



ALABAMA LAW INSTITUTE

40 Years of Service

By David R. Boyd



Bedford



Black



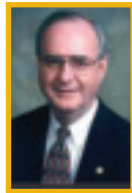
Campbell



Guin



Irons



Mitchell



Newton



Smitherman



Ward

This year marks the 40th anniversary of the commencement of operations of the Alabama Law Institute, a low-key but extraordinarily important and influential organization that has played an indispensable role in the drafting and adoption of numerous pieces of major Alabama legislation over the past four decades. Largely fueled by the pro bono efforts of thousands of Alabama lawyer-volunteers, the Law Institute has carved itself a place of distinction, earning gratitude and winning acclaim for its contributions to the legislative process.

The Alabama Law Institute was created by statute in 1967 as “an official law revision and law reform agency of the State of Alabama.” Not being funded immediately, however, the Law Institute did not actually begin operations until 1969. As the Institute’s first director, L. Vastine Stabler, Jr. wrote in July 1, 1969 letters welcoming the fledgling organization’s first members, “the Alabama Law Institute . . . was designed to engage in significant long-range improvement of the laws of our state.” Attorney-legislators Hugh Merrill of

Anniston and Howell Heflin of Tusculum were the initial executive officers of the institute, and the first annual meeting of the membership was held at the Town House Motor Hotel in Mobile on July 17, 1969, immediately before the ASB’s Annual Meeting.

Modeled generally on the Louisiana State Law Institute that had been founded in 1938, the Law Institute developed gradually in its first few years before maturing into its present form as the legislature’s permanent law improvement and law reform agency. Demopolis lawyer Rick Manley, a former and multi-term legislator elected first in 1966, recalls the institute’s creation and early contributions. “The legislature didn’t have anything like this at the time. In its early years, the Law Institute filled a great need by helping legislators in many ways. Once the Institute got on its feet, everyone wanted help with research and drafting. That’s a role filled now by the Legislative Reference Service, but the Law Institute was very well received and made a big contribution even in its first years.”

As it has evolved over the years, the Law Institute’s mission is to assist the

legislature through the clarification, simplification and modernization of existing statutory law, and by suggesting new laws, not only to fill gaps in the *Alabama Code* but also to keep Alabama generally in step with trends and developments nationally, including model acts and uniform laws. Law Institute projects may be identified or suggested by the legislature, others in state government, the state bar, judges, the general public, or by the institute itself. In addition to its important work on legislation, the Law Institute provides training workshops, handbooks and other publications for various public officials. It also supplies legislative analysts and interns to assist committees and individual legislators, and makes its resources available on an *ad hoc* basis to help with legislative projects in addition to those on the institute’s own formal agenda.

The Law Institute is housed in the Law Center Building on the University of Alabama campus, where it has access not only to state-of-the-art research facilities, but also to a faculty of legal experts in various fields of law. Although the Law

Institute's staff has a regular presence in Montgomery, particularly during sessions of the legislature, maintaining its headquarters away from the capital city provides important insulation from political influence and bolsters the institute's well-deserved reputation for non-partisanship.

Law Institute projects are often extensive revisions of the law that result from several years of study and concentrated work. Indeed, during its 40 years of assisting the legislature, the Law Institute has played a key role in the drafting and passage of approximately 100 pieces of major legislation, including everything from the *Criminal Code* in 1978, the institute's first major project to pass the legislature, to the much-needed Landlord-Tenant Act and the new *Elections Code* in recent sessions. At the beginning of the 2009 legislative session, several new proposals, including the massive *Business and Nonprofit Entities Code* and the Revised Uniform Limited Partnership Act, were introduced and enthusiastically embraced. Numerous other important law revisions are currently under study and likely destined for eventual adoption, since the legislature has never failed to enact a major Law Institute bill once presented. Not all projects are completed quickly, however. Indeed, work began in 1999 on the *Business Entities Code* that was finally introduced in the 2009 legislative session.

The Law Institute also contributes to the legislative process by providing staff support to a legislature that has little, if any, of its own. The Law Institute supplies lawyer support for many legislative committees and for the Democrat, Republican and Black caucuses. These talented lawyers, made available to the legislature at a small fraction of the cost of full-time legal staff, analyze all bills on a committee's agenda, prepare reports, attend committee meetings for discussion of the legislation and draft requested amendments. For the past 30 years, the institute has also directed the legislative intern program, through which students provide much-needed adjunct services for the legislature while enjoying the opportunity to observe and participate in the legislative process.

The Law Institute's membership is broad, consisting of lawyers, state and federal judges, law faculty from the Cumberland and University of Alabama

law schools, and lawyer members of the legislature. The institute is governed, however, by the smaller Institute Council, composed of six practicing lawyers from each congressional district as well as representatives from the appellate courts, the attorney general's office, the state bar, the law schools, the legislature, and the governor's office. Since January 1975, the Law Institute has been directed by Bob McCurley, himself an Alabama lawyer, who was joined in 1978 by Associate Director Penny Davis, likewise a member of our bar. McCurley has served as director for 33 of the Law Institute's 40 years, and is justifiably credited with having developed it into a well-oiled machine that is widely respected by legislators and other government officials.

Although a number of states have organization of similar nature and purpose, the Alabama Law Institute's model is perhaps unique. Operating with only a very small paid staff, the Law Institute is basically a volunteer-based agency. It draws its resources for drafting legislation principally from Alabama's lawyers, law professors and judges. Once a topic is identified, the institute selects a chief draftsman, or reporter, who is usually a law professor who receives a small stipend. Subject matter experts in the field under revision, mainly lawyers but on occasion legislators as well, are asked to serve on an advisory committee to prepare the proposed revision. These committee members contribute significant time, effort and expertise, pro bono, supported extensively by student law clerks supplied by the institute. Alabama legal professionals have devoted incalculable volunteer hours to researching, debating, drafting and refining dozens of important code revisions and other statutes over the past 40 years. With approximately 250 lawyers involved in various Law Institute projects in any given year, it is no exaggeration to say that several thousand Alabama lawyers have participated in Law Institute work during these four decades—all without compensation and strictly for the public good. It is estimated that on average over \$1,000,000 of donated lawyer time is contributed annually. Law Institute Director Bob McCurley proudly observes that, "Alabama lawyers volunteer more time to making the laws of their state than do lawyers in any other state."

Although the Law Institute receives a line-item appropriation from the legislature, the organization operates on a tidy budget. Four-term former legislator and former Speaker Pro Tem Jim Campbell, now a full-time Anniston lawyer, served for a number of years as president of the Law Institute. Campbell observes that, "The most remarkable thing the Law Institute has done is engage the private bar to do the bulk of the work. The legislature is getting a huge return for the small amount of money it appropriates to the Law Institute, whose budget is minuscule compared to the budgets of similar organizations in other states. And the Law Institute's product is just terrific."

The Alabama Law Institute model is not only very economical, but also widely envied—even to the point of virtual disbelief that it could possibly work at all, much less so well. Other states apparently have difficulty comprehending McCurley's explanation to them that "the smartest and brightest lawyers in Alabama are doing this stuff for nothing." House of Representatives member Cam Ward, an Alabaster lawyer, serves as one of Alabama's commissioners on the National Conference of Commissioners on Uniform State Laws. He reports frequently being asked by his other-state colleagues about the reasons for Alabama's success in passing major legislation, noting that they seem "in awe" of the institute's success. Representative Ward proudly answers by explaining that the Law Institute serves as the essential bridge between the legislature and the practicing bar, thus allowing an organized combination of efforts and talent not seen elsewhere. That collaboration, he explains, coupled with the meticulous work and the advance, pre-session planning and preparation by the Law Institute, has led to Alabama's coveted success, separating it from most other states.

The credibility earned and enjoyed by the Law Institute over its 40 years is often mentioned by legislators. House Majority Leader Ken Guin, a Carbon Hill lawyer, reports that Law Institute bills are viewed differently from most other legislation. "A lot of legislation is suspect on its face," he explains, "but Law Institute bills enjoy a high level of respect. Members know they can trust and rely on Law Institute legislation as

being thoroughly researched, well-written and fair.” Veteran Senator Roger Bedford, who practices law in Russellville, agrees that Law Institute-proposed legislation enjoys a special status. Legislators are inherently suspicious of legislation, particularly a bill of any length, and often they don’t fully understand it, Senator Bedford explains. “It’s hard to describe the validity that the Law Institute brings to a bill,” says Bedford, who has sponsored several pieces of the organization’s legislation. “Regardless of a bill’s length or complexity, if you say it’s a Law Institute bill, legislators get on board with it.”

Tusculumbia attorney Marcel Black has served in the house of representatives for some 18 years, many of those as chairman of the important Judiciary Committee. A frequent sponsor of institute-developed legislation, Representative Black has no reluctance to extol the organization’s worth and contributions. “When you can say it’s a Law Institute bill, all the members see it as having a stamp of approval unlike any other bill we see,” Black explains. “That credibility carries from start to finish without question.” Seven-term Senator Wendell Mitchell of Luverne, where he has practiced law for many years, offers an equally strong testimonial. “The Law Institute takes on issues that are of great importance to the public, to the legal profession and to business and presents answers in a way that legislators can appreciate and understand,” Mitchell explains. He describes the institute as being “indispensable to the process of reform and updating of Alabama’s laws, especially with much-needed uniform laws such as the *Probate Code* where there are real, practical problems to be addressed.” In contrast to his experiences with some other proponents of legislation, Mitchell says, there is never a concern about the institute “skirting issues, hiding the ball or telling half-truths.”

Equally important to the Law Institute’s sterling reputation, Democrat Ken Guin reports, is the universal perception that institute legislation is written from a non-partisan viewpoint. In illustration, he recalls the massive and comprehensive 2006 *Election Code* revision bill, the subject matter of which might inherently raise political eyebrows. It would have

been perfectly natural, Representative Guin recalls, for his Republican house colleagues to have been suspect of a new *Elections Code* sponsored by a leader of the opposition party. To his relief, however, both sides found that they could support the bill as drafted by the Law Institute, and it passed unanimously. Democrat Senator Bedford, who currently serves as vice president of the Law Institute, expresses this same sentiment, recalling instances where Republican senate colleagues dropped initial opposition to Bedford-sponsored legislation upon realizing that it had the imprimatur of the Law Institute. Senator Wendell Mitchell agrees with fellow lawyers Guin and Bedford, noting that the Law Institute’s non-partisan nature makes it particularly valuable to and credible in the legislative process. “If both the trial lawyers and the Business Council are promoting changes, for example, it’s great to have a neutral entity like the Law Institute on which to rely.”

Senator Rodger Smitherman, a Birmingham lawyer currently serving as senate president pro tem, describes the Law Institute as “non-partisan and highly competent.” Relating an experience that demonstrates the institute’s contribution to the legislative process beyond its traditional role of developing major code revisions, Smitherman points to the Homeland Security bill passed by the legislature in 2003. Many legislators had invasion-of-privacy concerns about the original legislation, Smitherman explains, and thus asked the Law Institute to review the bill, believing that legislators would receive a thorough and unbiased evaluation. The resulting Law Institute report recommended certain amendments to address legislators’ misgivings, and the revised bill passed shortly thereafter, making Alabama the first state to pass a Homeland Security law.

Representative Marcel Black echoes Senator Smitherman’s statements. “The Law Institute does a lot of work unrelated to its own bills that is very important and goes largely unnoticed,” Black says, giving as an example research to identify provisions of the *Code of Alabama* that need to be amended to include an index for cost-of-living adjustments. “They do lots of stuff that’s not in the spotlight,” explains Black.

Current Law Institute President and Speaker Pro Tem Demetrius Newton of Birmingham, where he has practiced law for some 57 years, describes the institute as “indispensable” to the legislature, remarking proudly on the “thousands of hours devoted pro bono by outstanding Alabama lawyers.” “But there is one thing that really sticks out to me,” Representative Newton relates. “But for the Law Institute, our legislative committees would be without any qualified staff assistance, which is where we were until the Law Institute began providing attorney-analysts some years ago.” Newton’s predecessor as institute president, former legislator Jim Campbell, believes that the Law Institute’s program for providing lawyer-analysts to assist legislative committees has done much to “solidify the reputation of the Law Institute among legislators.”

Senator Rodger Smitherman also praises the work of these Law Institute-provided analysts and interns who support the work of the legislature and its committees. The analysts, all of whom are lawyers, come to their work as knowledgeable non-partisans, Smitherman explains, and consequently legislators have come to have great confidence in their analysis and interpretation of proposed legislation. The legislative intern program has been under the Law Institute’s direction for the last 30 years, with approximately 13 interns—some assigned to the house generally and some to offices of individual house and senate leaders—participating in each session. Legislative interns, who assist with constituent services and provide various other needed services not involving legal research or analysis of bills, express excitement at the opportunity to be a part of the lawmaking process. “This is a tremendous opportunity to see the legislative process up close,” says Larry McCree, a Miles College student whose observations are typical of his intern colleagues, “especially the committee process, because the real decisions are often made in committee.” Other interns speak of the value of organized sessions with the state’s constitutional officers, another aspect of the program, and of watching the dynamics of legislators from opposite parties trying to enlist the support of one another for their favored legislation.

New legislators are quickly exposed to the work and reputation of the Law Institute. Florence lawyer Tammy Irons, now serving her first full term in the house, recognized almost immediately that Law Institute bills have “instant credibility and respect.” In the early days not every legislator had such immediate and unbridled appreciation for the work of the Law Institute, although most were strong supporters. The story is told of a veteran Jefferson County legislator, long-since departed from that position, who simply could not see the value in the major code revisions and other legislation advocated by the Law Institute. The grizzled lawmaker was not just dismissive of the institute’s efforts, but apparently determined to cause as much grief as possible for the organization. A tactful and well-received inquiry was made to the speaker—an institute supporter—about whether something might be done to change the adversarial legislator’s mind. No details are available, but the adversary quickly became one of the Law Institute’s most ardent legislator supporters and remained so until his retirement.

Many knowledgeable observers believe that the Law Institute fills a void resulting from the significant decrease in recent decades of the number of lawyer-legislators. In the not-too-distant past, lawyers populated—some would say dominated—both legislative houses in large numbers, but currently there are only 11 lawyers in the 35-member senate, and only the same number in the 105-person house of representatives. In earlier years, with many more lawyers serving, the legislative process enjoyed the input of trained and experienced lawyers as a matter of course, but that is now a thing of the past. The Law Institute helps fill this void by enlisting the volunteer input and services of lawyers across the state in researching and drafting legislative initiatives. As veteran lawyer-legislator Roger Bedford says, “With so few lawyers serving in the legislature, the work of the Alabama Law Institute is absolutely invaluable.”

Perhaps the biggest challenge ever for the Law Institute—although arguably one of the most important and ultimately most satisfying projects—was the Landlord-Tenant Act. Alabama was one

of only two states not to have adopted some version of this uniform law, with opponents having kept it sidelined for years. The breakthrough came in 2006 when the legislature requested the institute to become involved. Working in the midst of a fierce legislative battle waged by tenants’ rights groups on one side and landlords on the other, McCurley and attorney Greg Masood of Montgomery managed intense negotiations that resulted in passage of the bill. A model of compromise, this legislation established a much-needed balance of power, protecting for the first time the rights of the often-poor and largely unrepresented tenants, while fairly acknowledging the legitimate business interests of the property owners. That same 2006 legislative session demonstrated the even-handed nature of the institute’s work, moreover, with passage of a *Trust Code* favored by the more affluent and a complete reorganization of the *Alabama Elections Code*, which benefited everyone.

Representative Marcel Black speaks for many in praising the work of Law Institute Director McCurley and his associate director of many years, Penny Davis. “Bob is just amazing,” Black relates. “I don’t see how he and Penny do it, running from place to place, negotiating very antagonistic situations, and staying on top of everything.” Describing McCurley as a very able negotiator and master of the art of compromise, Black also compliments Davis’s ability to “pick out important little things in proposed legislation that most others would miss.”

Representative Black relates with a grin that McCurley prides himself on being able to reduce even the most complex and voluminous piece of legislation to a very brief summary for purposes of legislative presentation. “A one-pager is the norm even for a 400-page bill,” Black says, “but we agreed that, for the 815-page *Business and Nonprofit Entities Code* that we have in this session, he could use front and back.”

By the early 1990s, at about the time of the institute’s 25th anniversary, much had been accomplished by the Law Institute. The organization was stable and mature. The legislature had passed the *Criminal Code*, *Probate Code*, *Banking Code*, *Rules of the Road*, *Administrative Procedures Act*, and some 40 other major

revisions—all Law Institute projects. Director Bob McCurley and Associate Director Penny Davis recall commenting to each other at the time that the institute might have become a victim of its own success and that they might have worked themselves out of a job. Little reason was there for concern, however, for 50 additional revisions later the 2009 legislative session is chock-full of Law Institute legislation (seven bills), with 10 additional revisions under study by various advisory committees and waiting their turn in the legislature, where they will surely be well-received and promptly enacted.

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A more detailed history of the Alabama Law Institute can be found in the September 1992 edition of *The Alabama Lawyer*, an article written on the occasion of the Institute’s 25th anniversary, pages 304-05. Each edition of the *Alabama Lawyer* includes an article entitled “Legislative Update.” The Institute’s Web site, www.ali.state.al.us, contains extensive additional information, including the annual *Report to the Alabama Legislature and Institute Membership*. The report includes a comprehensive list of enacted legislation and completed projects as well as a description of projects to be presented in the current legislative session and those under study and planned for future presentation. The institute’s procedure for considering and proposing new projects is also set out in detail. Also listed are Law Institute publications and conferences offered to assist various public officials in the performance of their duties. ▲▼▲



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which he has participated in a number of legal matters involving the Alabama legislature. He is currently a member of the Council of the Alabama Law Institute and serves on its Executive Committee.