



MARK WHITE

*The Alabama Lawyer* editor, Robert Huffaker, managed to corral ASB President (and road warrior) Mark White between speaking engagements for a few minutes of dialogue. In this interview Mark recounts the accomplishments of his administration, gives a preview of the upcoming annual meeting and addresses the challenges that lie ahead for our profession.



## Turbulent Political and Economic Times— The Bar Will Respond

**Robert A. Huffaker, editor:** Mark, one of your New Year's resolutions was judicial campaign reform. How have you fared on that?

**Mark White, president:** For decades, the Alabama State Bar has advocated merit selection. The current status of judicial campaign reform is that there are some bills in the legislature. Unfortunately, I don't think there is any realistic chance of those bills getting passed or even receiving honest consideration in this session of the legislature. We have had more movement on how we, as the bar, are confronting the issue of third parties dragging the name of the ASB into judicial campaigns. Last fall, we made a complaint to the attorney general and asked him to investigate whether the Fair Campaign Practice Act had been violated. We were forced to do that by the unacceptable conduct of these third parties.

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**RAH:** That was in connection with the supreme court seat in the last election?

**MW:** Right. We had some third parties using push polls where they would call citizens and say, "Are you aware that the state bar has given an 'F' to some candidates?" Those representations were just false. The problem for the state bar is that because we're a mandatory bar, we can't endorse candidates. We don't give grades to candidates. We don't evaluate judges. Yet, the representation was made in the push polls, and then later in some radio ads, that the bar had "negatively endorsed" a candidate, for lack of a better term. Notwithstanding the fact that some people think I'm too active, when I got the first couple of complaints I didn't respond. I continued to receive complaints, including one from a lawyer in my building. He had caller I.D. and so he knew where the call came from, and it was obviously a third-party group. I went to that group's Web site and found that they advertise that they do that sort of activity. If our name had never been mentioned there would have been no need for the state bar to say anything other than what we were doing in support of the Judicial Campaign Oversight Committee. Those two candidates for the supreme court, as you may remember, came to the state bar's annual meeting and got a standing ovation for signing the Campaign Conduct Pledge, which was a great day for our bar and our state. And I think they're both fine people—I



*Mark White, 2008-09 president, Alabama State Bar*

still do—and I have no criticism of them personally. I think the process is tainted and that's unfortunate. But as far as the judicial campaign process, I think you will see a number of legislative activities going on this session, although they will not be specifically sponsored by the ASB. There is one bill in this session where a judicial circuit is trying to be able to "opt out" of the partisan judicial election system, meaning its judges could decide to run non-partisan. This process of moving toward merit selection is going to occur in stages.

**RAH:** You mentioned that we are, of course, an integrated bar. How do you respond to the criticism by the segment of the bar who disagrees with some of the positions that the bar is taking? One example would be whether we should have merit selection of judges or election of judges through partisan elections?

**MW:** I think the most important thing about our association is that those voices are heard. The action of the Board of Bar Commissioners in support of merit selection is the official position of the state bar. As I said, we, as the bar, would not have said anything about the campaign process if the bar hadn't been falsely portrayed in the campaign. It's not unusual in an association to have a difference of opinion. In fact, it's very healthy and it's very positive. Same thing in the judges group—I would think that there are a lot of people, a lot of members who are very comfortable with



the present system of electing judges at the circuit level. By and large, circuit judges know the citizens, the citizens know them and that process works. Unfortunately, it's when you get to the statewide level where you start to see the process and the amount of money compromising our profession and the appearance of justice. I think that directly relates to the unfortunate statistic that almost 80 percent of the people in this country believe there is a correlation between campaign contributions and results in the courtroom. Worse yet is that 49 percent of trial judges in this country share the same belief.

**RAH:** Is the method by which we select judges—that is via partisan politics or by some sort of merit system—a political issue in which our bar should be involved?

**MW:** I don't think we have a choice. The process has gotten so foul and it's so tainted that it compromises the integrity or at least the perception of the integrity of our judicial system. I get a lot more complaints asking, "Why isn't the bar doing more?" than complaints from people asking why we are involved in this tackling this issue. In fact, I drove here for this interview after speaking to a bar association in south Alabama, and after I made my speech a person came up to me and said, "You're not doing enough for non-partisan elections." Frankly, it would probably surprise some people that I have only had two complaints about what we filed with the attorney general after the supreme court election. Interestingly enough, I had more members mad at me because I suggested they should sign the Attorney Professionalism Pledge. I don't know how that shakes out in the great world of math, but

there have not been large mathematical numbers of complaints about the bar's position and actions on this issue.

**RAH:** I've had the same dialogue with at least five or six of your predecessors about moving toward a better way to elect state judges, and you say you don't think we're going

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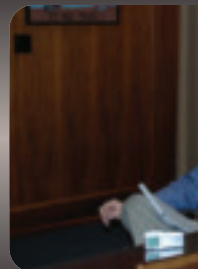
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to get anywhere (legislatively) this time. Are we going to live to see it?

**MW:** That's a good question. In my opinion, just the impact of the numbers of dollars spent in these judicial elections on public opinion is going to precipitate a change. I think you could probably win a poll or a vote for non-partisan elections. The other thing that's happened is that in pockets of Alabama there's been a shift like you saw happen in Dallas and Houston. When you're a one-party state, then everybody is a Democrat. Then you become a two-party state, and then it begins to shift and everybody becomes a Republican. Now there are places, such as in Texas, where there has been a shift back in the other direction: Dallas had 53 incumbent Republican trial judges who were all recently defeated. In Jefferson County, both Republican judges who ran last time were defeated. I don't think a judge should be elected based on partisan politics, and I don't think a judge should be defeated based on partisan politics. We lose very good judges because of that and I think that what we're going to see is people are tired of the partisan process. The fact is that we have very good judges, some of whom are Democrats and some of whom are Republicans. The average person who goes to court and sees the amount of money that is contributed to statewide campaigns doesn't trust the system. If the public doesn't believe the system is working, then we've got a problem. So, I think the bar has absolutely got to be active in this problem. We have no choice. Obviously the bar doesn't endorse candidates. I don't know what the answer ultimately will be but I would encourage anybody who says they've got a better idea to come forward and voice it.



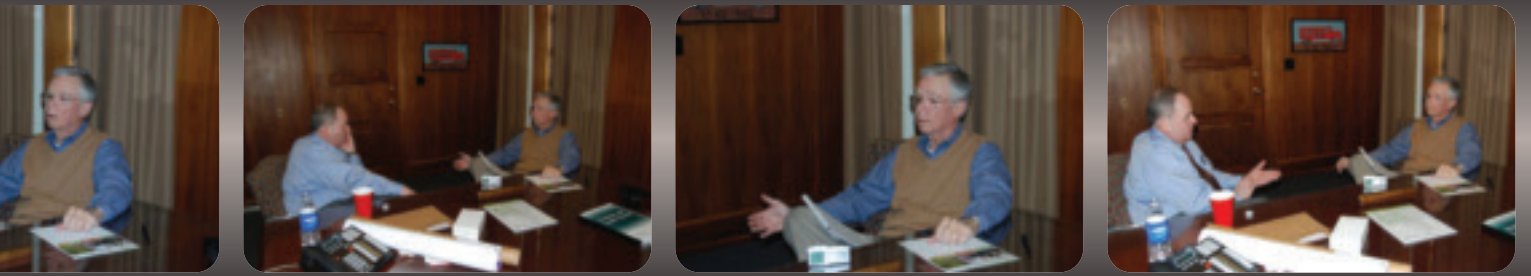
*At the 2008 Annual Meeting, Mark White's well-wishers included (left to right) Leon Ashford, Dean Charles Gamble, Chief Justice Sue Bell Cobb, Justice Gorman Houston, and Judge U.W. Clemon.*

**RAH:** What's on your agenda for the remainder of your term?

**MW:** Two years ago, Sam Crosby and I decided that we were going to try to improve the bar's relationship with the legislature. We have spent a good bit of time talking to the stakeholders, talking to the legislators and considering what resources the bar could provide. We also wanted to give additional resources to our members. So, two things have come out of that. First, you can now track any bill from our state bar Web site at [www.alabar.org](http://www.alabar.org) (thanks to our legislative counsel Kim Adams and Susie Edwards who put this together with Brad Carr's assistance). You can see where that bill is in the legislative process.

**RAH:** What's the second?

**MW:** The second thing was to put together a panel of neutrals. We established this panel as a resource for the legislature, and we sent all the legislators a Christmas stocking the week before Christmas announcing this panel to them. The



members of the initial panel of neutrals are former Governor Brewer, former Governor Patterson, Delores Boyd, former Congressman Ronnie Flipppo, former Congressman Jack Edwards, Butch Ellis, and Scottie McAllen (the former head of UAB). They are there not to be advocates but simply to be a resource for the legislators. It can be a dispute caused by personalities, it can be that they just need generic neutral information about something—we put the panel out there because there was an indication that the legislature needed it. I was prepared to never get a call for the panel's assistance. However, the response has been overwhelming. Probably one of the reasons I get criticized, with some even saying I am controversial, is that I did decide and do believe that over 16,000 lawyers in Alabama should have a seat at the table when decisions are made that affect the rule of law, that affect our justice system, that affect how citizens are treated by our courts and that we have a duty to participate in that process. I think that seat is perhaps not as a traditional advocate, and in this case the panel we appointed serves as a resource. And the response has not only been specific and direct—walking through the state house, dealing with the administration, dealing with the chief justice in the supreme court—but there's also a renewed sense of respect for the bar. I think that perhaps we are more appreciated. Lawyers always feel like they're underappreciated, but my sense over the last several months is that we are getting genuine expressions of appreciation for being willing and available to help our government.

**RAH:** During these difficult economic times, has the downturn in the economy affected the bar operations in any way that you can see?

**MW:** Voluntarily, the bar made some cutbacks in our expenses, particularly expenses related to in-state travel. We also implemented a hiring freeze. Because our funding comes from membership dues, we don't get a mandatory cut even though it goes through the State of Alabama. Nevertheless, we made a conscious decision that we are going to be faithful stewards of our resources.

**RAH:** What else have you seen happening to our profession during these lean times?

**MW:** On the horizon, there are some interesting numbers and some interesting things that I think could have an impact on the operation of the bar. Law school applications are down 26 to 28 percent. LSAT applications are down about the same percentage. Typically, in difficult economic times they're up. So, where in the past you would have seen people turning to the law in tough economic times, we're not seeing that. On the national scale, there are predictions that we're going to lose as much as 6 percent to 8 percent of our total number of lawyers in the next few years. We're going to be down by that much. Additionally, when you look at the age demographics of our bar, you see that a substantial number of our lawyers are 50-plus. That's a healthy majority. A lot of people think there are too many lawyers, but I think we are facing a future with fewer lawyers, not more.

**RAH:** Do you see the ASB implementing any programs to provide assistance to lawyers in these economic times?

**MW:** Absolutely. In fact, we're already talking about those programs. Our first outreach was Tom Methvin's program for Alabamians who are facing foreclosure. Just in the last few

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Getting some well-deserved advice as he begins his term, Mark White listens to Dean John Carroll (middle) and Tony McLain.

months, we've served the needs of over 1,200 people who were going to be evicted from their homes. Tom put that together quickly. What our state bar should do is first respond to our clients, but at the same time look at ourselves. Obviously in these economic times, unemployment is up nationally. We're sitting here today and two weeks ago 700 lawyers in six major law firms got laid off across the country. We're seeing big law firms in Alabama only paying the basic bar dues, not paying for the extra sections or things that the bar puts on top of the basic dues. We're seeing a huge increase in calls to our Lawyer Assistance Program. Nationwide, we're seeing an increase in suicide among lawyers. So the economy is absolutely having a traumatic impact on our profession. What we're in the early planning stages of thinking about is how can the bar be a resource? For example, can we put together a job bank? Should we be teaching CLE courses on how to write a resume? Can we get a win-win situation because we've got *pro bono* needs at the same time we've got lawyers looking for work, and can a lawyer beef up his resume, his skills and his practice by doing *pro bono* work in some of the areas where we so desperately need those talents? There are a lot of things we can do but we're in a revolution. The whole country is in an economic revolution. It affects not only our association but also our practice. Now I'm sure there will be some criticism. I'm sure people will say wait a minute, what business do you have trying to provide job banks or resume writing or things like that? But I think when you look at this association's goals, it fits like a glove.

**RAH:** Give us a preview of the upcoming annual meeting.

**MW:** Well I'm sitting here today hoping that by the time you have to actually put this to ink I can give you an announcement about some different things. We've got a great program that the Diversity Task Force has put together, with the general counsel for Miller Coors coming as the keynote speaker. He tells an amazing story that essentially translates that lawyers should recognize that practicing diversity can increase your income. There's an economic incentive in addition to the fact that it's just the right thing to do. We've got the lawyer who represented President Bush in the Florida *Bush vs. Gore* case coming to make a presentation. It is a fascinating tale about the historical expansion of executive power—of power in the Executive Branch without regard to whether it was Democrats or Republicans. We are absolutely, totally committed to this meeting being kid-friendly and young lawyer-friendly. We have taken the needs of spouses into consideration. We're also going to reach out to minority lawyers. For solo practitioners and small firm lawyers in rural areas to come to Point Clear for the annual meeting is a pretty good economic hit. So, we're going to give scholarships to some of those lawyers. We've created and are continuing to increase the amount of a scholarship fund that will specifically give lawyers, who probably have never come to an annual meeting, the opportunity to be there, and we've had some major firms step up to provide funds for those scholarships.

**RAH:** I got the IOLTA certification last week. What do I need to do about that?

**MW:** One of the things you never anticipate as president of the bar is that there are so many logistical things that go on that you didn't create, that you didn't have anything to do with, that you should be thankful to the good Lord everyday get done without your interference. The IOLTA certification has created some confusion, but Tracy Daniel is wading through that and handling it. It runs the whole gamut. We still have some people at one end of the spectrum who didn't realize they were supposed to have IOLTA accounts. I'm hopeful that we can handle that administratively. Then, on the other hand, we've got some issues regarding whether



*Hailing from all points in the state are (left to right) 2008-09 President-elect Tom Methvin from Montgomery, '08-'09 President Mark White of Birmingham and Immediate Past President Sam Crosby from Daphne.*

accounts have been properly designated. I know everybody received their certification, and they should look at it like a "revival." It's designed to rejuvenate your IOLTA commitment.

**RAH:** This is your show—what else you want to touch on?

**MW:** It's more than passing strange to be doing this interview in *The Alabama Lawyer* because, as you know, I do have a selfish interest in this publication and in you. Since I was there and agreed when we redid this publication that you should be the first and only editor, don't you think I ought to be interviewing you? Bobby Segall has given me some questions that he wants me to ask you.

**RAH:** You can't turn the tables. That's an editor's prerogative.

**MW:** I want to mention something that's been a good result too and it was controversial. We brought more of our bar's communications/public relations functions in-house with a professional staff, not related to principles or goals or Law Day or things like that. We felt there was a need for the state bar to be able to respond quickly when we get inquiries from the media. We had to adapt to the speed of technology and Brad Carr and his staff, Margaret Murphy and everybody have been able to respond in amazing fashion. By way of example, you think you anticipate everything. Then, within hours of becoming ASB president, the issue comes up about a person who's on death row and there's a petition for a stay before the supreme court and the classic situation where there hadn't been any DNA testing and the bar is getting calls for a

response. The response was measured, and it was based on the idea that it takes courage to issue a stay in this day and time. Our response was also an important response, because by the time we gave it the court had issued the stay. We've been talking about the political process of electing our judges and part of the problem is they do get instant criticism when they make tough calls. The nice thing about the communications aspect of the bar is that we were able to put out a statement explaining the process, that a stay means the process is working, it doesn't mean the process is failing. It means the court is carrying out its constitutionally-required duty. We got out our response after getting notice of the stay with a 17-minute deadline. Now that's where I'm really proud of our staff and our internal folks. The fact that our staff had the ability to get out the word is significant. We were called upon for our position, and the last thing I think the bar needs to say is "no comment" or "we're not interested." The fact that they were able to turn that around looking at a 17-minute deadline is commendable in any organization.

**RAH:** I sense that you are proud of the performance of the bar staff?

**MW:** I think the lawyers of Alabama get magnificent benefit from the bar staff. The staff is extremely efficient, and we don't realize it. Working with the staff has been a great treat. ▲▲▲

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