing space in which to launch his long-delayed initiative in France in 1214. From Poitou, supported by loyal magnates, mercenary captains and allies from the Netherlands and Germany, he planned to catch Philip's army in a pincer movement.⁴²

A decade of scheming, plundering and rack-renting came to naught, though. The French won at Bouvines, and John came home in mid-October of 1214 with no martial glory, no reconquered lands and few liquid assets. Being John, he immediately set about punishing his foes, demanding a heavy scutage of those who had failed to accompany him to France. These demands irked magnates who were already in debt to the crown, notably in East Anglia and the north. At this point, about two-score of the barons turned conclusively on the king. Most resented high taxes and repeated calls for foreign service. Supposedly, some resented John's lecherous advances toward their wives.⁴³ Today, we know that they were

all caught up in a changing feudal order. Relations that had once been based on "homage" and "fealty" were increasingly financial in nature.⁴⁴ As Sir James Holt once put it, the movement of 1215 "was a rebellion of the king's debtors."⁴⁵

By December 1214, rebel barons had formed a *conjuratio*, an oath-bound body.⁴⁶ Led by Eustace de Vesci and Robert Fitzwalter, their goal was a government *per concilium*, where controversies were settled *per judicium*.⁴⁷ They demanded that the king embrace the laws of Edward the Confessor and the coronation oath of Henry I.⁴⁸ By some accounts, John had already done so—in the oath he had sworn the previous year before Archbishop Stephen, on the occasion of being received back into the church. Historian James Holt believes that John had simply renewed his own coronation oath, in a context "which associated secular and ecclesiastical matters in a single royal promise of good behaviour"—leaving the specifics to be determined by force.⁴⁹

Early in January 1215, John met with the rebel leaders in London, but nothing was decided beyond another meeting after Easter. In the ensuing months, John played a masterly game, promising concessions to church and nobility, and in March cementing himself in Innocent's goodwill by promising to go on Crusade.⁵⁰ By the time of the post-Easter council, rebel opinion had hardened. Not trusting John, they came armed, bearing "a schedule of non-negotiable demands." John did not appear, so they sent him their demands. By the end of April, John had

received more welcome communications in the form of papal letters. One commanded the rebels to dissolve their conspiracies or face excommunication. Another scolded Langton and his bishops for taking the rebels' side. Yet John had taught his subjects that papal wrath could be endured, even ignored. On May 5, the rebels renounced their allegiance to John.⁵¹

The hostilities that followed were quickly over. The barons failed to capture any of the Crown's castles, but John's forces failed to control London—whereupon support for the king seemed to melt away.⁵² Moderates such as the warrior-earl William Marshal⁵³ urged arbitration. John, intent upon impressing Innocent, had already promised that he would not move against the rebels “except by the law of our realm or by judgment of their peers in our court.” He may not have meant a word of this, but he had presented a basis for the celebrated 39th article of Magna Carta. Negotiations among Marshal, Stephen Langton and their counterparts began by early June, at Runnymede.⁵⁴ By the 10th, John had agreed to the “Articles of the Barons,” essentially a draft of Magna Carta. Chancery clerks polished the language, and on June 19, the rebels exchanged the “kiss of peace” with John, who set his seal to the final document.⁵⁵

Magna Carta: That Was Then, This Is Now

Legal historian A.E. Dick Howard divides the 63 “chapters” of Magna Carta into subdivisions, with the first concerning feudal rights and finances.⁵⁶ Chapter 2 addressed one of the barons' chief complaints, reliefs, which were to be assessed according to the 100-shilling/100-pound scale noted above.⁵⁷ More interesting to modern students, Chapter 12 promised that neither scutage nor aids should be imposed, “unless by common counsel” of the kingdom. While this may seem to inject a democratic note into the proceedings, the counselors in question were “the archbishops, bishops, abbots, earls, and great barons.”⁵⁸ Still, these provisions represented a distinct check upon the power of the monarch—an issue on which former writers had seemed confused.⁵⁹ Future opponents of royal prerogative suffered no such confusion—for them, Magna Carta was gospel.

Another of Dick's categories consists of chapters pertaining to “Courts and Justice.”⁶⁰ These include regulation of royal judges' eyres, requiring them to travel to each county on a quarterly basis, and to dispense justice in company with four knights “elected out of each county by the people thereof.”⁶¹ Other chapters commanded courts to levy fines “according to the measure” of the offense, adding that penalties should not be calculated to ruin the fined party. These latter principles were to be applied all along the socio-economic scale, right down to serfs (villeins),⁶² which might be construed today as a democratic measure. Most likely, these measures were twofold in purpose: to co-opt an increasingly important knightly class, and to afford unfree persons, in any court, the sort of consideration that any good lord might show them. With regard to his own courts John admitted to endemic problems, promising in Chapter 40, “To no one will We sell, to none will We deny or delay, right or justice.”⁶³

Evocative as these provisions are, scholars and practitioners have paid the most attention to Chapter 39: “No free man shall be taken, imprisoned, disseised [ejected from his land], outlawed, banished, or in any way destroyed . . . except by the lawful judgment of his peers, and by the law of the land.” This language, which marks the dawning of “due process” as a ruling principle of common law, has had tremendous impact upon modern justice.

For the rebel barons, the effect of Magna Carta was practical and immediate. Because John had left behind him a trail of murders, extralegal killings and seizures by force, the rebels did not trust John to carry out his promises. Chapter 61 of Magna Carta provides for a committee of 25 barons to advise and govern the king. This chapter concludes with a promise that John would not “procure, by Ourselves or any other” means “whereby any of these concessions or liberties shall be revoked.”⁶⁴

Despite these promises set on parchment with his seal, John showed his mastery of the solemn lie. Very soon he would ask Innocent to release him from obedience to Magna Carta, and Innocent complied in August of 1215. Civil War followed, in which John showed unexpected maturity and success as a commander, so much so that the rebel barons sent for French assistance. By the time of John's death in October 1216, Philip II's son, Louis, was in England as a claimant for the throne. Opposing him was John's nine-year old son Henry III, who successfully turned the civil war into a war for English independence. Twice, in 1216 and 1217, the boy king reissued Magna Carta. An exceptionally long-lived king, Henry III would re-issue the charter again in 1225, 1237 and 1253.⁶⁵ His own policies were intended to regain his ancestors' prerogatives, but his attitude toward Magna Carta proves that he ruled under the law.⁶⁶

Conclusion

Several scholars have traced the post-1215 history of Magna Carta. An excellent treatment is contained in a short book published by the late Daniel John Meador, former dean (1966-1970) of the University of Alabama School of Law.⁶⁷ Meador shows how Magna Carta was eventually linked with the writ of *habeas corpus* by such foes of Stuart absolutism as John Selden and Edward Coke. In arguments for *Darnel's Case* (1627); in House of Commons debates over the Petition of Right (1628); and above all, in the second part of Coke's *INSTITUTES OF THE LAWS OF ENGLAND* (1642), the writ of *habeas corpus* was held up as a vital tool against arbitrary imprisonment, which Coke asserted was forbidden by the due process provision of Magna Carta set forth in Chapter 39. Thus, the medieval visions of Fitzwalter and Langton were retooled for use in a post-feudal world, emphatically so when Blackstone praised Coke's interpretations in his *COMMENTARIES ON THE LAW OF ENGLAND* (1765-1769), a work which, like Coke's *INSTITUTES*, was required reading for generations of American lawyers.⁶⁸

By the middle of the 19th century, Magna Carta was firmly established as a starting point of the process by which English-speaking peoples achieved free and balanced government.⁶⁹ The name “Magna Carta” was so commonplace that Ralph Waldo Emerson, in 1856, could include it in a list of catch-phrases:

“Magna-charta, jury trial, *habeas-corporis*, ship money, Popery, Plymouth-colony, American Revolution,” he wrote, “are all questions involving a yeoman’s right to his dinner.”⁷⁰ In more modern times, the great charter’s name has been a code-word for a spectrum of motives and intentions. Consider Justice Hugo L. Black in 1947, quoting an earlier writer on pro-business interpretations of the 14th Amendment: “It [the amendment] was aimed at checking the power of wealth and privilege. . . It has become the Magna Charta of accumulated and organized capital.”⁷¹

As we celebrate the 800th anniversary of Magna Carta, we should recall that the original was written with an eye to several groups: the king and his officers, rebel barons, churchmen in England and Rome and as many knights and landowners as could be won over to support it. As a symbol, it has meant different things to leaders, jurists and scholars. Like the U.S. Constitution, it lives in our collective consciousness. Today, as in 1215, it stands for freedom and legal rights, as we, in a democratic society, define them. | AL

Endnotes

1. The term Angevin refers to the dynasty’s origins in the French province of Anjou. Previous rulers had been Henry II (1154-1189) and Richard I (1189-1199). See Frank McLynn, *RICHARD AND JOHN: KINGS AT WAR* (2007), 1-26; and Ralph V. Turner, *MAGNA CARTA THROUGH THE AGES* (2003), 13-14.
2. Christopher Tyerman, *WHO’S WHO IN EARLY MEDIEVAL ENGLAND* (1996), 296.
3. For an overview see Arthur R. Hogue, *ORIGINS OF THE COMMON LAW* (1966, 1985), 35-55; and Turner, *MAGNA CARTA*, 35; see also Ralph V. Turner, *KING JOHN* (1994), 35.
4. Robert Bartlett, *ENGLAND UNDER THE NORMAN AND ANGEVIN KINGS, 1075-1225* (2000), 26; Turner, *KING JOHN*, 53.
5. Turner, *MAGNA CARTA*, 35-36; McLynn, *op. cit.*, 292-302.
6. Bartlett, *op. cit.*, 26-27. Hannis Taylor, *ORIGIN AND GROWTH OF THE ENGLISH CONSTITUTION: AN HISTORICAL TREATISE* (1889-1898), I: 364-365, tells of the jurisprudence by which Philip declared himself the new lord of Normandy.
7. McLynn, *op. cit.*, 301-306; Turner, *MAGNA CARTA*, 32-34. For a commentary written shortly after the events, see J.A. Giles, trans., *ROGER OF WENDOVER’S FLOWERS OF HISTORY, COMPRISING THE HISTORY OF ENGLAND FROM THE DESCENT OF THE SAXONS TO THE YEAR 1235* (1849), II: 203, 205-206.
8. Bartlett, *op. cit.*, 27.
9. McLynn, *op. cit.*, 325-336; Turner, *MAGNA CARTA*, 36.
10. Examine the modern printed shire records taken from the Domesday Book (the massive original of which was compiled 1086) to see that bishops, abbeys, and parishes rank among the shires’ wealthiest landowners, often holding as much land as the king. See, for example, John Morris and Clare Caldwell, eds., *DOMESDAY BOOK: OXFORDSHIRE* (1987), 154b.
11. Turner, *KING JOHN*, 149-153.
12. McLynn, *op. cit.*, 371-375; *ROGER OF WENDOVER’S FLOWERS OF HISTORY*, II: 215-218, 219-221, 236-238; and Turner, *KING JOHN*, 156-159. Note that Innocent also assessed the rights of the “suffrigan bishops of the church of Canterbury” in this matter.
13. McLynn, *op. cit.*, 375; Turner, *KING JOHN*, 158-159.
14. Peter D. Clarke, *THE INTERDICT IN THE THIRTEENTH CENTURY: A QUESTION OF COLLECTIVE GUILT* (2007), 1, 15-28, 37-48, 170.
15. McLynn, *op. cit.*, 375-377; Turner, *KING JOHN*, 160-163; and for an insight into John’s point of view, see Tyerman, *op. cit.*, 321.
16. Turner, *KING JOHN*, 164-165.
17. After Henry I died (1135) a civil war raged (1139-1153) between his heir, the Empress Matilda, and the usurper, King Stephen. Henry II (1154-1189), was the son of Matilda. See McLynn, *op. cit.*, 2; and for a succinct view of Henry II’s royal style, see Hogue, *op. cit.*, 33-45.
18. Hogue, *op. cit.*, 151-163; Bartlett, *op. cit.*, 177-193, especially 190-192; J.C. Holt, *MAGNA CARTA*, 2nd ed. (1992), 178-181; and see Taylor, *op. cit.*, I: 303-333, for the transition from Anglo Saxon law to Angevin common law. The circuit-rising royal justices were said to be “on eyre.”
19. Holt, *op. cit.*, 180-183.
20. Bartlett, *op. cit.*, 178-179, 190-193; McLynn, *op. cit.*, 366-368; Turner, *KING JOHN*, 201-202; Turner, *MAGNA CARTA*, 13-14, 48; and see also Ralph V. Turner, *ENGLISH JUDICIARY IN THE AGE OF GLANVILL AND BRACTON, 1176-1239* (1985), *passim*.
21. Turner, *KING JOHN*, 205-207; for treatment of “amercedments,” monetary penalties inflicted by royal justices, see *ibid.*, 209. And for the easy acceptance of the idea that extra payment to the crown or to judges was “part of the normal costs of lawsuits,” see *ibid.*, 209 (quoted passage), 214.
22. Hogue, *op. cit.*, 50, estimates 230 barons; Turner, *MAGNA CARTA*, 18, 55, estimates 165 barons.
23. John’s general tax of 1207 had almost touched off a revolt. See Turner, *MAGNA CARTA*, 45.
24. Turner, *KING JOHN*, 102; and G.D.G. Hall, ed., *THE TREATISE ON THE LAW AND CUSTOMS OF ENGLAND COMMONLY CALLED GLANVILL* (1965), 108 (IX.4). See also L.J. Downer, trans., *LEGES HENRICI PRIMI* (1972), 109 [C. 10, 1], which places “the reliefs of his barons” under the King’s jurisdiction.
25. Turner, *KING JOHN*, 103.
26. J.C. Holt, *Magna Carta, 1215-1217: The Legal and Social Context*, in Edward B. King and Susan J. Ridyard, eds., *LAW IN MEDIAEVAL LIFE AND THOUGHT: SEWANEE MEDIAEVAL STUDIES, NUMBER FIVE* (1990), 12.
27. Holt, *MAGNA CARTA*, 85; Turner, *KING JOHN*, 101; and Antonia Fraser, *LIVES OF THE KINGS AND QUEENS OF ENGLAND*, rev. ed. (2000), 65.
28. Turner, *MAGNA CARTA*, 41-42.
29. Tyerman, *op. cit.*, 317-319; and see Turner, *ENGLISH JUDICIARY IN THE AGE OF GLANVILL AND BRACTON*, 130-131.
30. Readers should consider Shakespeare’s *TWELFTH NIGHT*, Act. 2, Scene 5, lines 159-160 [Yale Shakespeare, 1922]: “Some are born great, some achieve greatness, and some have greatness thrust upon them.”
31. Turner, *KING JOHN*, 54-58, 72-76, 104.
32. *Ibid.*, 70, 77, 102-103, 107-108, 206; and Bartlett, *op. cit.*, 346-360. For the practices of the Exchequer generally, go to an original source; Richard Fitzneale [Arthur Hughes, *et al*, eds.], *DIALOGUS DE SACCARIO: ENGLISH AND LATIN* (1902), *passim*. For a contemporary discussion of the mistreatment of Jews, see *ROGER OF WENDOVER’S FLOWERS OF HISTORY*, II: 81-82.
33. W.L. Warren, *GOVERNANCE OF ANGEVIN ENGLAND, 1076-1272* (1987), 157-158.

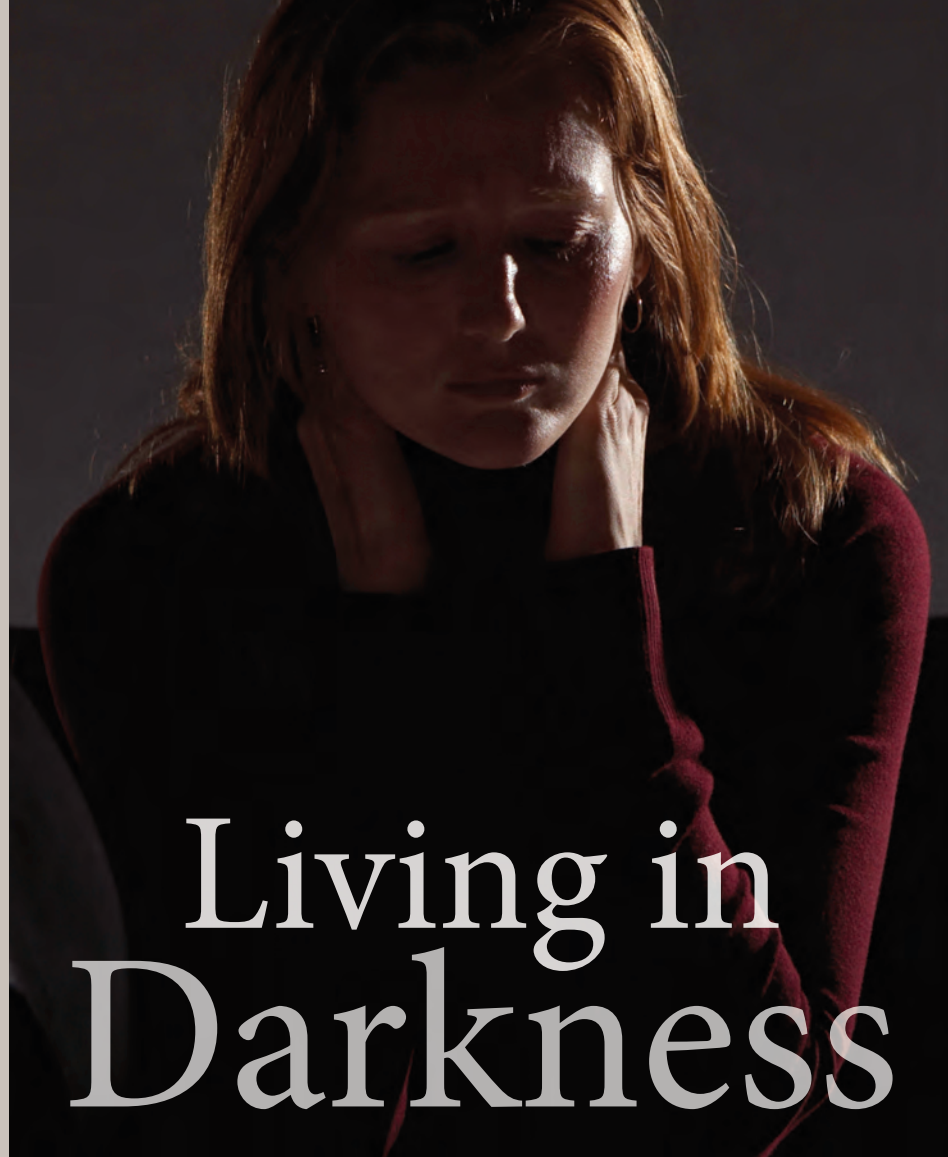
34. *Ibid.*, 158; Holt, MAGNA CARTA, 83, 109; Turner, KING JOHN, 197-198, 208, 220-221; Turner, MAGNA CARTA, 47-48; Tyerman, *op. cit.*, 311-312; Bartlett, *op. cit.*, 30. It was true that De Briouze had not met his payments to the Exchequer; likewise, that his wife had refused to give up their sons; finally, that he had violently resisted efforts to seize his lands.
35. The words are from the opening speech of Shakespeare's RICHARD III ("Now is the winter of our discontent . . .") but they seem appropriate here.
36. Generally see Turner, KING JOHN, 180-181, 183-184, 192-193; and see GLANVILL, 112 (IX.8), for the statement (though hedged about with conditional language) that lords, in matters of their own private wars, "may not lawfully constrain their tenants beyond their the limits of their willingness to comply."
37. Holt, MAGNA CARTA, 93-95, 118.
38. Turner, KING JOHN, 4, 7-9, 16, 179, 185, 261, 262; Bartlett, *op. cit.*, 497-500, 506; McLynn, *op. cit.*, 115, 151, 243, 260, 275, 306-307.
39. For short biographies, see Tyerman, *op. cit.*, 313-317.
40. Turner, KING JOHN, 167, 192-193, 217, 226-231; Turner, MAGNA CARTA, 46-47, 53-54; and Holt, MAGNA CARTA, 119-120, 204, 211.
41. Turner, MAGNA CARTA, 39-40; ROGER OF WENDOVER'S FLOWERS OF HISTORY, II: 256, notes that in 1212, Innocent had taken the preliminary step of absolving princes high and low from "all fealty and allegiance" to John.
42. Turner, MAGNA CARTA, 30, 37.
43. McLynn, *op. cit.*, 410-411; Holt, MAGNA CARTA, 221 ff.; Turner, KING JOHN, 215-218; Turner, MAGNA CARTA, 55.
44. See GLANVILL, 103-109 (IX.1-IX.6). But note also that Thomas Littleton's TENURES (1481/1482), the last great work of medieval common law, still contained serious, even moving entries involving these concepts of loyalty. See LITTLETON'S TENURES IN ENGLISH, rev. ed. (1845), *passim*, but especially §§ 85, 91-92.
45. Turner, KING JOHN, 218-219, quoting at 218 Holt's THE NORTHERNERS (1961), 34.
46. Holt, MAGNA CARTA, 222-223.
47. Turner, KING JOHN, 193, 201-221.
48. Holt, MAGNA CARTA, 222.
49. *Ibid.*, 218-220, 223-226.
50. Turner, KING JOHN, 232-234; Holt, MAGNA CARTA, 227.
51. Turner, KING JOHN, 234; Holt, MAGNA CARTA, 229.
52. Giles, ROGER OF WENDOVER'S FLOWERS OF HISTORY, II: 307-309.
53. Turner, KING JOHN, 236; Tyerman, *op. cit.*, 287-290. Marshal was the greatest fighter of his day, a consistent supporter of the Angevin line who had been rewarded with the earldom of Pembroke. His candor and honesty had cost him John's favor after the fall of Normandy; see McLynn, *op. cit.*, 37-33.
54. Turner, KING JOHN, 235-236 (quoted passage on 235). Runnymede is a short distance from Windsor.
55. *Ibid.*, 236-238. By June 24, the clerks had drawn up a number of copies, of which four survive.
56. A.E. Dick Howard, MAGNA CARTA: TEXT AND COMMENTARY, rev. ed. (1998), 8-12. The text of Magna Carta may be found in *ibid.*, 35-54; all subsequent cites to Magna Carta refer to the translation of the document in Howard.
57. Magna Carta, Ch. 2; for provisions intended to protect Wards, widows and heirs, see Chs. 3-11.
58. *Ibid.*, Chs. 12, 14. The specified exception to these chapters is noted in Ch. 12, by which the king may impose "reasonable" aids in order to finance the knighting of his eldest son, the marriage of his eldest daughter, or his own ransom. Ch. 15 places the same three-part limitations upon all lords.
59. GLANVILLE, 2 (Prologue), speaks of laws "settled in council on the advice of the magnates and with the supporting authority of the prince—for this also is a law, that 'what pleases the prince has the force of law.'" For an older, more authoritative passage that supported the barons' claims see LEGES HENRICI PRIMI, Ch. 1,1.
60. Howard, *op. cit.*, 12-17.
61. Magna Carta, Chs. 18; the elections presumably were to be held among (Ch. 19) the "knights and freeholders" present at the county (shire) court. Note that Ch. 17 required sittings of the Bench to be held at some fixed place, and not to follow the king around the country—arguably the beginning of that court's separate institutional history.
62. See *Ibid.*, Chs. 20 (free men and serfs, or villeins), 21 (earls and barons, fined only by their peers), and 22 (churchmen). And note Ch. 60, in which John states that "All the customs and liberties aforesaid" should be observed by "all Our subjects, whether clerks [churchmen] or laymen . . . toward their dependents."
63. *Ibid.*, Ch. 40. Magna Carta also referred to a developing legal profession when it promised that the king would appoint to certain offices "only such men as know the law of the land"; *ibid.*, Ch. 45. For an anticipation of our Bill of Rights' "takings" clause, compare the U.S. Constitution, 5th Amendment, with Magna Carta, Ch. 28. The discussion of Magna Carta in this piece does not touch upon the many of John's more specific promises of restoration and amendment; nor does it deal with the crafty passages (Chs. 52, 53, 57) by which John postponed many of the promised reforms until he returned from his promised Crusade.
64. *Ibid.*, Ch. 61; and see Ch. 52 for the barons' role in mediating land-disputes.
65. Henry III ruled from 1216 to 1272. In the course of his re-issues, Chapter 39 of the 1215 charter became Chapter 29.
66. Tyerman, *op. cit.*, 335-347; Turner, KING JOHN, 249-257; Howard, *op. cit.*, 23-24.
67. Daniel John Meador, HABEAS CORPUS AND MAGNA CARTA: DUALISM OF POWER AND LIBERTY (1966). For Dean Meador's obituary see the BIRMINGHAM NEWS, February 11-13, 2013.
68. Meador, *op. cit.*, 10-29, *passim*, especially 13-29. And see Beverly Zweiben, HOW BLACKSTONE LOST THE COLONIES: ENGLISH LAW, COLONIAL LAWYERS, AND THE AMERICAN REVOLUTION (1990).
69. William Holdsworth, SOURCES AND LITERATURE OF ENGLISH LAW (1925), 10-11; and see Sir Herbert Butterfield, THE WHIG INTERPRETATION OF HISTORY (1931, 1965).
70. Robert Ernest Spiller, *et al.*, eds., COLLECTED WORKS OF RALPH WALDO EMERSON, 10 vols. (1971-), at 5: 48.
71. See Black's dissent in *Adamson v. California*, 332 U.S. 68-92 (1947), at 84, quoting from Charles Collins, THE FOURTEENTH AMENDMENT AND THE STATES (1912). See Peter Linebaugh, THE MAGNA CARTA MANIFESTO (2014), 190.

The following story was written by a current member of our "recovering community." He does an honest and courageous job of sharing the realities of his active addiction, some of the negative consequences that occurred as a result, his "intervention" involving two members of the Alabama Lawyer Assistance Program's committee of volunteer attorneys and the positive changes that have occurred in his life as a result of his daily commitment to a genuine program of recovery. The Alabama Lawyer Assistance Program's committee of volunteer attorneys is truly a dedicated group that is willing to reach out to any law student, attorney or judge who may be experiencing a problem resulting in impairment. These problems can include alcoholism and/or drug addiction; mental health issues such as depression, anxiety, bipolar disorder or others; and the emerging issues of cognitive decline related to aging attorneys, such as Alzheimer's disease and early onset dementia.

This man's story is only one of many. It is the highlight of our lives to provide assistance to those who are struggling in the throes of active addiction, or mired in the perceived (and seemingly very real) hopelessness of depression.

We encourage a call to our office or to one of our many committee members around the state should anyone become aware of a colleague who is suffering. These are who people need help but typically lack the insight to see this, and who desperately need people in their lives who care enough to reach out. The Alabama Lawyer Assistance Program is here to provide guidance and assistance. When there is a need, we hope to hear from you!

—Robert Thornhill, director,
Alabama Lawyer Assistance
Program



Living in Darkness

My story

I'm driving down the road weaving across the center line, trying to get Lortabs out of a plastic bag I just picked up from my dealer. There is a bag of Adderall too, with 50 30 mg capsules. I need about 10 Lortabs and four Adderall to get me back up from the Xanax and Ambien I took last night. I'm late for court because my dealer was late with the delivery. I just paid \$750 for a supply that may last four days.

My phone rings and it's my client; I can hear the worry in her voice. Where are you? Are you coming to court? I half-heartedly apologize, tell her I'm delayed by traffic, and will be there in five minutes. Of course, I'm lying. I'm still 10 to 15 minutes away, and there is no traffic.

I never used to lie. Now they roll off my tongue even when the truth will do. The problem is that I'm not a very good liar. My wife has caught me in several. She is patient with my addiction but we have a

child and her patience is growing thin. I would not have tolerated the same behavior from her and would have divorced her four years ago. Not only am I high most of the time, but I'm a real jerk. I lose my temper and take it out on my wife even though she is nothing other than supportive. Even worse, I take out my frustrations on my six-year-old daughter who is nothing but an angel. She is afraid of me. She still loves me and that is painful when I feel remorse about treating her so harshly. I don't love me; in fact I hate me and what I have become.

Of course, I want out of this living nightmare. I have quit several times, going through painful withdrawals, only to start again two weeks later. The truth is that I'm miserable with drugs or without drugs and hence the problem. I made it as an addict for 44 years before I ever used the first drug. Then came my surgery and my first experience with Dilaudin. My immediate thought when I got that first

dose was, hey, why doesn't everybody do this every day? By the second day in the hospital I was watching the clock, anticipating my next dose. By the fourth day in the hospital I was faking pain to the nurse so I could get another shot. I was on my way to a serious drug problem. My surgeon prescribed pain medication for four months post-discharge. Even then I knew I was on a slippery slope, but I just couldn't stop. The truth is that for the first time in my life I was not unhappy. Don't misunderstand, I wasn't happy; I had just temporarily numbed my feelings.

It wasn't long until I had a full-time dealer selling me 30 Lortabs every two weeks. That number continued to climb. Within five years, I was taking 10 or 12 at a time just to function. I had cross-addicted to Adderall and Xanax and had to take Ambien to sleep. I was miserable by then. I contemplated suicide briefly but, alas, I had a family. I asked my wife to help me. I don't know what she could do but I was desperate. She tried in vain to get me to seek help. However, I refused to admit I was one of those poor addicts who needed rehab. I had seen the Bradford commercials but was convinced I didn't need treatment to get clean. After all, for goodness sake, I am an educated attorney with a doctorate degree.

Eventually, one of our many arguments turned to a physical altercation between my wife and me. To her credit, 45 minutes later I was in jail. Looking back, I deserved worse. The judge, who was a friend of mine, decided not to set bond. I was still angry and unstable, and if he had released me, I probably would have gotten into more trouble. I was in solitary confinement in the county jail for five days. It gave me a lot of time to think, and in hindsight, that's where my recovery began. My wife's desperate act to have me locked up saved my life.

My mother came to bail me out of jail. I was humiliated and humbled. My wife had filed a protection-from-abuse petition and obtained a restraining order. I had nowhere to go but my office. It had a shower and kitchen so it would do in a pinch.

The next day, two good friends who are also lawyers came to see me and did somewhat of an intervention. I realized then that the Alabama State Bar was going to come down on me and the only answer to the problem was admission to Bradford Health Services. It was difficult to drive myself to the facility. I thought of all the Bradford commercials I had seen and told myself I wasn't that sick. Even though I was clean from my five days in jail, my mind was foggy but I didn't realize it at the time. That's the nature of being a drug addict for six years. We lie to others but, worse, we lie to ourselves. So my admission into Bradford was to protect my license and not to save my life.

The next 10 weeks at Bradford were remarkable. As is typical of a drug addicted lawyer, I tried to BS my way through the program.

My wife had filed for divorce and I was angry. In my insanity, I filed a petition for custody. I am a drug addict in an institution and in my mind I believed I could convince a judge that I was the better choice for custody. I lost, of course. However, a remarkable thing happened. During my testimony I never lied about my drug use, including how long and how much. After I got back to Bradford from court, my roommate took me aside and asked how all of this was affecting my daughter. Until that moment, in my selfishness, I had thought of no one but me. This was the second significant event in my recovery. At four the next morning, I finally surrendered to the fact that I was an addict. It was my seventh week at Bradford. I knew at that moment, for the first time, that I could beat the disease of addiction. Had I not gotten treatment I would be dead. Bradford's program works if you're ready to give up the alcohol and drugs—it's that simple. However, you must work a program.

Before my admission to Bradford I had bar complaints filed. The ethical violations were serious and the complaints had teeth. The complaints resulted in a one-year probation and required me to see a mentor once a month. At the end of the year I received a public reprimand with general publication. I feel fortunate that I wasn't suspended for some period of time, and I truly believe my involvement in the Alabama Lawyer Assistance Program helped me keep my license. I believe the Office of General Counsel was somewhat sympathetic to my addiction but only because I got help. As for ALAP—the Alabama Lawyer Assistance Program—if you are willing to do the work, the program will help you stay clean and sober. I'm not suggesting it's easy; it's not. However, if you are willing to take advice from others as suggested by ALAP and go to the meetings and work something called the steps, and you are ready, staying clean is very possible.

I have nearly three years' clean time. It may not sound like a lot but to me it's a lifetime. My law practice failed due to the changing legal environment and because, in active addiction, I wasn't working. I have, however, started a new chapter in my career and I am looking forward to what life has in store for me. My relationships with my daughter and wife are better than ever. This will sound crazy, but I'm glad I became an addict, survived, got clean and learned to deal with life on life's terms. I was not happy before becoming an addict. Like so many addicts, I was self-medicating, trying to function and find some meaning to life.

I share this to help someone who may be where I was with drugs or alcohol. There is hope. You will have to ask for help, which is something addicts don't do very well. There is a different way to live your life. At one time in my addiction I thought I couldn't live without the drugs. The truth is that I wasn't alive at all, but barely existing. Today I am truly happy, and I can say this with conviction. The question is, are you happy? | [AL](#)



J. Anthony McLain



Withdrawal Allowed when Client Refuses to Cooperate with or Follow Advice of Attorney

QUESTION:

"This is to follow up our conversation of last week in which we discussed my firm's position in a lawsuit in south Alabama. Please accept this letter as my law firm's request for guidance on the question of whether we may ethically withdraw from the case at this point.

"A brief rendition of the facts of the case may be helpful to you. In May 1991, my law firm became involved in a lawsuit in Any County, Alabama. We filed suit alleging, among other things, breach of contract, fraud and environmental damage.

"The facts which gave rise to the lawsuit are as follows. At one time, our clients were the owners of a 250-acre tract of property near the City of Downtown, Alabama. Our clients fell into financial difficulty and found it necessary to sell this tract of land. The defendant in the Any County lawsuit is the purchaser of the property. The defendant purchased the entire tract with the exception of a one-acre parcel which sits in the middle of the tract. Our client's dwelling sits on this one-acre parcel. Our client has access to his property by way of an access easement which runs from his one acre to the public highway.

"As part of the conveyance, our clients negotiated a right to repurchase the property within three years of the sale. There is some question as to whether our clients will ever be in a position to exercise the option due to their financial condition.

"Subsequent to the sale of the property, the defendant began to do a considerable clean-up operation on his newly-purchased property. The defendant began to tear down a number of old, rotted chicken houses which were on the property.

The defendant also destroyed and completely rebuilt a dam for a large pond on the property. Furthermore, the defendant cleared a good deal of what he considered 'trash' trees from the property. During his clean-up operation, the defendant began to dig large pits on the property. Old tires were trucked to the property and thrown into the pits along with trash generated from the tearing down of the chicken houses and clearing of the trash trees. All of the materials in the pits were then set afire and allowed to burn freely.

"These pits with burned refuse in them amount to an illegal dump under ADEM regulations. Thus, we filed a lawsuit against the defendant because of this alleging fraud and breach of contract. Our theory is that the illegal dump amounts to an unreasonable and bad faith interference with our clients' right to repurchase the property within three years.

"Subsequent to our filing of the lawsuit, one of our clients began what amounts to a feud with the defendant. Our client has become involved in several petty disputes with the defendant, which, in our view, have materially diminished our ability to represent him in this case.

"The first indication of a problem came to us several months ago when our client was accused of malicious mischief in the second degree. The defendant alleged that our client had maliciously damaged a cattle gate which he had placed up on his property. The gate was also at the point of beginning of my client's access easement to his reserved one acre of property. However, at that time, the defendant had not placed a lock on the gate nor had he restricted my client's access to his property in anyway. Despite this fact, my client admitted that he had taken the gate off the hinges and had bent its hinges in such a way as to prevent its being rehung. This case was eventually tried in Uptown Municipal Court and our client was convicted of malicious mischief.

"After this incident, I explained to our client that he must refrain from these petty squabbles with the defendant. I told him in no uncertain terms that if he had a problem with the defendant he should call me first before he did anything.

"Recently, I received a call from the defendant's attorney. He informed me that the defendant's gate had been left open and that the defendant's cows had been allowed to wander away from the property. This created a significant hazard to area motorists.

"I confronted my client about this incident. He did not deny that he left the gate open and allowed the defendant's cows to escape. However, he did state to me that he would not 'recognize' the defendant's right to put up a gate on the

property because he considered it to be an unreasonable interference with his access easement. My client contends that he owns the property which is described within the bounds of the access easement. Despite my best efforts to explain to him the rights of an easement owner, he contends that he owns the area described within the easement and will tolerate no interference with it.

"After this latest incident with the defendant's cows, the defendant's lawyer and I discussed to a compromise whereby the defendant would be allowed to put a lock on his gate so that he would know it would be secure. However, the defendant would provide my client with a key to the lock so that he could freely have access to his property. I relayed this proposition to my client and he flatly refused to go along with it. He still contends that he owns the easement property and that he should not have to have a key to get onto his own property.

"At this point, it is obvious to me that my client does not wish to heed my advice nor does he intend to cooperate in my firm's representation of him. On the contrary, it is obvious to me that my client intends to continue his petty feud with the defendant. It is obvious to me and my partners that our case has already been materially damaged by our client's actions thus far. Our question is whether we may ethically withdraw at this point because our client refuses to cooperate with us or follow our advice."

ANSWER:

You may ethically withdraw from representation of your client at this point due to your client's refusal to cooperate with you or follow your advice.

DISCUSSION:

The applicable ethical principle concerning your fact situation is found at Rule 1.16, *Alabama Rules of Professional Conduct (ARPC)*, specifically, subsection (b) (3), which states as follows:

"Rule 1.16 Declining or Terminating Representation
(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

* * *

(3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent."

Pursuant to Rule 1.16(b)(3), you may withdraw from representing the present client since the client has demonstrated by his past actions his refusal to heed your advice and conduct himself in accordance with applicable law. As stated in the Comment to Rule 1.16:

“Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it.”

Based on the prior misconduct and conviction of your client, and his refusal to accept the requirements of the law applicable to the property rights he possesses, you may ethically withdraw from representation of the client. This conclusion is further supported by your belief, based on your client’s previous actions, that he will, in the future, continue to refuse to follow your advice and possibly contravene other laws applicable to his particular situation.

Consistent with your withdrawal, please heed the provisions of Rule 1.16(d) which state as follows:

“Rule 1.16 Declining or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.”

Strict compliance with this provision of the *Rules of Professional Conduct* would ensure transition for the client to possible substitute counsel, and likewise conform your conduct in these matters to the *Rules of Professional Conduct*. | AL
[RO-92-04]

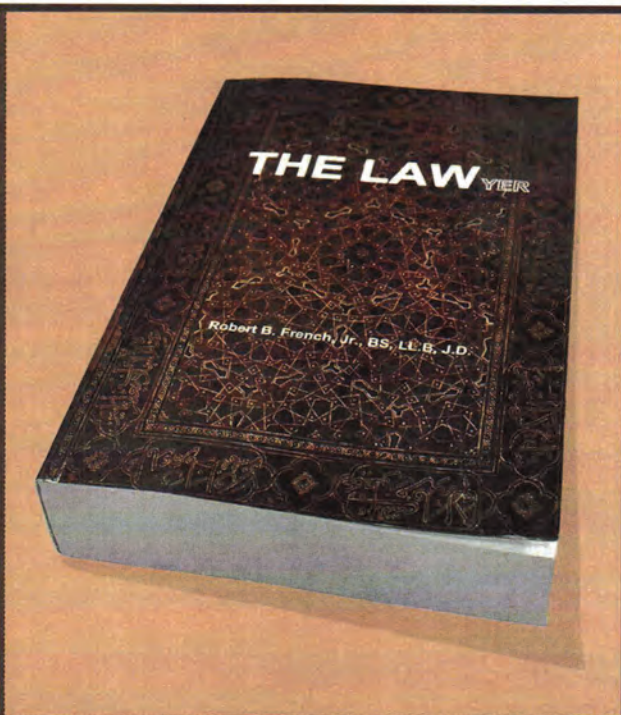
THE LAWYER

By Bob French -- Fort Payne, Alabama -- 51 years practicing law.
Also author of *An Adventure with John*.

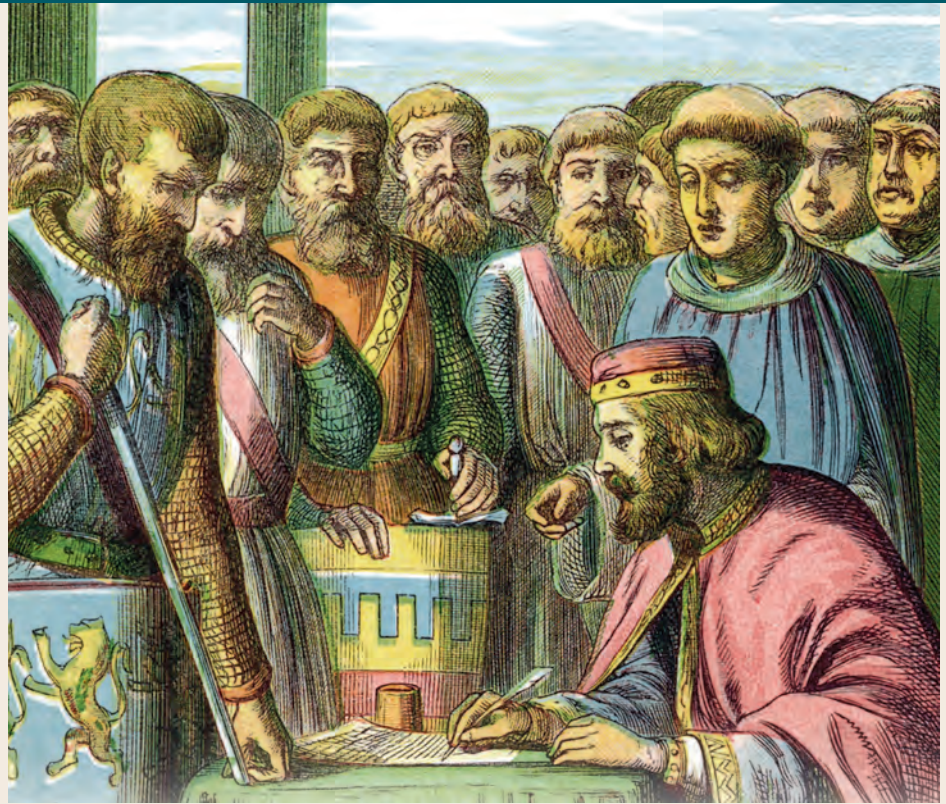
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LAW DAY 2015

Magna Carta:

Symbol of Freedom under Law

The Alabama State Bar recently announced the theme for the 2015 Law Day, held each year on May 1. In recognition of the 800th anniversary of the sealing of Magna Carta, “Magna Carta: Symbol of Freedom under Law” honors the document that embodies the fundamental concepts of liberty.

“Magna Carta represents a turning point in the effort to establish freedom under the law,” said Alabama State Bar President Richard Raleigh. “The importance of the document as a stepping stone on the path to freedom cannot be understated, and I encourage students across Alabama to participate in this year’s competition and to consider how the rule of law is important to our society.”

The Law Day competition is open to students in grades kindergarten through 12. Students are asked to submit entries

based on the criteria for each grade level. A total of \$2,400 in cash prizes will be awarded to the winners during a special ceremony April 30. Teachers of those winning students will also receive a monetary gift for use in the classroom.

Montgomery attorney **Kelly Pate** is chair of this year’s Law Day Committee. Additional information and entry forms are available by contacting the Alabama State Bar at 800-354-6154, extension 2126. The deadline for student submissions is April 3, 2015.

Law Day was established in 1958 when President Dwight D. Eisenhower proclaimed May 1 as Law Day to strengthen our heritage of liberty, justice and equality under law. The nationally recognized day is set aside to celebrate the rule of law and to underscore how law and the legal process contribute to the freedoms we share. | AL



Wilson F. Green

By Wilson F. Green

Wilson F. Green is a partner in Fleenor & Green LLP in Tuscaloosa. He is a summa cum laude graduate of the University of Alabama School of Law and a former law clerk to the Hon. Robert B. Propst, United States District Court for the Northern District of Alabama. From 2000-09, Green served as adjunct professor at the law school, where he taught courses in class actions and complex litigation. He represents consumers and businesses in consumer and commercial litigation.

By Marc A. Starrett

Marc A. Starrett is an assistant attorney general for the State of Alabama and represents the state in criminal appeals and habeas corpus in all state and federal courts. He is a graduate of the University of Alabama School of Law. Starrett served as staff attorney to Justice Kenneth Ingram and Justice Mark Kennedy on the Alabama Supreme Court, and was engaged in civil and criminal practice in Montgomery before appointment to the Office of the Attorney General. Among other cases for the office, Starrett successfully prosecuted Bobby Frank Cherry on appeal from his murder convictions for the 1963 bombing of Birmingham's Sixteenth Street Baptist Church.



Marc A. Starrett

RECENT CIVIL DECISIONS

From the Alabama Supreme Court

Gambling

***Houston County EDA v. State*, No. 1130388 (Ala. Nov. 21, 2014)**

The court affirmed *per curiam* the circuit court's condemnation of 600-plus machines as being illegal gambling devices. The primary issue in the case was whether the machines played "bingo," as defined in the case law. Employing the six-factor test of *Barber v. Cornerstone Cmty. Outreach, Inc.*, 42 So. 3d 65, 78 (Ala. 2009), the court concluded that the evidence before the circuit court confirmed that the six factors were not satisfied.

Fraud; Statute of Limitations

***Tender Care Veterinary Hospital, Inc. v. First Tuskegee Bank*, No. 1131078 (Ala. Nov. 26, 2014)**

In breach of fiduciary duty cases arising from an actual trust relationship, the statute of limitations has been held not to begin running until termination of the trust relationship. In this case, the court held that in cases alleging a breach-of-fiduciary-duty claim not involving a trust arrangement, the statute of limitations begins running when the aggrieved party was damaged.

Emblements

***Paint Rock Turf, LLC v. First Jackson Bank et al.*, No. 1130480 (Ala. Nov. 26, 2014)**

This case involves a claim to emblements, under *Ala. Code* § 35-9-2, to a defaulted mortgagor (debtor/landowner, the sod farm) and mortgagee (creditor—the

bank). The statute provides: "The tenant at will is entitled to his emblements, if the crop is sowed before notice to quit by the landlord, or the tenancy otherwise suddenly terminated, as by sale of the estate by the landlord, or by judicial sale, or death of the landlord or tenant." (Emphasis added.) In *Lamar v. Johnson*, 81 So. 140 (1919), the court held that a defaulted mortgagor who was permitted to remain on the land by its mortgagee assumed the status of a tenant at will. In this case, the court concluded that the automatic stay imposed by 11 U.S.C. § 362 as a result of Paint Rock's bankruptcy did not create a tenancy at will, and therefore the trial court correctly granted a JML to the creditor bank on the emblements claim.

Spousal Elective Shares; Timeliness of Election

***Saylor v. Saylor*, No. 1120848 (Ala. Dec. 5, 2014)**

Held: (1) PR of estate was not required to take appeal from order of probate court which extended the time for wife to seek elective spousal share and granting spousal share, but not determining the amount of the share; even assuming

that *Ala. Code* § 12-22-21(4) applied to an elective share, the court had not set an amount, and thus the order was not one "compel[ling] the payment of a legacy or distributive share;" (2) in wife's appeal from circuit court's order dismissing wife's petition for elective share, the circuit court did not abuse its discretion in refusing to extend the six-month limitation of *Ala. Code* § 43-8-73 to make a decision regarding taking an elective share, because although an accurate inventory and accounting for the estate would have enabled her to make an "intelligent choice," the legislature has not required that an inventory and accounting be filed as a precondition to triggering the elective share time periods.

Lost-Profit Damages

***Deng v. Scroggins*, No. 1121415 (Ala. Dec. 5, 2014)**

Jury's damage award of \$1.5 million compensatory lost profits was speculative, based on extrapolations largely made in argument by counsel, and was not sufficiently grounded in competent opinion evidence as to the value of the product or profits associated with sales, and therefore new trial was necessary on that issue.

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Venue; Residence and Domicile

Ex parte Progressive Direct Insurance Company, No. 1130805 (Ala. Dec. 5, 2014)

Petition for mandamus granted; Wilcox County Circuit Court directed to transfer action to Tuscaloosa County Circuit Court, in action arising from MVA occurring in Tuscaloosa by Robinson (whose residency was in issue) against Clayton (Tuscaloosa resident) and Progressive (Robinson's UM carrier). The issue in the case was the residence of Robinson, who was working in Tuscaloosa and living in an apartment there, but who purportedly returned on weekends to Wilcox County. The evidence was that Robinson represented to multiple public authorities, in the accident report and even to voting officials that he was a resident of Tuscaloosa, thus evincing an abandonment of Wilcox County as his residence.

Venue; Forum Non Conveniens

Ex parte Manning, No. 1131152 (Ala. Dec. 5, 2014)

Petition for mandamus granted; Macon County Circuit Court directed to transfer action to Montgomery County Circuit Court in action based on *forum non conveniens*. The case involved a Montgomery MVA, where Richardson (plaintiff) was a resident of Montgomery County, and Manning (defendant) was a resident of Macon County. Law-enforcement personnel who responded to the accident worked in Montgomery County. Relying on its recent decision in *Ex parte Morton*, [Ms. 1130302, August 29, 2014] ___ So. 3d ___ (Ala. 2014), the court held the residency of the defendant was a weak connection under the nexus test, and Montgomery County had a stronger connection to the claims in this case than has Macon County.

Discovery; Trade Secrets

Ex parte Robert Bosch LLC, No. 1130480 (Ala. Dec. 12, 2014)

Ron (passenger in vehicle) died in MVA, allegedly as a result of a malfunction in an electronic control unit ("ECU") for airbags installed in the vehicle and manufactured by Bosch, which caused the airbag to fail to deploy and the seat-belt pre-tensioner to fail. In wrongful death action brought against Bosch and others, plaintiff noticed the deposition of a corporate representative of Bosch, seeking testimony and documents on a number of categories, including the algorithm used in the ECU. Bosch objected on the basis that the algorithm was a confidential trade secret. Plaintiff responded, accompanied by an expert affidavit opining, based on his prior knowledge concerning the ECUs in the vehicle in question, that a defect in the algorithm most likely caused the injuries in the accident which led to the decedent's death.

The trial court ultimately denied the motion for protective order and ordered that the algorithm be produced, but that it be given the maximum protection possible (including a number of specific protections in an amended order). Bosch petitioned for mandamus, claiming both that the algorithm was not subject to any discovery or, alternatively, that the protections in the trial court's order were inadequate. The supreme court granted the writ in part, holding that the trade-secret protections in the trial court's order were inadequate.

Wrongful Death; Appointment of Administrators

Ex parte Grant, No. 1131150 (Ala. Dec. 12, 2014)

Administrator appointed by Lowndes County Probate Court filed death case in Montgomery County. Wife of decedent moved to intervene in the Montgomery case, contending that administrator was appointed through fraud, and asked for stay of Montgomery case pending dispute over the administration of the estate by the Lowndes County Probate Court. Montgomery court granted intervention and declared appointment of administrator void for fraud, and stayed the case; administrator petitioned for mandamus. The supreme court granted the writ in part, holding that the Lowndes court had exclusive jurisdiction over the appointment of administrator issue, and thus the Montgomery court had no jurisdiction over that aspect. However, Montgomery court acted within its discretion in staying case pending resolution of appointment issue by Lowndes court.

Venue; LLCs

Ex parte WMS LLC, No. 1131216 (Ala. Dec. 12, 2014)

Former partner sued LLC law firm in Chambers County. Because none of law firm's partners were residents of Chambers County, venue was improper under *Ala. Code* § 6-3-2 (venue as to an LLC is determined with reference to its individual members), unless some substantial acts relating to the matter occurred in Chambers County, which was not the case here.

Property Tax Assessment Challenges

Lumpkin v. State, No. 1130999 (Ala. Dec. 19, 2014)

A party aggrieved by a decision of a county board of equalization fixing the assessed value of his or her property must file the cost bond required by § 40-3-25 within the 30-day period after the board of equalization's final decision fixing the assessed valuation in order to perfect an appeal to the circuit court.

MVAs; UM Procedure

***Travelers Home & Marine Ins. Co. v. Gray*, No. 1130035 (Ala. Dec. 19, 2014)**

When a UM carrier has elected to participate in a lawsuit against both it and a third-party tortfeasor, the taking of a default judgment against the third-party tortfeasor only is not binding on the UM carrier. In this case, the trial court erred in granting summary judgment against Travelers because the motion did not present evidence of liability, causation, damages, etc., in relation to the acts of the uninsured third-party tortfeasor.

From the Alabama Court Of Civil Appeals

Specific Performance

***Century Automotive Group v. Structure Designs LLC*, No. 2130344 (Ala. Civ. App. Nov. 21, 2014)**

The CCA reversed the circuit court's award of specific performance under UCC Article 2 to auto dealer for breach of contract committed by sign company, where dealer had sought money damages as its remedy. The CCA concluded that awarding specific performance would be inequitable, especially where plaintiff dealer had sought return of money.

Workers' Compensation

***Flexicrew Staffing, Inc. v. Champion*, No. 2130213 (Ala. Civ. App. Dec. 12, 2014)**

Injuries sustained while traveling to see an employer-designated physician for initial treatment of a work-related injury are compensable under the act.

Workers' Compensation

***Fab Arc Steel Supply, Inc. v. Dodd*, No. 2121061 (Ala. Civ. App. Jan. 16, 2015)**

Held: (1) trial court may find that a work-related accident caused a particular injury based on circumstantial evidence



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even if that injury cannot be objectively or scientifically verified and defined; (2) trial court may infer medical causation from circumstantial evidence consisting of the sudden appearance of an injury and symptoms immediately following a workplace accident; but (3) employer was not estopped from asserting employee's failure to reach MMI, despite employee's argument that employer should be estopped because failure to reach MMI was the result of the employer's denial of benefits.

Appeals to Circuit Court

***Williams v. Capital One Bank NA*, No. 2130681 (Ala. Civ. App. Jan. 16, 2015)**

Because circuit court never acquired jurisdiction over untimely appeal from the district court, it had no jurisdiction to award attorneys' fees to creditor on denial of debtor's post-judgment motion.

"Costs" Awardable under Rule 54

***Autrey v. Memory*, No. 2140166 (Ala. Civ. App. Jan. 23, 2015)**

Prevailing party may recover costs under Rule 54(d) even where the litigant's insurance carrier has paid them.

From the United States Supreme Court

FLSA

***Integrity Staffing Solutions, Inc. v. Busk*, No. 13-433 (U.S. Dec. 9, 2014)**

Issue: whether hourly warehouse workers, who retrieved products from warehouse shelves and packaged them for delivery to Amazon.com customers, performed compensable services when employer required them to undergo a security screening before leaving the warehouse each day. Held: No; time spent waiting to undergo and undergoing security screenings is not compensable under FLSA.

Juror Misconduct; New Trial; Evidence

***Warger v. Shauers*, No. 13-517 (U.S. Dec. 9, 2014)**
Held: (1) Rule 606(b)'s exclusionary rule applies to juror testimony during a proceeding in which a party seeks to secure a new trial on the ground that a juror lied during *voir dire*; and (2) The affidavit at issue (of a juror who admitted to providing a false answer in *voir dire*) was not admissible under Rule 606(b)(2)(A)'s exception for evidence of "extraneous prejudicial information."

TILA; Statutory Construction

***Jesinowski v. Countrywide Home Loans*, No. 13-684 (U.S. Jan. 13, 2015)**

The Truth in Lending Act gives borrowers the right to rescind certain loans for up to three years after the transaction is consummated. The question presented is whether a borrower exercises this right by providing written notice to his lender, or whether he must also file a lawsuit before the three-year period elapses. Held: Only written notice is required.

MDL Proceedings; Appellate Jurisdiction

***Gelboim v. Bank of America Corp.*, No. 13-1174 (U.S. Jan. 21, 2015)**

Dismissal of action by MDL transferee court (which had jurisdiction for coordination of pretrial proceedings) was a final and appealable order; plaintiffs' right to appeal ripened when the district court dismissed their case, not upon eventual completion of the MDL proceedings in all of the consolidated cases.

From the Eleventh Circuit Court of Appeals

Standing; Injunctive Relief

***Strickland v. Alexander*, No. 13-15483 (11th Cir. Nov. 20, 2014)**

Plaintiff filed action seeking declaratory and injunctive relief, challenging the enforceability of Georgia's garnishment statute as applied to workers' compensation and Social Security Disability funds. The district court dismissed the action for lack of standing. The Eleventh Circuit reversed, reasoning that the plaintiffs demonstrated a real and immediate threat of future injury, notwithstanding the fact that creditors had withdrawn their challenges to the exemptions from garnishments, and therefore the future injury was sufficiently imminent to confer standing.

ERISA; Accrual

***Witt v. Metropolitan Life Ins. Co.*, No. 14-11349 (11th Cir. Nov. 25, 2014)**

An ERISA cause of action accrues, and the limitations period begins to run, when the claimant has reason to know that the claim administrator has clearly repudiated the claim or amount sought.

Class Actions; Offers of Judgment

Stein v. Buccaneers Ltd. Partnership, No. 13-15417 (11th Cir. Dec. 1, 2014)

This case concerns a hot topic in consumer class actions—whether a defendant can use an unaccepted Rule 68 offer of judgment to the putative class representative to moot both the individual’s claims and the class claims. The Eleventh Circuit answered in the negative as to both questions.

Standing; Concrete and Particularized Injury

Kawa Orthodontics v. Sec. of Treasury, No. 14-10296 (11th Cir. Dec. 2, 2014)

Orthodontics firm lacked standing to challenge the Treasury’s delay in implementing the employer mandate provisions of the Affordable Care Act, where firm’s claimed injury—he lost time and resources in attempting to comply with the law—was not sufficiently concrete and particularized.

TILA

Harris v. Schonbrun, No. 13-15505 (11th Cir. Dec. 10, 2014)

Held: (1) lender did not satisfy an obligation to provide clear and conspicuous notice of right to rescind a loan under TILA, where lender instructs the borrower to sign simultaneously both the loan and a postdated waiver of the borrower’s right to rescind; and (2) if it rescinds the loan, district court is not necessarily required to award the borrower statutory damages, attorney’s fees and costs.

Default Judgments

Perez v. Wells Fargo Bank, NA, No. 13-13853 (11th Cir. Dec. 18, 2014)

Motion for judgment on the pleadings was in fact a motion for default judgment, so Rule 55’s standard of “good cause” for setting aside an entry of default judgment—not the higher one of “excusable neglect” applicable to missed deadlines outside the default context—applied.



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CAFA; Burden on Removing Party to Prove Amount in Controversy

Dudley v. Eli Lilly & Co., No. 14-13048 (11th Cir. Dec. 29, 2014)

Defendant’s proffers about the amount in controversy were too speculative to support any conclusion that the removing defendant had met CAFA’s amount-in-controversy requirement by a preponderance of the evidence.

FCRA

Collins v. Experian Information Solutions, Inc., No. 14-11111 (11th Cir. Jan. 5, 2015)

To recover “actual damages” for a violation of 15 U.S.C. § 1681i(a), requiring a consumer reporting agency to conduct a “reasonable reinvestigation” of disputed information contained in a consumer’s credit file, consumer is not required to show that consumer reporting agency disclosed the consumer’s credit report to a third party. However, as to a claim for willful violation, Experian’s “taking no steps other than contacting only Equable [the creditor] with an ACDV form regarding the disputed entry might have been negligent,” but was not reckless or willful.

False Claims Act

U.S. ex rel. Osheroff v. Humana, Inc., No. 13-15278 (11th Cir. Jan. 16, 2015)

A fairly complex FCA case concerning interplay with the Affordable Care Act, the upshot of which was that the public disclosure provisions of the False Claims Act barred the claims.

Mortgage Transfer Taxes

Montgomery County Commission v. FHFA, No. 13-12615 (11th Cir. Jan. 16, 2015)

State taxes normally imposed on real estate transfers do not apply when federal entities (Fannie Mae and Freddie Mac)

transfer real property in their respective states, because those federal entities have a Congressional charter exempting them from “all taxation.”

FLSA

Bailey v. TitleMax of Georgia, Inc., No. 14-11747 (11th Cir. Jan. 15, 2015)

Employer may defeat FLSA claim by asserting unclean hands or *in pari delicto*, based on the employee’s alleged conduct in underreporting as a total bar to the employee’s FLSA claim.

RECENT CRIMINAL DECISIONS

From the Court of Criminal Appeals

Voluntary Statements

Wimbley v. State, No. CR-11-0076 (Ala. Crim. App. Dec. 19, 2014)

Defendant’s confession to deputy sheriff was not rendered involuntary because he had been allegedly held in solitary confinement for four days without water, light or a bed. The defendant failed to prove these allegations, and, even if true, they would not entitle him to suppression of his statement under the circumstances here.

Rule 404(b)

Marks v. State, No. CR-13-0819 (Ala. Crim. App. Dec. 19, 2014)

Because neither the defense of consent nor the defendant’s identity was placed at issue, the trial court erred in admitting the state’s evidence that the defendant had previously sexually assaulted two other women.

Rule 32; Ineffective Assistance

State v. Gissendanner, No. CR-09-0998 (Ala. Crim. App. Dec. 19, 2014)

Defense counsel’s failure to secure testimony from experts in pathology, fingerprints and other subjects, or to produce mitigation testimony from certain friends and family, did not constitute ineffective assistance of counsel. The court found that counsel was fully prepared and had skillfully handled the defendant’s capital murder trial and sentencing proceedings.

Rule 32; Amendments

Pickett v. State, No. CR-13-1493 (Ala. Crim. App. Dec. 19, 2014)

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 References available. NMLS # 190932

The trial court erred in dismissing the defendant's motion to amend his Rule 32 petition, submitted within several weeks of the petition's filing, and prior to the trial court's judgment, and no undue delay or prejudice would result from permitting the amendment.

Impersonation of Police

State v. Baker, No. CR-13-0142 (Ala. Crim. App. Nov. 21, 2014)

Trial court erred in dismissing an indictment for impersonation of a police officer under *Ala. Code* § 13A-10-11; the statute was not unconstitutionally vague, and the defendant, charged with having falsely identified himself as a deputy sheriff and worn a law enforcement equipment belt and shirt emblazoned with "Sheriff's Office," was sufficiently apprised of his offense.

Probation Revocation

Daniels v. State, No. CR-13-1222 (Ala. Crim. App. Nov. 21, 2014)

The court reversed the defendant's probation revocation because there was no transcript of the revocation proceeding and the record did not indicate the evidence upon which the trial court had relied in its decision.

Sentencing Reform Act

Oliver v. State, No. CR-13-0892 (Ala. Crim. App. Nov. 21, 2014)

Trial court erred in departing from the presumptive sentencing standards under the Alabama Sentencing Reform Act, *Ala. Code* § 13A-6-23, by failing to list the aggravating factors supporting that departure.

Menacing

Moore v. State, No. CR-13-0113 (Ala. Crim. App. Nov. 21, 2014)

Under *Ex parte Pate*, 145 So. 3d 733 (Ala. 2013), defendant's act of raising a steel pipe above his shoulders "like a batter" was insufficient to constitute a physical action for proof of menacing under *Ala. Code* § 13A-6-23. | [AL](#)



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Euel A. Screws, Jr.

Euel A. Screws, Jr.

When my law partners “assigned” the opportunity to me to write a “legal eulogy” for Euel Screws, Jr., my friend and partner of 50 years, I thought it would, except for the grief of losing him to cancer on November 1, be easy. Instead, I found it nearly impossible to encapsulate the gist or the spirit of the man I knew for so long. On the surface, Euel was an easy-going, gregarious, charming, good-humored man, a man who made friends easily and enemies only in the rarest of circumstances. And he was every one of those things. But he was also an intensely competitive, highly skilled and highly creative trial lawyer, who successfully conducted trials throughout the state, in both state and federal courts; he was an equally effective appellate advocate.



When I reflect on his background, those attributes can be seen from the very beginning: he was editor-in-chief of the University of Alabama *Law Review* and a charter member of the Bench and Bar Legal Honor Society. At the university, he was inducted into ODK, the leadership honorary society. His legal grounding beyond law school included both a state and federal court clerkship, under Justice Thomas Lawson of the Alabama Supreme Court and Judge Richard Rives, chief judge of the U.S. Fifth Circuit Court of Appeals. Characteristically, Euel remained for many years a friend and poker-playing companion to several of the notable judges on the Fifth Circuit, including Judges John Minor Wisdom, John Brown and Walter Gewin. He later joined Judge Rives’s old law firm, where he practiced with John Godbold, Albert Copeland and Truman Hobbs.

Euel was passionately dedicated to his clients and their interests, and that dedication, compassion and empathy were always evident to the juries he so successfully appeared before. From its origins, he was an early pillar of what was then the Alabama Trial Lawyers’ Association, a group founded by Howell Heflin, John Godbold, Francis Hare, Truman Hobbs and Frank Tipler, Sr. to teach trial skills.

The same boundless energy, enthusiasm and optimism he brought to law practice typified his approach to life in general, from his Korean War-era Army service as an instructor in night combat and marksmanship, to his life-long love of hunting, competitive sailing (he regularly raced in sailboat regattas, and once captained a sailboat through the Caribbean), fishing and gardening; he was a successful cotton farmer and owned a cotton gin; and his hobbies included being a great teller of wonderful stories, classical piano, Democratic Party politics and landscaping his beloved Lake Martin house. He was devoted to his bride, Dane; to their three children and grandchildren; to his great circle of friends; and to his Episcopal church.

If there is a modern equivalent to the “Renaissance Man”—that is, a man of broad and varied talents, of interests of every kind, of an open, exploring spirit—that would fit Euel Screws.

When he died, his family, knowing the man who was husband, father, grandfather, legal master advocate, scholar, outdoorsman, farmer, boon companion and friend, buried him in hunting camouflage, with a tin of Skoal, a pint of good Scotch, a fishing fly and a Christian cross formed of cotton twigs and bolls. For a man full of life and the joy of the good things life offers, I cannot think of anything better.

—Richard H. Gill

Ackerman, Harold Thomas

Moody
Admitted: 1955
Died: November 17, 2014

Andrews, John Samuel

Greenville
Admitted: 1968
Died: November 19, 2014

Campbell, Joseph Randall, II

Pike Road
Admitted: 2003
Died: November 10, 2014

Lee, Alice Finch

Monroeville
Admitted: 1943
Died: November 17, 2014

Martinson, Douglas Claude

Huntsville
Admitted: 1964
Died: November 12, 2014

McDonald, Robert Emmett, Jr.

Mobile
Admitted: 1961
Died: November 6, 2014

Mezrano, Louis Anthony

Birmingham
Admitted: 1967
Died: November 14, 2014

Palughi, Joseph Patrick, Jr.

Mobile
Admitted: 1966
Died: December 12, 2014

Patterson, Arthur Frank, Jr.

Lanett
Admitted: 1993
Died: December 6, 2014

Record, Walter Alvin, III

Huntsville
Admitted: 1980
Died: November 23, 2014

Sparks, Herbert Blackman, Jr.

Birmingham
Admitted: 1984
Died: November 4, 2014

Stanford, James Arthur, Jr.

Arab
Admitted: 2001
Died: December 11, 2014

Younger, William Carl

Montgomery
Admitted: 1956
Died: October 29, 2014

Notice

Reinstatement

Transfer to Disability Inactive Status

Disbarment

Suspensions

Notice

- **Thomas Christian Fernekes**, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of March 25, 2015 or, thereafter, the allegations contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB nos. 2010-1212, 2012-1572 and 2012-1890 by the Disciplinary Board of the Alabama State Bar.

Reinstatement

- Monroeville attorney **Leston Curtiss Stallworth** was reinstated to the practice of law in Alabama, effective November 14, 2014, by order of the Supreme Court of Alabama. The supreme court's order was based upon the decision of Panel I of the Disciplinary Board of the Alabama State Bar granting the petition for reinstatement filed by Stallworth on July 18, 2014. [Rule 28, Pet. No. 2014-1237]

Transfer to Disability Inactive Status

- Mobile attorney **Michael Bruce Smith** was transferred to disability inactive status pursuant to Rule 27(c), *Alabama Rules of Disciplinary Procedure*, effective December 1, 2014, by order of the Disciplinary Board of the Alabama State Bar. [Rule 27(c), Pet. No. 2014-1750]

Disbarment

- Hoover attorney **William Brett Brown** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective December 4, 2014. The supreme court entered its order based upon the November 13, 2014 order by Panel I of the Disciplinary Board of the Alabama State Bar accepting Brown's consent to disbarment. Brown consented to disbarment based upon a pending bar investigation concerning his criminal arrest and conviction in Marengo County. On August 19, 2014, Brown pleaded guilty to attempted sexual misconduct (*Ala. Code* §§ 13A-4-2, 13A-6-65). [Rule 23, Pet. No. 2014-1314; ASB No. 2012-1101]

Suspensions

- Montgomery attorney **Randy Barnett Blake** was suspended from the practice of law in Alabama for 91 days, by order of the Supreme Court of Alabama, effective June 1, 2014. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Blake's conditional guilty plea, wherein he pled guilty to violating Rules 1.3, 1.4(a) and (b), 1.16(d) and 8.4(d), *Ala. R. Prof. C.* The complainant hired Blake in August 2010 to probate the will of her deceased husband. Blake assured the complainant that everything was progressing with the probate of the estate. Eventually, the complainant was unable to contact Blake, and was contacted by another attorney who advised that he had been appointed to represent her in the estate matter as a result of Blake's failure to appear for several hearings. Blake had also failed to appear before the court for a show-cause hearing. According to the newly-appointed attorney, Blake failed to send all of the required notices to creditors of the estate and

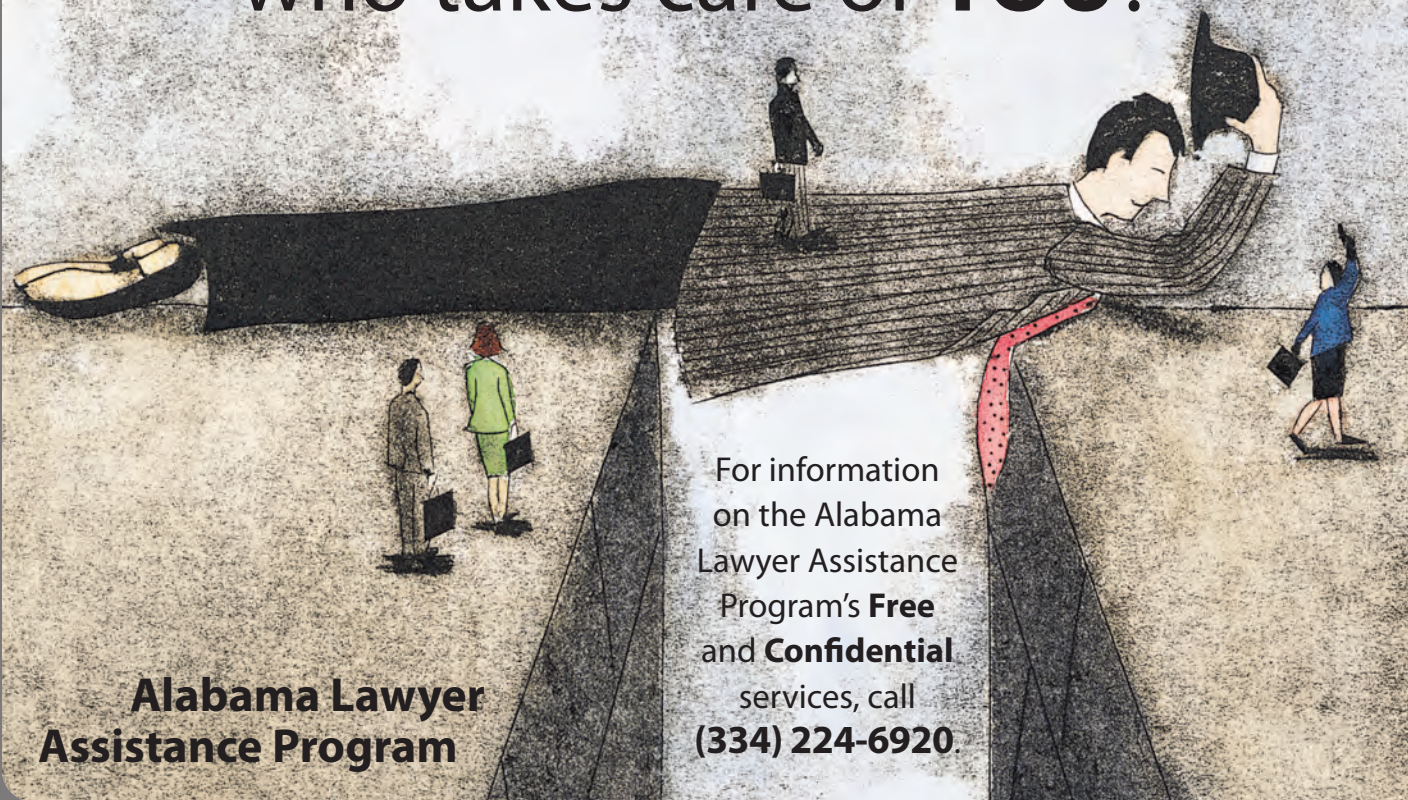
failed to submit an inventory to the court. As a result, Blake was taken off the case by the court and the other attorney was appointed. The appointed attorney stated that it appeared Blake had improperly advised the complainant to dispose of estate property by giving the property to her adult son. This property had to be retrieved and returned to the estate. The estate was subsequently completed by the appointed attorney. [ASB No. 2013-644]

- Birmingham attorney **Bethany T. W. Moore** was suspended from the practice of law in Alabama for 45 days, by order of the Supreme Court of Alabama, effective November 19, 2014. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Moore's consent to discipline, wherein Moore was deemed guilty of violating Rules 1.3, 1.4(a), 1.16(d), 3.2 and 8.4(a), (d) and (g), *Ala. R. Prof. C.* In June 2013, Moore entered a notice of appearance on behalf of the complainant regarding criminal charges, and was paid a fee of \$2,700. After filing a plea of not guilty and a waiver of arraignment, Moore failed to

communicate further with the client and failed to appear on his behalf on multiple occasions. The Office of General Counsel also received a letter from a Shelby County Circuit Judge, reporting that Moore had failed to appear on behalf of her client for a pre-trial hearing. The judge sent Moore a certified letter, directing her to appear on September 9, 2013 and explain why she should not be held in contempt. Moore did not appear or respond to the letter, and failed to respond to the prosecutor's attempts to contact her regarding the matter. [ASB No. 2013-1767]

- Jasper attorney **Brian Speegle Royster** was summarily suspended from the practice of law in Alabama pursuant to Rules 8(e) and 20(a), *Alabama Rules of Disciplinary Procedure*, by order of the Disciplinary Commission of the Alabama State Bar, effective November 3, 2014. The order of the Disciplinary Commission was based on a petition filed by the Office of General Counsel evidencing that Royster had failed to respond to requests for information from a disciplinary authority. [Rule 20(a), Pet. No. 14-1633] | [AL](#)

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2015 Legislative Session

The new quadrennium is well underway, as of the publication of this issue. On January 13, the new legislature convened for its organizational session. During that brief session, both houses of the legislature met to elect leadership, adopt rules and perform their constitutional duties related to receiving the official results of the November 2014 elections.

Re-elections and New Members

The senate is now comprised of 26 Republicans, eight Democrats and one Independent. Seven members are new from the close of the last session. Senator Del Marsh was re-elected to serve as president pro tempore. Patrick Harris, a member of the Alabama State Bar, was re-elected to serve a second term as secretary.

The house is now made up of 72 Republicans and 33 Democrats. Twenty-five members are new this quadrennial. Representative Mike Hubbard was re-elected to serve as speaker and Representative Victor Gaston as speaker pro tem.

The number of lawyers elected to the legislature continues to be down with seven members of the state bar elected to the senate and 11 to the house. ASB members elected to the senate are **Greg Albritton, Arthur Orr, Hank Sanders, Rodger Smitherman, Cam Ward, Tom Whatley** and **Phil Williams**. State bar members elected to the house are **Paul Beckman, Marcel Black, Chris England, David Faulkner, Matt Fridy, Juandalynn Givan, Jim Hill, Mike Jones, Bill Poole, Tim Wadsworth** and **Isaac Whorton**.

Impact

While the number of lawyers may be down, their impact is not. Lawyers will chair four committees in the senate. The Agriculture, Conservation & Forestry Committee that deals with bills affecting the largest industry in Alabama will be chaired by Sen. Whatley. The Finance & Taxation General Fund Committee that appropriates funds for all non-education functions of state government will be chaired by Sen. Orr. The Fiscal Responsibility & Economic Development Committee will be chaired by Sen. Williams. And, the Senate Judiciary Committee will be chaired by Sen. Ward.

In the house, lawyers will serve as chairs of two very significant committees. Rep. Poole will chair the Ways & Means Education Committee that appropriates all education funds. Rep. Jones will chair the House Judiciary Committee.

This new legislature will be under tremendous pressure to deal with a number of issues that have been brewing in our state of some time. Two of the most significant issues being dealt with are reforms to the criminal justice system and the condition of the general fund.

Criminal Justice System Reform

One of the largest items on the agenda for this legislative session is much-needed reform of Alabama's criminal justice system. During the 2014 Legislative Session, Sen. Ward sponsored legislation to create the Alabama Prison Reform Task Force. That group, chaired by Sen. Ward, has been working diligently to study the issues and make recommendations to the legislature.

With the help of the Council of State Governments Justice Center, the task force has had tremendous data, information and resources in studying the issues. There is no way to hide from the fact that our prisons are far beyond capacity and that the cost of running the system will be very difficult, if not impossible, to sustain.

The issues being looked at include the types of offenders being sent to prison, how long they are staying and under what terms they are re-entering society. In all likelihood, every aspect of the system must be looked at and improved.

In the last decade, the total population of persons in the corrections system increased nearly 20 percent and the spending on corrections increased nearly 50 percent. These are not sustainable figures. The May column will focus on specific recommendations that the task force has made.

General Fund

During the legislative orientation held in December, the legislature was presented with a stark picture of the general fund. By all estimates, the shortfall for Fiscal Year 2016 will be at least \$200 million. The FY2015 General Fund appropriated a little more than \$1.8 billion. Of that total, more than \$685 million went to Medicaid and \$394 million to the Department of Corrections. It is impossible to believe that either of those figures will be decreasing any time soon.

Both the legislature and the executive branch must look at every option to cut spending and increase revenue in order to address the coming shortfall. | AL

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About Members

J. Marland Hayes, formerly with Tanner & Guin LLC, announces the opening of **J. Marland Hayes LLC** at 505 Energy Center Blvd., Ste. 604, Northport 35473. Phone (205) 764-9179.

John W. Sheffield, formerly of Johnston, Barton, Proctor & Rose, announces the opening of **John W. Sheffield LLC** at 400 Union Hill Dr., Ste. 350, Birmingham 35209. Phone (205) 613-7859.

Bloom Sugarman Everett LLP announces that **Ariel Denbo Zion** has been promoted to counsel.

Bradley Arant Boult Cummings LLP announces that **Edward S. Sledge, IV** and **Stuart M. Maxey** joined as partners.

Burr & Forman LLP announces that **Robert C. Matthews** joined as counsel in the Mobile office. **Trent Scofield** joined as counsel and **Ellen T. Matthews** and **Ronald D. Williams** are partners, all in the Birmingham office.

Butler Pappas Weihmuller Katz Craig LLP announces that **Carin Brock** is a partner in the Mobile office.

Capell & Howard PC announces that **Terrie S. Biggs** is a shareholder and **Kristin Dillard** and **Faith Perdue** joined as associates.

Sydney Cook & Associates LLC of Tuscaloosa announces that **Emilee H. Scheeff** joined as an associate.

Cusimano, Roberts & Mills LLC of Gadsden announces that **Donald D. Knowlton** joined the firm.

Espy, Nettles & Scogin PC announces that **Brenton Cooper McWilliams** is a shareholder, **William Milam Cain, Sr.** is an associate and the name of the firm is now **Espy, Nettles, Scogin & McWilliams PC**.

Friedman Law Firm PC announces that **Jamie B. Stewart** and **Edmund A. Crackel** joined as associates.

Hagwood Adelman Tipton PC announces that **Christopher L. Shaeffer** is a shareholder in the Birmingham office.

Hale Sides LLC announces that **Richard D. Whitaker** is a partner in the Birmingham office.

Haskell Slaughter & Gallion LLC announces that retired **Presiding Circuit Judge Charles Price** joined the Montgomery office of counsel.

Holtsford Gilliland Higgins Hitson & Howard PC announces that **Megan**

Among Firms

The **University of Alabama School of Law** announces that **Caroline J. Strawbridge** is the major gifts officer for the Office of Advancement.

Alfa Insurance Company announces the promotion of **Angela L. Cooner** to senior vice president, general counsel and secretary.

The United States Senate announces that it confirmed **Leigh A. Bradley** to be general counsel of the **Department of Veterans Affairs**.

Avaya Inc. announces that **Wesley Sowell** is senior corporate counsel and contracting operations.

Balch & Bingham LLP announces that **Conrad Anderson IV; Thomas G. DeLawrence; Franklin H. Long, Jr.; Michel M. Marcoux; W. Brad Neighbors; Chad A. Pilcher; Brandon N. Robinson** and **Mary Forman Samuels** are partners in the Birmingham office.

Beasley, Allen, Crow, Methvin, Portis & Miles PC announces that **David Dearing, James Lampkin, Danielle Ward Mason** and **Matt Teague** are principals.

Belt Law Firm PC announces that **S. Drew Barnett** and **W. Alan Duke, Jr.** joined the firm as associates and that **Robert P. Bruner** is a partner. The firm name is now **Belt & Bruner PC**.

Due to space constraints, *The Alabama Lawyer* no longer publishes address changes, additional addresses for firms or positions for attorneys that do not affect their employment, such as committee or board affiliations. We do not print information on attorneys who are not members of the Alabama State Bar.

About Members

This section announces the opening of new solo firms.

Among Firms

This section announces the opening of a new firm, a firm's name change, the new employment of an attorney or the promotion of an attorney within that firm.

K. McCarthy is a partner, **Christopher R. Reader** is an associate in the central Alabama office and **Blake T. Richardson** is an associate in the Gulf Coast office.

Jones Walker announces that **Jason R. Watkins** is a partner in the Mobile office.

Kendall Maddox & Associates LLC announces that **Seth F. Capper** joined as an associate.

Lee, Livingston, Lee & Nichols PC announces that **Benjamin H. Barron** is a partner.

Maynard Cooper & Gale PC announces that **Josh Baker, Jack Bethay, Stephanie Mays, Randall Minor** and **Harrison Smith** are shareholders and **Chris Wiginton** joined the firm.

McDowell Knight Roedder & Sledge LLC announces that **S. Fraser Reid, III** and **J. Blair Newman** are members.

Phelps Dunbar announces that **Andrew V. Garner** was promoted to counsel in the Tupelo office and **A. Grady Williams, IV** is a partner in the Mobile office.

Pitts, Pitts & Williams announces that **Thomas ap R. Jones** joined as a partner and the firm name is now **Pitts, Williams & Jones**.

Rushton, Stakely, Johnston & Garrett PA announces that **J. Ladd Davis** and **Stephen P. Dees** are shareholders.

Sanders & Williams LLC announces that **Geoffrey D. Alexander** joined as an associate.

Smith, Spires & Peddy PC announces that **Angela C. Shields** joined as an associate.

Starnes Davis Florie announces that **Amber M. Whillock** is a partner.

Wallace, Ellis, Fowler, Head & Justice of Columbiana announces that **J. Bentley Owens, III** joined the firm

and the firm name is now **Ellis, Head, Owens & Justice**.

Waller Lansden Dortch & Davis, LLP announces that **Larry Brantley** joined the firm, **Kristen Larremore** is a partner and **Brittany R. Stancombe** is an associate.

Whitaker, Mudd, Luke & Wells LLC of Birmingham announces that **John C. Shashy** joined the firm as an associate. | [AL](#)

Do you represent a client who has filed a claim for medical benefits, lost wages, loss of support, counseling, or funeral and burial assistance with the Alabama Crime Victims' Compensation Commission?



When your client applied for benefits, a subrogation agreement was signed pursuant to §15-23-14, Code of Alabama (1975). You must provide written notification to the Alabama Crime Victims' Compensation Commission upon filing a lawsuit or negotiating a settlement arising from your client's victimization.

For more information, contact Colette Gray, Restitution/Recovery Specialist for the Alabama Crime Victims' Compensation Commission at (334) 290-4420.



Alabama Crime Victims'
Compensation Commission

PO BOX 231267
Montgomery, Alabama 36123-1267
www.acvcc.alabama.gov
(334) 290-4420



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ABA, MPLCs and CLE

In February, the Young Lawyers' Section of the Alabama State Bar sent four delegates to the **American Bar Association Young Lawyers' Division** mid-year meeting in Houston. Later that month, YLS officers and executive committee members held their annual winter meeting at the Grand Hotel in Point Clear.

Upcoming events include the **Minority Pre-Law Conferences (MPLCs)**, which will take place this spring in Birmingham, Montgomery, Huntsville and, for the first time ever, Mobile. The MPLCs are award-winning programs designed to introduce 11th- and 12th-grade students to the American civil and criminal justice system. The program provides students with a unique opportunity to talk one-on-one with practicing minority lawyers. During the program, students also have an opportunity to view a simulated trial, performed by practicing attorneys. This experience is designed to give students a better understanding of how courts of the United States resolve legal conflicts and the roles judges, lawyers, juries and witnesses play in the system. Through participating in the mock trial as jurors, students gain an insider's perspective on courtroom procedure. The program includes a luncheon with a keynote speaker and break-out sessions where the students are able to discuss the mock trial and the legal profession with attorneys in a small-group setting. There is no charge to students participating in the MPLCs, thanks to the generous support of our sponsors. For more information on dates and times, or if you are interested in becoming a sponsor, contact **Marcus Maples**, mmaples@sirate.com or (205) 930-5144.

The largest YLS event of 2015 will be our **Orange Beach Seminar** May 14-16 at the **Perdido Beach Resort**. The Orange Beach CLE is the largest seminar held in Alabama specifically targeted at young lawyers. It is crafted each year to offer a broad range of topics that all young lawyers should have a working knowledge of, regardless of their specialized area of practice. Topics include a panel discussion from circuit court judges from around the state, practical lessons on dispute resolution by **Allison Skinner**, a roundtable discussion about changes in the legal field, ABC's of EQ for lawyers by **Professor Pamela Bucy Pierson**, trial strategy advice from **Michael Upchurch** and **Michael Ermert** and a primer on how to bill more effectively by **Annie Dike**. In addition, there will be a welcome reception, a golf tournament, a beach party each day and a cocktail party and silent auction. Not only is this a fantastic CLE aimed at the practice development of your firm's young lawyers, it is a tremendous opportunity for them to meet judges in front of whom they may practice and network with others from around the state. Hotel rooms are filling up fast for that weekend, so mark your calendars for **May 14-16** and get registered today.

More information about the CLE can be found on the YLS page on the Alabama State Bar website (<https://www.alabar.org/membership/sections/young-lawyers/>), on our Facebook page (www.facebook.com/ASByounglawyers) or by contacting **Megan Comer** at (251) 694-6340. | [AL](#)

free•dom:

noun

**the power to determine
action without restraint.**

free•dom court re•porting:

proper noun

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more freedom by handling
your legal support needs.**



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