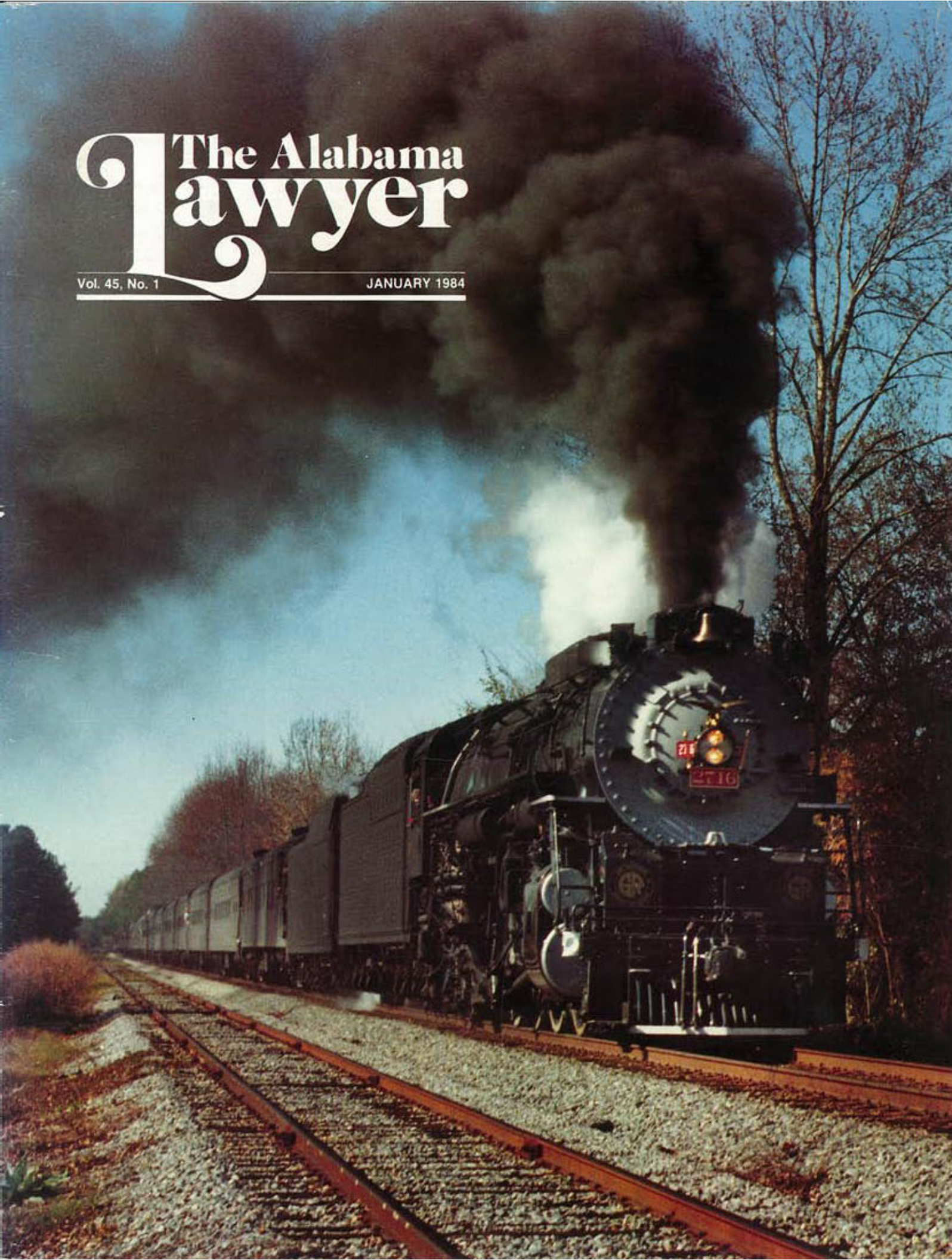


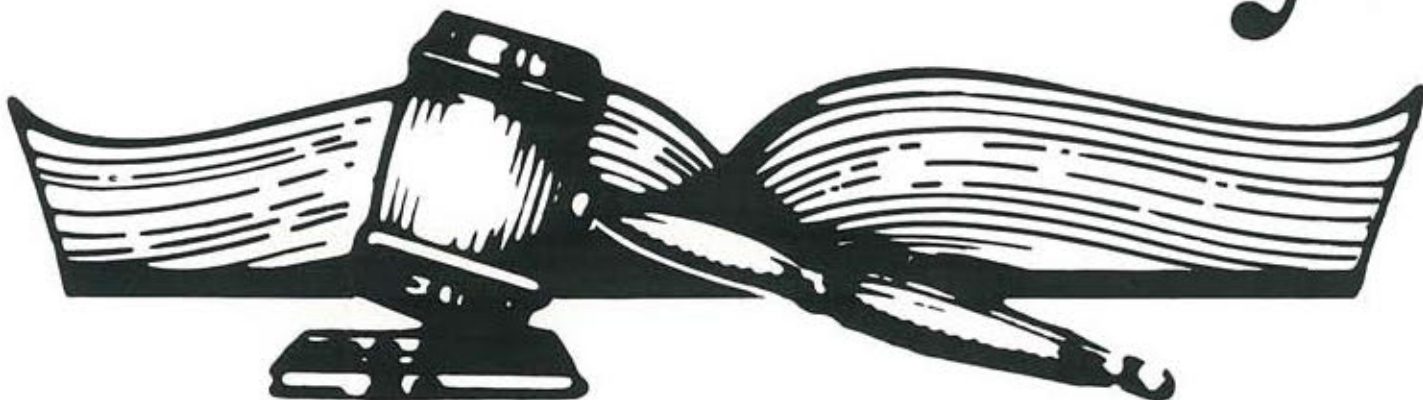
The Alabama Lawyer

Vol. 45, No. 1

JANUARY 1984



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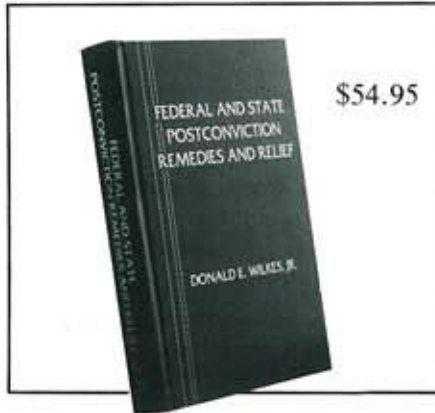
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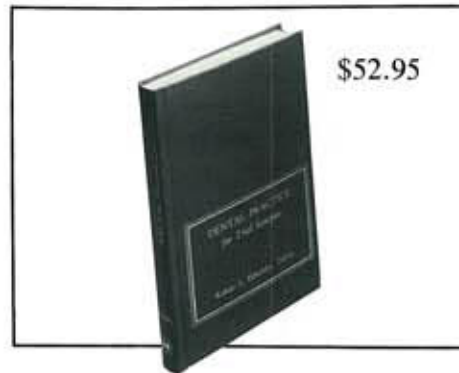
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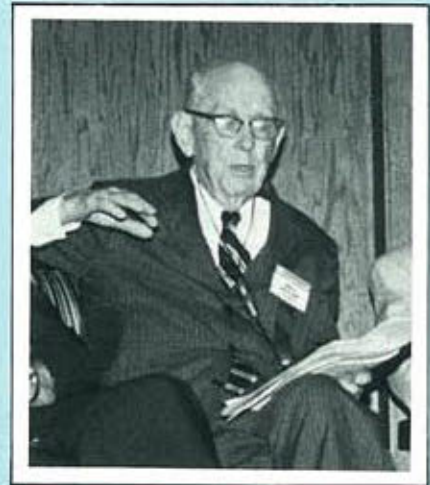
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THE JANUARY

Special thanks are extended to the following people who made special contributions toward the publication of this issue: Euel A. Screws, Rayanne M. Stamper, Archie Marlowe (committee picture), Mary Lyn Pike, Ruth Strickland, Barbara Rhodes, and Tabor A. Novak, Jr.



Reflections of the Reflective Roundtable

—pg. 12

Reflections of the practice of law 'then and now' are told by seven of Alabama's most distinguished attorneys. Better stories were never heard.



Sales Warranties in Alabama — The Notice Requirement

—pg. 7

In most instances, notice of breach of warranty is a condition precedent to a civil action on the warranty. How stringent is the notice requirement?



On the Cover

This 230 ton steam power locomotive approaches Gold Hill in east Alabama. The photograph was taken by Montgomery amateur photographer Neil Smart, Jr.

1984 ISSUE IN BRIEF



New Attorneys Admitted to Bar

—pg. 21

Membership count of the Alabama Bar continues to rise as 261 new admittees are certified to the Supreme Court of Alabama. Names, exam statistics, and pictures inside.



Section 1983 Actions — A Practical Overview

—pg. 34

In the past several years, civil actions filed under 42 U.S.C. §1983 have inundated the federal courts. What are the rights and remedies available to a litigant in these actions?



Memorial Ceremony Honors Fellow Attorneys

—pg. 54

Past bar presidents, commissioners, and justices were among the giants of the law the bar lost to death this past year. President William B. Hairston memorializes them and the magnitude of their contributions.

Upcoming

January 18-20

ADAA Mid-Winter Conference, Birmingham

January 17-18

ALTA Mid-Winter Conference, Birmingham

February 8-15

ABA Midyear Meeting, Las Vegas, NV

March 9-10

Alabama State Bar Midyear Meeting, Montgomery

April 5-8

ADLA Annual Meeting, Palm Beach, FL

May 18-19

YLS Annual Seminar, Sandestin, FL

July 12-14

Alabama State Bar Convention, Mobile

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HAIRSTON

President's Page

It is hard to realize that the Bar year 1983-84 is now half over. Time has become an avalanche. In the reflective pause of the holiday season one realizes that this Bar has much to be thankful for — much that it can be proud of. By the same token there is much to be done — many needs that must be met.

We can look with pride at an achievement undertaken a couple of years ago — Alabama's Mandatory Continuing Legal Education Program (MCLE). An undertaking that now comes to the fullness of fruition as a result of a lot of dedicated work by a lot of our members plus an enthusiastic response and cooperation by the whole of the membership. After two years the MCLE program of the Alabama State Bar is a well received and proven success.

The MCLE Commission, the director, the local bars and the law schools have worked diligently to develop programs to meet all needs, all schedules and all pocketbooks. They have done well. Programs seem to have covered every topic in the digest. They vary from "no cost-no frills" to the \$800 sophisticated productions; from a one-half hour quickie to the three day extravaganza. At least sixty-six organizations have put on some 398 seminars within the state. The prime providers have been the law schools. Their one day seminars running in cost around \$75 are (and will be) the backbone of the program.

We can take pride in the fact that other Bars have studied and adopted much of what we have done in this area. Even the American Bar Association is following our lead in combining CLE with the annual meeting.

Camille Cook received the ALI-ABA Committee on Continuing Professional Education's Award of Merit for her work in the program. ALI-ABA brought their committee into Alabama to meet for the first time ever. It's a nice feeling to know that this Bar is a leader when it comes to putting new fields into production.

Our other needs don't allow us to bask in glory long. We do not have a Client Security Fund. We need one — not often — but when the need is there it is a desperate need. There is no provision in the statute by which we are licensed that allows the Board of Commissioners to allocate a part of our dues (license fees) to be used to reimburse for lawyer dishonesty. The Client Security Fund Task Force has recommended the creation of a Security Fund if we can work out the funding. Proposed legislation that will make this recommendation a reality will be considered by the commissioners on their January 20th meeting.

And that brings us to another need — money. The Bar is currently pushing its financial resources to the limit. Our budget is what is basically neces-

sary to keep the doors open and the bills paid. We need additional funds that will enable us to fund new programs that are being developed by our committees. Right now we have placed an economic damper on their enthusiasm. For instance, we need \$2,000 to fund a "hot-line" for use in connection with an Alcohol and Drug Abuse Program. We don't have it. That we don't is holding up the work of that committee.

There are two ways to go about increasing our financial resources. About ten percent of our Bar does not pay dues. A lawyer does not pay dues for the first two years following his admission to the Bar. I question that we can continue this luxury. Legislation is being considered that will remove this moratorium.

Then we can look at the amount of our dues. The \$100 per year has not kept pace with the cost of rendering the service or meeting the needs demanded by a rapidly expanding Bar. We need to look to legislation that will increase this amount.

Another problem with which we are faced is the continuing effort of the Federal Trade Commission to regulate lawyers and the delivery of legal services. Bills are presently pending in the U.S. Congress

(Continued on page 18)

Executive Director's Report



HAMNER

The legal profession is unique in that it has the responsibility to enforce its own professional standards. There are constant criticisms of the way this is done and its effectiveness; however, lawyers in Alabama have demonstrated their commitment time and time again. Commitment of not only time but of resources.

There is presently considerable discussion in Congress about how well those professions with self-regulatory authority and responsibility do their jobs. This is a focal point in discussions of legislation relating to Federal Trade Commission oversight of professionals. The McClure Amendment by Senator McClure (R-Idaho) would exempt from FTC control those professionals whose activities are being effectively regulated by the state's highest court. While FTC oversight would be burdensome and offensive, I feel that the Alabama State Bar and the Supreme Court of Alabama would meet this standard.

Actions speak louder than words. This fact is illustrated in no better way than to review the profession's commitment to professional responsibility in tangible areas.

During fiscal year 1983, the Alabama State Bar expended over twenty-eight percent of its total revenues for professional responsibility matters. These expenditures of \$195,622 were

paid from license fees. The cost was off-set by slightly over \$2,400 in revenues generated from reinstatement proceedings. This isn't the whole story by any means.

Lawyer participation in grievance procedures at the state and local levels accounts for well over \$1,000,000 in noncompensable time for those who have accepted the responsibility to serve in the regulatory process.

The Center for Professional Responsibility is a further testament to lawyer commitment to their self-discipline role. The Board of Trustees of the Alabama State Bar Foundation committed itself to a fund drive in September 1980 to purchase a facility to house the Center for Professional Responsibility. The purchase price was \$125,000 while furniture and equipment was another \$27,285. Interest on the initial mortgage totalled \$11,670.

The entire debt was paid in thirty months because lawyers gave — 231 enrolled in the "150 Club" which evidenced an individual gift of at least \$150. Two hundred twenty-two other individual lawyers or firms made contributions to the fund raising effort.

Designated gifts for specific purposes totalled \$20,000.

H. Edmond Turner Memorial	\$5,000
Mrs. H.E. Turner & H.E. Turner, Jr.	
Library Fund	\$5,000
Sirote, Permutt, Friend, Friedman & Apolinsky	

Sam W. Pipes Room	\$3,500
Lyons, Pipes & Cook	
Richard T. Rives —	
Truman M. Hobbs Room	\$3,000
Copeland, Franco, Screws & Gill	
Crum, Steiner, Nachman Room	\$3,000
Steiner, Crum & Baker	
G.P. Benton Memorial Garden	\$ 500
A.B. Gaston Enterprises	

Lawyers and their families gave \$86,038 toward the purchase. The Foundation Trustees committed \$40,000 from reserves and additional rental revenues of \$42,500 accounted for the balance. The state bar rents the Perry Street facility from the State Bar Foundation for \$1,750 per month which includes utilities and maintenance. During the period in which the mortgage was being retired, expenses for utility and maintenance costs totalled \$17,317.

I don't believe the day will ever come when complaints about professionals will be nonexistent; however, I am convinced that our profession can effectively regulate itself. The efforts of Alabama lawyers in the past and the sense of professional awareness prevalent today is the best evidence. So long as we do a creditable job, we need not fear outside intrusion. □

Reginald T. Hamner



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Sales Warranties In Alabama

The Notice Requirement

by Nathaniel Hansford



Nathaniel Hansford is Associate Dean and Professor of Law at the University of Alabama School of Law. He received his B.S. and LL.B. degrees from the University of Georgia and his LL.M. from the University of Michigan.

Perhaps, one of the most common cases which confronts a practitioner is breach of warranty in the sale of goods. The fact pattern in many of the cases is very similar. The buyer, either a consumer or businessman, purchases an item from a seller. Buyer takes the item home or to his business and uses it as he should. Then after several months of normal use the "thing" fails to operate properly. Of course, most buyers at this stage would like to return the item to seller, receive their money back and forget about the whole affair. However, Article 2 of the Uniform Commercial Code (UCC), which is the controlling law in the case, does not operate so that one can rightfully return the goods.

One very important point in a sale of goods is tender. Once the seller tenders the goods, the buyer must either accept or reject the goods. If the buyer rejects, then the seller takes the goods back, attempts to prove proper tender and, if successful, recovers damages for breach of contract. On the other hand, if the buyer accepts the goods, the buyer has the goods. The buyer must keep the goods. The goods may be conforming or non-conforming, but the buyer keeps the goods and seeks money damages. Under the Uniform Commercial Code, he cannot force the goods back on the seller or return the goods to the seller except in one limited situation.¹ Although other avenues of recourse outside the Code, such as rescission for fraud, may be available to the buyer, breach of an express or implied warranty is the usual means of recovery for the defective goods.

In order to be successful in a suit for a breach of warranty, the claimant must show that he gave the seller reasonable notice of the breach. In fact, the Alabama courts have consistently held that the allegation of notice is a condition precedent to recovery.² Simply filing suit does not constitute notice of breach of warranty under the Code. Prior notice to the seller must be plead in the buyer's complaint. Section 2-607(3) of the UCC expressly states that "[w]here tender has been accepted the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller

of breach or be barred from any remedy

Traditionally, the Code and the courts have not treated the problem of notification of non-conformity as a small matter. The courts and commentators usually give several policy reasons to justify their rather inflexible position on notice. In *Parker v. Bell Ford, Inc.* the Alabama Supreme Court recognizes that "Notice of breach serves two distinct purposes. First, express notice opens the way for settlement through negotiation between the parties . . . Second, proper notice minimizes the possibility of prejudice to the seller by giving him 'ample opportunity to cure the defect, inspect the goods, investigate the claim or do whatever may be necessary to properly defend himself or minimize his damages while the facts are fresh in the minds of the parties.'"⁹

After recognizing that the law requires notice and that notice is a prerequisite to a cause of action on breach of warranty, the significant issues center on three areas of the notice requirement: (1) the form of the notice, (2) the contents of the notice, and (3) the timing of the notice. The Alabama courts have dealt with all three of these issues as well as some other notice problems.

Form of the Notice

One of the first issues that faced the courts was the question of the form of the notice. In the case of *Page v. Camper City & Mobile Home Sales*⁴ the buyer had given oral notice of the breach and the seller contended that the Code required written notice. The supreme court reviewed Section 2-607(3) of the Uniform Commercial Code and based its opinion on the word "notify," which appears in the section. The court recognized that the drafters had used the term "written notice" in other Code sections when they intended a writing.⁵ Moreover, written requirements throughout the UCC are usually imposed by the word "sent" or one of its derivatives. Although the court does not discuss this point, an oral communication of breach serves all of the policy reasons for notification just as well as written notice. Oral notice

gives the seller the time he needs to investigate and encourage settlement as well as written communication. The evidentiary value of a writing is certainly outweighed by the burden it could place on the unsuspecting or unsophisticated buyer. To add a writing requirement for notice would create a potential trap for the buyer, would not further the policy reasons for notice, and would open notification to some of the same criticisms leveled at the Statute of Frauds.⁶

Contents of the Notice

The next area of the notice requirement that generates cases is the issue of the contents of the notice. Of what

Notice of intention to make a claim seems to go beyond a mere request that the seller correct the problem with the goods.

must the buyer give notice? How much information and detail about the alleged breach must the buyer give the seller to fulfill the notice requirement?

Section 2-607(3) simply requires that the buyer's communication must give the seller notice of the breach or be barred from any remedy. However, the comments to the section do give more guidance. Comment 4 provides that "[t]he contents of the notification need merely be sufficient to let the seller know that the transaction is still troublesome and needs to be watched." As the comment further explains, there is no policy reason that requires the notification to be a definitive statement of all the objections nor is there reason to require that the notification be a claim for damages.⁷

In the case of *Parker v. Bell Ford, Inc.*⁸ the plaintiff complained of excessive tire wear on his new truck that he had purchased from Bell Ford. Bell sent Mr. Parker to an alignment shop where the mechanic attempted repairs on the vehicle. Parker continued to have problems with his tires; however,

he never again notified Bell nor registered a complaint until he filed suit. In discussing the notice requirement in a breach of warranty action the supreme court referred to the pre-code case of *Smith v. Pizitz of Bessemer*⁹ which states that the notice must "appraise the vendor that a claim will be made against him and give him an opportunity, to prepare a defense or notify his supplier." The *Pizitz* court compared a tort claim with a contract claim. The court reasoned that in tort the defendant has immediate knowledge of the occurrence out of which the claim arises; however, the vendor has no opportunity to know of a contract claim until he receives notice of the claim.

This pre-code notion of the notice requirement is clearly more restrictive than the drafter of the code intended and tried to express in the comments. Notice that a buyer intends to make a claim requires more details and specifics of the defects and of the purpose for the communication than does notice that the transaction is "troublesome and must be watched." Notice of intention to make a claim seems to go beyond a mere request that the seller correct the problem with the goods.

Although the *Parker* case quoted from *Pizitz* in formulating the standard for the contents of the notice, the court liberalizes the *Pizitz* rule. The court "expand[s] that rationale to also include the requirement of notice in order to enable the seller to make adjustments or replacements, or to suggest opportunities for cure, to the end of minimizing the buyer's loss and reducing the sellers' own liability to the buyer."¹⁰

The idea that the court intended a loose test for the sufficiency of contents of the notice is further bolstered by its cite to White and Summers, UCC § 11-9 (1972). Professors White and Summers give their opinion, based on the drafters' comments, that "it is difficult to conceive of words which, if put in writing, would not satisfy the notice requirement of 2-607."¹¹

The proposition that *Parker* embraces the intention of the drafters to formulate a loose test on notice content is eroded by the court's application of the rule to the facts. After seemingly expanding the rationale for notice stated

in *Pizitz*, the court then concluded that Mr. Parker failed to give notice to the defendant and agreed with the trial court that its approval of a motion for a directed verdict in favor of the defendant was proper. The court reached the conclusion that the plaintiff gave no notice even in light of the fact that Parker had informed Bell Ford of the excessive tire wear and Bell attempted to solve the problem.¹²

Noteworthy, also, is the fact that the *Parker* court adopted the rule of the *Gigandel* case,¹³ a case decided under the Uniform Commercial Code. *Gigandel* concluded that the issue of what is a reasonable time for giving notice is a question for the jury or the trier of fact. In *Parker*, the supreme court read *Gigandel* to cover both the issue of the timeliness and the issue of reasonableness of the notice and agreed that these were jury questions. The court, however, recognized that timeliness and reasonableness of notice are only jury questions if the buyer gives some form of notice; if the buyer gives no notice then there is no issue for the jury and the issue is a matter for the court to decide as it did in *Parker*.

In the recent case of *Volkswagen of America v. Harrell*¹⁴ the Alabama Supreme Court returned to the issue of the type of notice required. In *Harrell*, the defendant contended that the plaintiff had failed to give it sufficient notice of the problems he was encountering with his camper. Justice Jones, writing for the court, concluded that the plaintiff did give proper notice. In this case, the plaintiff sought to have the vehicle repaired at several authorized V.W. dealerships and contacted the V.W.'s regional manager and the V.W.'s home office customer representative concerning the inability of anyone to correct the defects. These numerous and varied complaints about the problem with the vehicle "could scarcely be said to fall without the realm of 'proper notice' and an 'opportunity, to repair the van.'" ¹⁵

Thus, the counseling point appears to be that in Alabama the buyer's simply informing the vendor that he is experiencing trouble with the product may not be sufficient notice. On the other hand, however, the buyer will not have to give a formal demand for a

remedy or notify the seller that he intends to make a claim. The buyer will probably have to inform the seller that the item is defective or causing trouble, give the seller an opportunity to repair, and, if the seller fails to solve the problem, advise the seller that the item is still not operating properly. The number of chances the seller has to repair and the number of notices of failure to repair the court requires is unclear.

Timing of the Notice

The third problem area in the notice requirement is the timing of the notice. The comments to Section 2-607(3) state that "[t]he time of notification is to be determined by applying commercial standards to a merchant buyer. 'A reasonable time' for notification from a retail consumer is to be judged by different standards so that in his case it will be extended, for the rule of requiring notification is designed to defeat commercial bad faith, not to deprive a good faith consumer of his remedy." In the *Gigandel* case,¹⁶ which was mentioned earlier, the supreme court ruled that the issue of what is a reasonable time for giving notice of breach of warranty is a question for the jury or the trier of fact. *Gigandel* waited six months to give notice of the defect and the court agreed with the trier of fact's decision that notice was not timely.

General rules governing the timing of the notice are difficult to formulate since the reasonable time standard may vary greatly depending upon the facts of the case. If one, however, is mindful of the policy as expressed in the Code's comment, the time limit should be very flexible. The general policy is to promote good faith dealings and to eliminate claims a buyer makes in bad faith or a buyer's underhanded tactics calculated to mislead or take advantage of the seller. Any time limitation should recognize that persons have natural tendencies to procrastinate and that many people lack the sophistication to know the proper course of action when confronted by a problem with a product.

A 1980 Fifth Circuit United States Court of Appeals case discussed a very interesting aspect of the timeliness

issue. In *Koch Supplies v. Farm Fresh Meats*,¹⁷ Farm Fresh purchased a fully equipped smokehouse from Koch. As part of the terms of purchase, the contract provided that Farm Fresh was to "inspect the equipment within 48 hours after its receipt; unless within said time [Farm Fresh] notifies [Koch], stating the defects, [Farm Fresh] shall be conclusively presumed to have accepted the equipment in its condition." Later, beyond the 48-hour period, the buyer discovered defects in the equipment. The court correctly recognized that the issue was not timely notice of breach of warranty. Rather, the problem in this case was timely rejection or revocation of acceptance under Section 2-608. The contract provision appeared to be a limitation on the period the buyer had to conduct a reasonable inspection and thus the provision was an attempt to set the exact time when the buyer accepted and could not later reject. The court concluded first that the 48-hour limitation was manifestly unreasonable and that it did not set the time of acceptance. Secondly, it decided that the buyer still had his remedy of revocation of acceptance since the defect in the product was latent.

Notice by the Third Party Beneficiaries

The final question the notice requirement raises centers on who must give the notice of breach. The UCC specifically requires that the buyer must give notice of a defect. Parties other than the buyer, however, may have the protection of a warranty. Under Section 2-318, the Code extends a seller's warranty to any person who may reasonably be expected to use or be affected by the goods and who receives personal injuries because of a breach of warranty.

Do the third party beneficiaries have to meet the notice requirements of the Uniform Commercial Code? *Simmons v. Clemco Industries* deals with this question. The Alabama Supreme Court decided that the third party beneficiary was not subject to the Code's requirement of notice and the court grounded its decision on several bases. First, the code uses the word "buyer" when it sets out the notice require-

ment in Section 2-607; a third-party claimant is not a "buyer." A third-party claiming the benefit of Section 2-318 is someone affected by the buyer's goods. The beneficiary of the extended warranty does not come within the express language of the code and, thus, does not have to give notice of breach. Moreover, the simple fact that the legislature extended warranty protection to third parties other than buyers does not mean the legislature intended that such a party must give notice. If the legislation had intended to require such notice, the Code would say that.

Finally, the court examined the policy reason for these notice requirements and concluded that the reasons did not apply to third party beneficiaries. Since these warranty beneficiaries may recover only for personal injury, the damage is done at the time of the breach of warranty. Notice is inconsequential in preventing or mitigating the harm when the injury has already occurred. Furthermore, the court believed that the statute of limitations adequately protects seller against stale personal injury claims by third party beneficiaries.¹⁹

Conclusion

The Alabama courts, like most other jurisdictions, take the notice requirement seriously. In order to bring an action for the breach of warranty in the sale of goods the buyer must have given the seller proper notice of the defect. Sound policy reasons support Alabama's position on the notice requirement and will continue to support it for the future. The courts, however, should be mindful of the danger of the notice requirement. Sellers should not be able to defeat a valid claim because of a technical approach to notice. The rather loose test of the sufficiency and timing of notice followed by the drafters of the Code adequately protects the seller and at the same time does not unduly restrict buyers in seeking recovery. If the buyer advises the seller within a reasonable time after discovery of a problem with the goods that he is having troubles, this should fulfill the UCC's notice requirement.

Footnotes

¹Ala. Code § 7-2-608 (1975).

²*Consolidated Pipe and Supply Co. v. Stockham Valves and Fittings*, 365 So. 2d 968 (Ala. 1978); *Page v. Camper City & Mobile Home Sales*, 292 Ala. 562, 297 So. 2d 810 (1974); *Smith v. Pizitz of Bessemer*, 271 Ala. 101, 122 So. 2d 591 (1960).

³*Standard Alliance Industries v. Black Clawson Co.*, 587 F.2d 813, 826 (6th Cir. 1978), cert. denied 441 U.S. 923 (1979) [quoting Note, *Notice of Breach and the Uniform Commercial Code*, 15 U. Fla. L. Rev. 520 (1963)].

⁴*Page v. Camper City & Mobile Home Sales*, 292 Ala. 562, 297 So. 2d 810 (1974); accord, *T.J. Stevenson & Co. v. 81,193 Bags of Flour*, 629 F.2d 338 (5th Cir. 1980).

⁵Ala. Code § 2-607 (5)(a) (1975).

⁶See generally *White & Summers, UCC*, 2nd ed., §§ 2-7 and 2-8 (1980).

⁷Ala. Code § 2-605 (1975).

⁸*Parker v. Bell Ford, Inc.*, 425 So. 2d 1101, (Ala. 1983); accord, *T.J. Stevenson & Co. v. 81,193 Bags of Flour*, 629 F.2d 338 (5th Cir. 1980).

⁹*Smith v. Pizitz of Bessemer*, 271 Ala. 101, 122 So. 2d 591 (1960).

¹⁰*Parker*, at 1103.

¹¹*White & Summers, UCC* § 11-9 (1972).

¹²"Whether tested by the substantial evidence rule or the scintilla evidence rule, the record served no evidence from which the jury could reasonably infer that Parker gave notice of defect prior to filing this suit." *Id.* n.8 at 1103.

¹³*Gigandel v. Third National Bank of Nashville*, 333 So. 2d 557 (Ala. 1976).

¹⁴*Volkswagen of America v. Harrell*, 431 So. 2d 156 (Ala. 1983).

¹⁵*Id.* at 163.

¹⁶*Id.*

¹⁷*Koch Supplies v. Farm Fresh Meats*, 630 F.2d 282 (5th Cir. 1980).

¹⁸*Simmons v. Clemco Industries*, 368 So. 2d 509 (Ala. 1979).

¹⁹These same arguments could be made to support the position that the law should not require notice in any case involving personal injury even if the buyer suffers the injury and he is the one claiming recovery for breach of warranty. □

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Letters to the Editor



Women Bar Leaders Date Back

In reading the November 1983 issue of *The Alabama Lawyer*, page 316, I noted the comment about Juliet St. John being the first woman attorney to serve as president of a local bar association in Alabama. Unless Mrs. St. John was president prior to 1948, the above statement is incorrect.

According to the Mobile Bar Association records, we have had two women attorneys serve as president, Rosa Gerhardt in 1948 and Doris VanAller in 1951.

Barbara C. Rhodes
Executive Director
Mobile Bar Association

It is my pleasure to bring to your attention a bit of Alabama legal history.

The members of the Baldwin County Bar Association were the first to elect a woman, Mrs. Phyllis S. Nesbit, their president in 1967.

She was in 1976 elected a district court judge in Baldwin County and thus became the first woman to be elected a trial judge in Alabama.

Judge Nesbit was reelected in 1982 and is presently serving her second term as district judge.

Fairhope **H. Greer Minic**

Editorial Note: Thanks for the correction! In response to that same misstatement, we have also received a letter from a member of the Houston County Bar Association. Mrs. Eleanor Oakley Gordy was elected

president of that local bar association in 1970. If there have been other women attorneys who have served as presidents of local bar associations, please let us know!

Disciplinary Action Questioned

As an Alabama attorney living and working in Italy, I keep abreast of the activities of my fellow Bar members by reading *The Alabama Lawyer*. I feel compelled to write you now after reading the Disciplinary Report in the September 1983 issue. One item disturbs me greatly. I am referring to the Disciplinary Board's decision to privately reprimand an attorney who illegally purchased and used marijuana and cocaine.

I find it absolutely ludicrous that the Board decided that a private reprimand for such conduct was sufficient. This lawyer's illicit possession and use of controlled substances was not a mistake or an accident, it was not negligence or a simple error of judgment, but willful misconduct. To allow an individual who swore to uphold the law and promised to serve faithfully as an officer of the court to be disciplined with a mere private reprimand is laughable. Regardless of the facts and circumstances of the individual case, suspension from the practice of law should have been the minimum appropriate disciplinary action and disbarment well may have been warranted.

I have to ask myself whether the Board's attitude in disciplining this

drug-abusing attorney is a reflection of its policing of other Alabama lawyers who willfully commit crimes. If so, the Alabama Bar needs a new Disciplinary Board.

The bottom line is that the Disciplinary Board's handling of this case is inexcusable. I have strong doubts as to the Board's ability to rigorously enforce high standards of conduct among our attorneys.

Vicenza, Italy **Frederic L. Borch**

LETTERS TO THE EDITOR

The purpose of the Letters to the Editor column is to provide a forum for the expression of the readers' views. Members of the Alabama State Bar are invited to submit short letters, not exceeding 250 words, expressing their opinions or giving information as to any matter appearing in the publication or of concern to the bar membership. The editor reserves the right to select excerpts therefrom to publish. All letters specifically addressed as Letters to the Editor will be candidates for publication in *The Alabama Lawyer*. The publication of a letter does not, however, constitute an endorsement of the views expressed. Letters should be sent to: The Alabama Lawyer, Letters to the Editor, P.O. Box 4156, Montgomery, Alabama 36101.

REFLECTIONS of the REFLECTIVE ROUNDTABLE

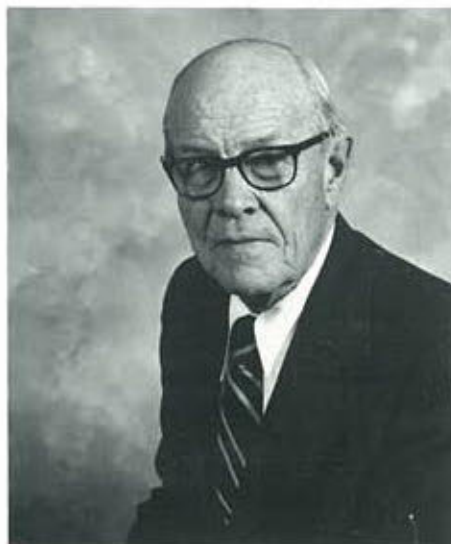
Thinking back — reflecting — July 23, 1983, came and passed quickly. But, it was a memorable day. Perhaps, not so much because of the events of that particular hot, hazy summer day, but for the remembrances which that day brought.

Gathered before several hundred of their friends among members of the bar, were seven "heroes of the legal profession." It was a nostalgic time as they reflected on their numerous years of practice — the old times, the funny times, the poignant times, the rough times, and the now times. They told stories of "now and then," delighting those assembled that final morning of the Alabama State Bar Convention.

"The Reflective Roundtable," as the program was appropriately named, was videotaped and has now become an invaluable relic of the bar association. Those distinguished attorneys participating on the panel included John A. Caddell (moderator), Robert F. Adams, Douglas Arant, James J. Carter, W. Guy Hardwick, Robert B. Harwood, and Seybourn H. Lynne.

Following are excerpts from "The Reflective Roundtable" — as they told it:

"**T**his story was told when I first started practicing law in Decatur. There was a young woman who had a child without the benefit of wedlock, and she persuaded the father to have the child legitimized. So they went to a lawyer there in Decatur and asked him if he would handle this proceeding. He told them, 'Yes, I'd be glad to represent you on it and try to get this done, but this judge that we have is pretty tough, and I can't promise you it will be accomplished.' And so they said, 'Well, we want you to try it,' and they went and filed a petition, had the hearing before the judge, the lawyer put the evidence on, the father agreed and all of that. The judge said, 'Now, wait a minute. Before I make this decision I want to talk to this lady privately. Let's go to my chambers.' So he took her in there and he said to her, 'I want to know if you understand that even if I grant you this



CADDELL

petition that this child is still a technical bastard.' He said, 'Do you know what that means?' She said, 'Yes sir, that's what my lawyer says you are.' "

John A. Caddell
Decatur

"**I**f I put a title to my remarks I think it would have to be 'then and now' . . . and on the then part — since you mentioned Sam Johnston, Judge Ben Turner and Mr. Gessner McCorvey — I'll have to tell you one story about 'then and now' as it applies to insurance companies.

"Then no rural jury would ever bring in a verdict in favor of an insurance company — not many of them do it now. But, there was one man who burned his house up in Washington County and, when the insurance company wouldn't pay him, he got Sam Johnston to represent him —and the insurance company got Mr. McCorvey to defend.

"So they went up to Chatom and tried it three times, and every time the jury would bring in a verdict for the plaintiff, the supreme court would immediately reverse it and send it back for a new trial. On the third trial Mr. Johnston looked over at the court reporter and saw that his head was down on the desk on his arms, and he called Mr. McCorvey's attention to it. They went up and spoke to the judge about it because the judge could not see him from where he was sitting. He leaned over and saw what was going on. He said, 'Shields, are you getting this witness's testimony?' The court reporter raised his head up and said, 'Judge, I know his testimony by heart.' "

(As Mr. Adams read from the firm's financial book dated 1937)

" . . . I wanted to read you just a few of the fees and a few of the expense items. On the matter of expense items I find:

Roll of 500 stamps \$15.00
Paid Vivian Zingleman (who was a secretary) to reimburse her for amount spent for suppers (plural) in town when working late 60¢

"From the fee book:

Cash fee — in re Taylor-St. Clair Dispute \$1.00

Preparation of deeds — (Now, I don't know how many, but there's more than one) \$5.00
 Preparation of income tax returns \$10.00
 (That was plural, and it was for the doctor who had the best practice in town at the time. But at **that** time, in order to prepare an income tax return, all you had to know how to do was to add and subtract!)

"This is against an insurance company:

For investigation of accident leading to suit against shipbuilding company, obtaining statements from six witnesses, negotiating for settlement, drafting releases and securing their execution, arranging competitive bids on property damage, having fence repaired, and securing release of owner \$20.00

"Do you wonder that they had to put in insurance adjusters to handle most of that?"

Robert F. Adams
 Mobile



ADAMS



ARANT

"I remember a lawyer here named M.B. Grace. He was quite well-known in Birmingham. He had — I don't know how it came about — but he had numerous claims involving something. All of them were identical claims of one kind or another, and charges were preferred against Mr. Grace by the grievance committee of the State Bar Association for soliciting these claims. And he **had** solicited them — no question about that.

"Mr. John D. McQueen, from Tuscaloosa, was the president of the Alabama State Bar Association at that time. And they had a hearing over there and, of course, it was found by the bar commission that he had solicited these claims for cases and . . . what they did was find him guilty and the punishment was to be a public reprimand. And Mr. McQueen and all the bar commission was assembled there and everybody around, and Mr. McQueen administered the reprimand. It was a very, very impressive occasion. (That was . . . over in the old courthouse . . . in that large room over there where Judge Huey used to be the presiding judge.)

"When Mr. McQueen finished his reprimand, Mr. Grace raised his hand and asked if he could say a word. Mr. McQueen and everybody was surprised, but he then said he'd like to ask whether it would be alright **now** to go ahead and finish those claims."

Douglas Arant
 Birmingham

"We had a justice of the peace appointed back in, I'd say, in the 30s — when we used to have them. He didn't know any law — you didn't have to be a lawyer. He was very proud of his appointment, and some of the boys gave him a few books (text books and things of that kind).

"He'd been presiding there as the justice of the peace for about two months and one day this boy comes in and says, 'Judge, I got a problem.' The judge said, 'Yes, what is it?' and he said, 'You remember that gal, Louise, that you married me up to about three weeks ago? . . . I done found out she's gonna have a baby and that baby is gonna be due in about two months . . . and I ain't the poppa. What am I gonna do about it?' The judge said, 'Now that do present a problem.'

"He reached back on the shelf and pulled down a book that happened to be **Brannan's Negotiable Instruments**. He flipped through the book and said, 'Uh oh, there ain't nothin' you can do about it, because it says right here "where the maker cannot be found, the endorser is liable"!' "



CARTER

"This lady, back when they had this new law on marital deductions, lost her husband. He had drawn his will properly. She came in and was complaining very bitterly about how she missed John — he had died rather young. So I said, 'But think of this: He drew his will properly and he left you almost a million dollars, tax-free.' She said, 'Yes, I know. That was very kind of him.' You know, some days I'd give ten thousand dollars of it just to have him back.' "

James J. Carter
Montgomery

"I would follow Jimmy Carter, a professional joke teller. But, I've listened to these two gentlemen tell about how hard it was when they got out of law school. They were fortunate indeed. Most of them got offers from firms. I got out in 1933, the end of the depression, and I started practicing alone. I have often said that during that first year I made one \$20 fee and a lot of small ones."



HARDWICK

"About that time . . . a friend of mine called me and said he had a note that he wanted me to sue on if I would. I didn't ask him why he didn't sue on it — that was my mistake. I said, 'Yeah, send it to me, I need it.' So I filed suit on that note in an adjoining county and I never could get a return on what happened with the suit. So one day I called the clerk in that county and said, 'What happened to my suit?' And he said, 'Haven't you got any sense at all? The man you sued is the circuit judge.' "

"In the latter part of 1954, Jim Folsom had been elected governor for the second time . . . and I was elected lieutenant governor. A mutual friend asked us to go on a fishing trip one weekend. We went, and it was an enjoyable trip. We fished some, ate some, and did some of the other things that you're laughing about!

"Sunday morning Governor Folsom had a full growth of beard. He decided that he needed a shave. The only razor on board was a straight razor, and he got one of his aides who lathered his face, took that razor and was shaking so that Jim said, 'You can't shave me.' He called a second aide. The second aide lathered his face, took the razor, and he was shaking. Jim says, 'You can't shave me.' I said, 'Well, Governor, let me shave you.' I took the razor, got down nearly to his face and he grabbed it and said, 'No, you can't shave me either. One quick jerk of that razor and you'd be governor of Alabama.'

"I want to say this to you. I wouldn't have harmed the governor, but he would have gotten a damn close shave!"

W. Guy Hardwick
Dothan

"On the court we didn't have too much opportunity for having humorous occurrences — except some of the arguments would approach that.

"Judge Ben Ray always made a delightful argument — a very able lawyer, he was a delightful man, and I loved him. He represented a woman who was young, married an older man, and he was taken quite ill. Took him out to St. Vincent's and, finally, ran some tests and found out he was loaded with arsenic. So they got to investigating and they found a lot of ant poisoning in her bedroom. So she was tried and convicted of assault with intent to murder. Judge Ray's argument was that you had to have malice in murder. There couldn't possibly be any malice in this case because this woman had only used ant poisoning when she could have used rat poisoning.

"I had lunch with him several years later and was kidding him about that, and he said, 'Well, what in the hell else was I gonna argue?' "

Judge Robert B. Harwood
Tuscaloosa



HARWOOD

"Another incident that happened involved friends of mine among members of the bar . . . George Rogers was defending a fellow in a moonshine case, who was convicted. George Rogers could cry harder than any lawyer that I ever knew in pleading for mercy. He came into my office four or five times asking . . . said, 'This fellow never really had a chance. He served two sentences, he's never really had a chance. I wish you'd put him on probation.' I said, 'I can't do it, George. He's been off twice. I just can't . . . that would make a mockery of it.' Well, George finally accepted that.

"One day, about two months later (I always let these people report after Christmas to serve their sentences — or New Years), Butch Clements, a dear friend of mine, showed up in the office. He started begging probation for this same fellow. I said, 'Butch, I turned George Rogers down, and you know I could not possibly put this man on probation. It would offend George deeply and I wouldn't blame him. I'm not going to put him on probation.'

"Well, one day, the day before Christmas Eve, a man and a woman and a little girl showed up. My secretary said, 'It's this fellow that you told

to report after New Year's Day.' I said, 'Well, let them come on in. I'll talk to them.' This man was saying how desperately his family needed him, and please try him one more time on probation. I said, 'I'm not gonna do it. I've turned down George Rogers, I've turned down Butch Clements, and there's nothing that could persuade me to put you on probation.'

"Well, he had a little five or six-year-old girl with him — his little daughter. She was blonde and blue-eyed, and she walked right around the corner of my desk and I had my arm on the chair. She put her little hand on my arm, looked up and said, 'You're not going to put my daddy in jail, are you?' I said, 'No, honey, I'm gonna put him on probation.' "

Judge Seybourn Lynne
Birmingham



LYNNE

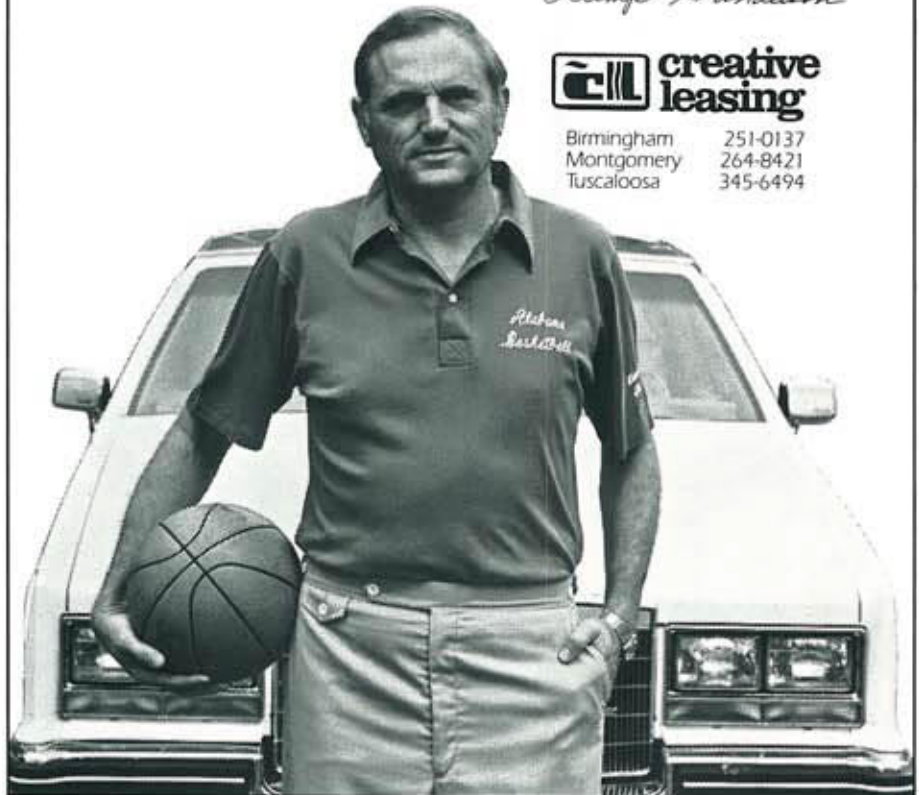
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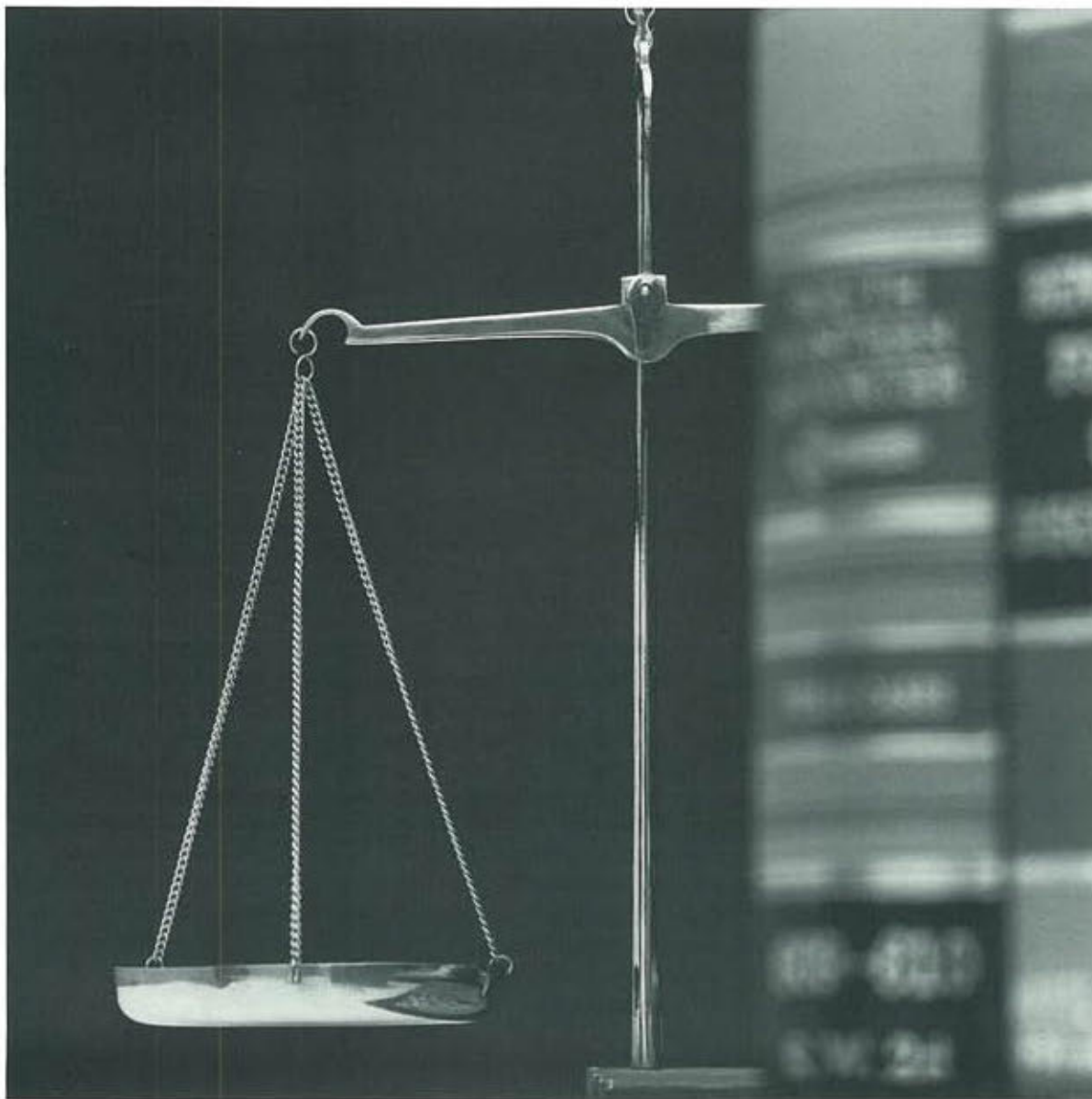
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Appellate Court Workload More Than Triples in Twelve Years

Trial Judges Reduce Pending Caseload

by Robert A. Martin
Administrative Office of Courts

The number of cases handled by the state's seventeen appellate court justices and judges has more than tripled in the past twelve years.

The year 1971 was the last time a new appellate judgeship was added and during that year the workload of the State Supreme Court and the two intermediate courts of appeal stood at 972 cases filed. This past court year 3,298 cases were filed for the same number of justices and judges to review. This is an increase in case filings of 239 percent, well above three times the number filed in the 1971 court year.

In 1971 the average caseload of an appellate judge in Alabama was 57 cases per year. The average number of filings per judges in the state today has risen to 194. This number varies among the three courts as shown in the chart below.

Average Filings Per Judge

	1971	1983	% Inc.
Supreme Court	30.4	144.9	376%
Court of Criminal Appeals	110.4	290.4	163%
Court of Civil Appeals	48.7	180.7	271%

Professor Robert A. Leflar of the University of Arkansas Law School says it is generally agreed that no appellate judge, however competent, should write more than 35 full-scale publishable opinions in a year. This past year, the full time judges on the Court of Criminal Appeals averaged writing 84 full opinions each. On the Court of Civil Appeals, the full time judges averaged writing 98 full opinions each. The jus-

tics on the Supreme Court averaged 72 full written opinions each.

When compared to national norms, Alabama's appeals courts continue to process cases in a timely manner; however, at the close of the 1982-83 court year, only the Court of Civil Appeals remained totally current with its caseload.

Chief Justice C.C. Torbert, Jr., says that although the appellate courts remain current in the sense that there is no undue delay in the processing of cases, he doesn't know how long the three courts can continue to keep abreast of the staggering increase in appeals. Pointing to the bound volumes of his cases alone, the chief justice demonstrates that their thickness has more than doubled since he took office in 1977. "I don't think I'm just writing longer opinions," he remarked.

Torbert says that the courts have been able to keep up with the increasing number of appeals through diligent work and by utilizing both retired and active judges to assist at the appellate level.

Currently two retired judges are assigned full time — one each to the Court of Civil Appeals and the Court of Criminal Appeals, and during the past four months eight circuit judges have assisted the Court of Criminal Appeals by completing one or two opinions each. Retired and active trial court judges were used to assist both the Supreme Court and Court of Criminal Appeals in 1972 and 1973.

Torbert praises the willingness of active trial judges and retired judges to pitch in and help; however, he says, "in the long run this is like using a bandaid to cover a gushing artery. We must plan to resolve the matter on a per-

manent basis before delay becomes a serious problem."

The chief justice says he plans to request the State Judicial Study Commission, a group consisting of judges, legislators, lawyers and court officials, to review the appellate workload and make recommendations on how to best approach the problem of handling the increasing number of appeals.

The increase in numbers isn't the only problem faced by the appeals courts. "Compounding this," Torbert says, "is the increasing number of new and complex civil litigation, the review on appeal of death penalty cases and legislation which mandates direct appeals to the Supreme Court of Public Service Commission decisions. When we combine the numbers with this, we suddenly find ourselves swimming upstream." Torbert says that a particular problem encountered by the Court of Criminal Appeals during the past year was the death of one judge and the resignation of another.

A summary of the 1982-83 workload of each court follows:

The Supreme Court — Increase in filings since 1971 or 376 percent.

New Filings 1982-83	1304
Cases Disposed 1982-83	1245

Court of Criminal Appeals — Increase in filings since 1971 of 163 percent.

New Filings 1982-83	1452
Cases Disposed 1982-83	1333

Court of Civil Appeals — Increase in filings since 1971 of 271 percent.

New Filings 1982-83	542
Cases Disposed 1982-83	511

Alabama's trial court judges disposed of nearly 8,000 more cases than were filed in the circuit and district courts during the past year. A total of 600,814 cases were filed statewide and 608,633 disposed.

Chief Justice C.C. Torbert, Jr., called the work of the state's 114 circuit judges and 90 district judges a "remarkable performance." "It is indicative of the dedicated effort and hard work of our judges, circuit clerks, registers and other judicial officials and employees," he said.

Circuit judges, who hear all civil cases in excess of \$5,000, domestic relations matters, the more serious criminal cases, 40 percent of juvenile matters and appeals from district court disposed of 128,299 cases, 2,081 more than the 126,218 circuit court filings during the year. The 114 circuit judges disposed an average of 1,125 cases per judge.

Of the 128,299 circuit court dispositions, 2,991 (2.3%) were jury trials; an average of 26 jury trials per judge.

District judges, who hear traffic, misdemeanor criminal, civil cases under \$5,000, small claims cases and 60 percent of juvenile matters, disposed of 480,334 cases, 5,738 more than the 474,596 district court filings during the year. The 90 district judges disposed an average of 5,337 cases per judge.

Over the past five years, state trial court filings have risen by 8 percent (557,314 filings in 1979 to 600,814 in 1983). During the same period, judges increased the number of cases they disposed by 9.5 percent (55,673 dispositions in 1979 to 608,522 in 1983). □

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President's Page

(Continued from page 4)

that would allow them to do this (Senate Bill 1714, House Bill 2970). Your Board of Bar Commissioners went on record early opposing this legislation. Working with the State Bar of Texas and through the Southern Conference of Bar Presidents they have taken an active role in leading the opposition to this encroachment. Alabama's membership in the ABA House of Delegates supported the resolution of that association in opposition. Our entire Congressional delegation has expressed its concern and opposition. Senator Heflin has been the floor leader in an attempt to keep FTC regulation out of those states where the integrated Bar is now subject to regulation by the highest court of the state.

The strength of our legal system lies in a strong and independent bar and

judiciary. Any interference with lawyers and legal services by the social planners as represented by the nation's bureaucracy would be disastrous. As I told this Bar last July, I'm not as concerned with what the public thinks of lawyers as I am about what lawyers think of lawyers. We must develop a strong and aggressive association. Working together as an association increases our ability to deal with these attacks from without. Separated by individual and special self interest, we are an easy prey.

The basic problems that give rise to attempts to regulate lawyers (other than through the courts) are our own internal problems. As we individually try to make a business of our profession we invite business regulations. As we fail to maintain standards required of those who would undertake to practice law we invite outsiders who would

protect the public from such failures. As we fail to conduct our activities in accord with our Code of Professional Responsibility we strain our traditional resources for disciplinary enforcement and invite intervention. Believe me there are those who would jump for the chance to take over for us. Just as we are, in a large part, the source of our problems, so we can, in large part, become the source of our solutions. We have the people power — it's just getting it moving in one direction. As a strong and aggressive association we can control our destiny.

The Midyear meeting, to be held March 9, 1984 in Montgomery, promises to be an event you do not want to miss. Make your plans now to be a part of this exciting Bar activity. Make this a part of growing closer together. □

William B. Hairston, Jr.

Young Lawyer's Section



Edmon H. McKinley
President

The Young Lawyers Section of the Alabama State Bar is continuing its schedule of fast-paced and diverse activities. The various substantive committees of the section have been very busy formulating the plans for their various activities for the remainder of the year. The various subcommittee chairmen have been busy orchestrating the multitude of components which make each of these efforts most successful.

New Attorneys Admitted in Montgomery

On the 24th day of October, 1983, our section held the Bar Admissions Ceremony in Montgomery. Lynda Flynt is the chairman of the Bar Admissions Ceremony Committee. The huge success of this very important event was due almost totally to the continuous hard work and the acute eye to detail which she put into the preparation and execution of this ceremony. I cannot thank her enough for her efforts. Rick Manley of Demopolis, vice president of the Alabama State Bar, delivered the congratulatory remarks to the new admittees on behalf of the Alabama State Bar. His remarks centered themselves around the three key words: preparation, communication, and professional responsibility. Rick gave the kind of talk that all of us lawyers need to hear every now and then to remind us that we must serve our clients and uphold the honor of our profession at the same time. Bill Hairston, president of the Alabama State Bar, gave the luncheon address. His remarks reflected his concern for our profession as it is attempting to adjust to not only the changes which are occurring within the profession but also the challenges that are facing it in the future.

Alabama Young Lawyers Represent Section in San Antonio

The Young Lawyers Section was represented at the American Bar Association — Young Lawyers Division (ABA-YLD) Affiliate Outreach Program in San Antonio in October by the largest group of Alabama young lawyers ever attending an affiliate outreach program. Those representing our section were Charlie Mixon of Mobile, Carol Ann

Smith and Rowena Crocker of Birmingham, Hobby Presley, also of Birmingham, who is the budget director for the ABA-YLD, and myself, as president and district representative. I am attempting this year to expose younger members of our Executive Committee to the various activities of the ABA-YLD so that this experience will have a longer impact on our section. Although there are many issues which are discussed at these national meetings which do not truly and directly affect us in Alabama, I think it is vitally important that Alabama young lawyers are exposed to the legal, social, and professional issues which are affecting our profession as a whole and which do — whether directly or indirectly — have bearing on our local section. In addition, it is tremendously important that members of our section are exposed to the leadership of the ABA-YLD. All of the programs in San Antonio were well attended by our representatives, and I feel that they gained a tremendous amount from them.

Rowena Crocker, who is chairman of our Law Day Committee, was particularly interested in the various discussions about National Law Day and picked up a large amount of ideas and materials which will be useful to us here in Alabama. Charlie and Carol Ann attended a varied selection of sessions. The various discussions and materials presented had topics dealing, among other things, with career dissatisfaction, continuing legal education, crime-victim services, Pro Bono projects, disaster legal services, issues affecting the legal profession, and long-range planning. Besides these structured sessions, there are other opportunities for our representatives to meet and talk with other affiliate representatives from around the country about their various activities and how they approach the various situations which confront their affiliates.

Basic Skills Seminar to be held in Birmingham

Carol Ann Smith and her CLE subcommittee are busy planning the annual Basic Skills Seminar to be held on March 30, 1984, in Birmingham. Carol and I have had

(Continued on page 46)

Lump sum payments
aren't the only way to settle
a personal injury
claim.

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SETTLEMENTS**

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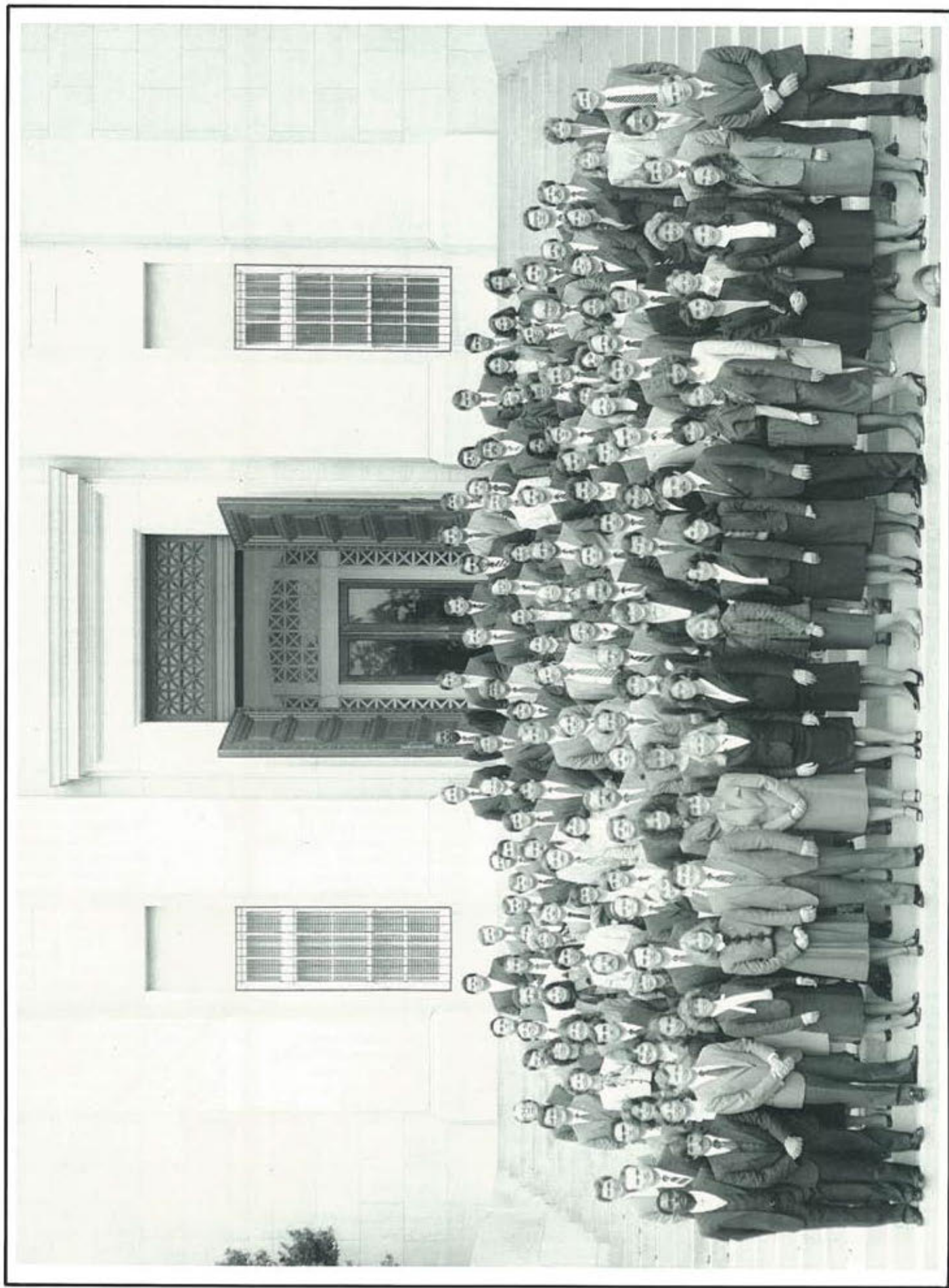
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Attorneys Admitted to Bar Fall 1983

Mary Rebekah Adams	Huntsville, Alabama	Richard Terrell Davis	Bessemer, Alabama
Dexter Ray Alexander	Birmingham, Alabama	Paul Sioussa Davison	Northport, Alabama
Frank Gerard Alfano	Birmingham, Alabama	Randy Allen Dempsey	Anniston, Alabama
Larry Keith Anderson	Birmingham, Alabama	Terri Faye Dial	Birmingham, Alabama
Susan Marie Ankenbrandt	Birmingham, Alabama	Tony Anthony Dison	Elkmont, Alabama
Lee Ford Armstrong	Montgomery, Alabama	Brenda Ann Dixon	Mobile, Alabama
Kathryn Melva Arrington	Huntsville, Alabama	J. David Dresher	Birmingham, Alabama
Charles Jeffery Ash	Montgomery, Alabama	Tamera Shay Driskill	Huntsville, Alabama
John David Roy Atchison	Gulfport, Mississippi	Celeste Weir Duncan	Birmingham, Alabama
Larry Odell Bailey	Birmingham, Alabama	Charles H. Durham III	Mobile, Alabama
Robert Michael Baker	Sheffield, Alabama	William Kent Eason	Birmingham, Alabama
John Bigham Barnett	Monroeville, Alabama	Kathryn Anne Eckerlein	Mobile, Alabama
Robert Daniel Beck	Fort Payne, Alabama	Helen Holmes Ellis	Tuscaloosa, Alabama
Steven Alter Benefield	Ozark, Alabama	Joana S. Ellis	Montgomery, Alabama
Melvin Stanford Blanton	Birmingham, Alabama	Gregg B. Everett	Montgomery, Alabama
Carroll E. Blow, Jr.	Union Springs, Alabama	Michael S. Evers	Dothan, Alabama
Michael Anthony Bownes	Montgomery, Alabama	Eric M. Fancher	Birmingham, Alabama
Thomas Whitwell Bowron II	Birmingham, Alabama	Douglas Jay Fees	Huntsville, Alabama
Deborah Susan Braden	Birmingham, Alabama	Thomas Alfred Harding Fendley	Mobile, Alabama
Teresa Dodson Brashers	Montgomery, Alabama	William H. Filmore	Brundidge, Alabama
Tasha Ann Brock	Birmingham, Alabama	Ruth Elizabeth Flanders	Anniston, Alabama
Benjamin Hillery Brooks III	Mobile, Alabama	Anthony Nicholas Fox	Florence, Alabama
Joy W. Brooks	Montgomery, Alabama	Nancy Lee Franklin	Birmingham, Alabama
Agee Stallworth Broughton III	Perdue Hill, Alabama	Gregory Marcus Friedlander	Mobile, Alabama
John D. Brown	Birmingham, Alabama	J. Mitchell Frost, Jr.	Birmingham, Alabama
William L. Brunson, Jr.	Elba, Alabama	Charles Michael Galloway	Birmingham, Alabama
Joseph William Buffington	Birmingham, Alabama	Elizabeth Caldwell Garber	Birmingham, Alabama
Frank Tucker Burge	Birmingham, Alabama	Phillip Bradley Garrison	Birmingham, Alabama
Lisa Joy Burks	Decatur, Alabama	William Lewis Garrison, Jr.	Birmingham, Alabama
Daniel Jay Burnick	Birmingham, Alabama	Benjamin J. George	Birmingham, Alabama
Brenda Lee Burns	Tuscaloosa, Alabama	Wyman O. Gilmore, Jr.	Grove Hill, Alabama
Guy L. Burns, Jr.	Birmingham, Alabama	Elizabeth Potter Graham	Huntsville, Alabama
Susan J. Bush	Birmingham, Alabama	Robert William Graham	Birmingham, Alabama
Timothy Alfred Bush	Birmingham, Alabama	Daniel Benjamin Graves	Mobile, Alabama
Willis Wayne Bush	Andalusia, Alabama	James Coulson Gray III	Birmingham, Alabama
John Joseph Callahan, Jr.	Montgomery, Alabama	William Alexander Gray, Jr.	Mobile, Alabama
Henry A. Callaway III	Mobile, Alabama	Robert Lee Green	Birmingham, Alabama
Samuel Chris Campisi	Birmingham, Alabama	James Houston Greer	Birmingham, Alabama
William L. Carroll	Birmingham, Alabama	Jan Dowdle Haden	Huntsville, Alabama
Judy Kay Carter	Ohatchee, Alabama	Jane Jeffers Hagan	Birmingham, Alabama
Elgin L. Carver, Jr.	Birmingham, Alabama	William Burton Hairston III	Birmingham, Alabama
Roger Dale Centers	Birmingham, Alabama	Barbara Ann Handley	Birmingham, Alabama
Mark Norman Chambless	Montgomery, Alabama	John Anderson Harp	Phenix City, Alabama
Raymond Pearson Chambliss	Birmingham, Alabama	Leah Marie Harper	Montgomery, Alabama
Suzanne Smith Childers	Birmingham, Alabama	Hub B. Harrington	Birmingham, Alabama
Charles Henry Clark, Jr.	Birmingham, Alabama	Mark Jackson Hassett	Chagrin Falls, Ohio
Virginia Lynn Clark	Birmingham, Alabama	Howard Griffith Hawk	Arab, Alabama
Richard A. Colegrove, Jr.	Birmingham, Alabama	Mary Douglas Hawkins	Birmingham, Alabama
Lauren Gay Coleman	Mobile, Alabama	Benjamin Freeman Hayley	Birmingham, Alabama
Stephen Paul Coleman	Mobile, Alabama	Randall Stark Haynes	Alexander City, Alabama
Harvey Roy Collins III	Montgomery, Alabama	John Frank Head	Columbiana, Alabama
R. Scott Colson III	Birmingham, Alabama	Richard A. Heard	Birmingham, Alabama
Julie Van Comfort	Birmingham, Alabama	Donald Lee Heflin	University, Alabama
Belton Youngblood Cooper, Jr.	Birmingham, Alabama	John Michael Hendrich	Mobile, Alabama
Brian Gregory Copeland	Cullman, Alabama	Truman M. Hobbs, Jr.	Montgomery, Alabama
Susan Glasscock Copeland	Montgomery, Alabama	Jenifer Collins Holt	Scottsboro, Alabama
Caryn L. Corenblum	Birmingham, Alabama	Gary Douglas Hooper	Birmingham, Alabama
Braxton Comer Counts III	Mobile, Alabama	Susan K. Hoven	Mobile, Alabama
Cheryl Lynn Payton Crisona	Mobile, Alabama	Gordon Kevin Howell	Chatom, Alabama
Alan Courtney Crowder	Tuscaloosa, Alabama	Phillip Francis Luke Hughes	Birmingham, Alabama
Robert F. Dangle	Birmingham, Alabama	Janet Lucille Humphreys	Birmingham, Alabama
James Vance Davidson	Birmingham, Alabama	Joseph Wood Hutchinson III	Silas, Alabama
Kenneth Dudley Davis	Andalusia, Alabama	Reginald D. Hyde	Tuscaloosa, Alabama



FALL 1983 ADMITTEES

Kenneth Stephen Jackson	Eufula, Alabama	Frank Joseph Russo	Birmingham, Alabama
Victor Jackson	Gadsden, Alabama	Robert H. Rutherford, Jr.	Birmingham, Alabama
Michael Stephen Jazwinski	Birmingham, Alabama	Rance Murry Sanders	Birmingham, Alabama
Peter Sheffey Joffrion	Huntsville, Alabama	Robert Glenn Saunders	Birmingham, Alabama
Theresa Berg Johanson	Birmingham, Alabama	James Michael Savage	Birmingham, Alabama
Kevin Lee Johnson	Birmingham, Alabama	Gary Steven Schiff	Birmingham, Alabama
Thomas Leon Johnston	Birmingham, Alabama	William Dennis Schilling	Birmingham, Alabama
Janet Kay Jones	Tuscaloosa, Alabama	Arthur J. Sharbel III	Birmingham, Alabama
Roxie Jamison Jones	Birmingham, Alabama	Sally Ann Sharp	Birmingham, Alabama
Stephen B. Jones	Birmingham, Alabama	Julie Torrence Shaw	Birmingham, Alabama
Stephen Mitchell Jones	Birmingham, Alabama	Gary Clayborn Sherrer	Gadsden, Alabama
William Donald Jones III	Birmingham, Alabama	Paul Blakely Sherrod, Jr.	Birmingham, Alabama
Carolyn Morgan Kennah	Gadsden, Alabama	John Richard Shoemaker	Birmingham, Alabama
William De-Jarnette King IV	Aliceville, Alabama	George Mitchell Simmerman, Jr.	Mobile, Alabama
Karen Marie Kremer	Birmingham, Alabama	Roger A. Sindle	Montgomery, Alabama
Lonette Elaine Lamb	Birmingham, Alabama	Mary Beth Slate	Decatur, Alabama
Desma Dawn Lankford	Gadsden, Alabama	Cynthia Ann Smith	Prattville, Alabama
Forrest Stephen Latta	Mobile, Alabama	James Dale Smith	Mobile, Alabama
Lucy McNeill Lemaster	Birmingham, Alabama	James Edward Smith	Birmingham, Alabama
Ronald Alan Levitt	Birmingham, Alabama	Reginald William Smith	Tuscaloosa, Alabama
Debra Kay Lewis	Birmingham, Alabama	James Callen Sparrow	Birmingham, Alabama
Dwayne Orton Littauer	Birmingham, Alabama	Gary Franklin Spencer	Birmingham, Alabama
Robert Randolph Lomax	Birmingham, Alabama	Samuel Alexander Spoon	Tuscaloosa, Alabama
Barnes Flournoy Lovelace, Jr.	Decatur, Alabama	Alyce Manley Spruell	Tuscaloosa, Alabama
Scott Edward Ludwig	Huntsville, Alabama	James Quinon Stanphill, Jr.	Florence, Alabama
Rosemary Castelli Lumpkins	Tuscaloosa, Alabama	Bryan Bartlett Starr, Jr.	Birmingham, Alabama
Michael Steven Lusk	Jacksonville, Alabama	Amy Watson Stewart	Montgomery, Alabama
Joel Christopher Marsh	Birmingham, Alabama	Marvin L. Stewart, Jr.	Birmingham, Alabama
Virginia Louise Martin	Bay Minette, Alabama	Vaughn Morton Stewart II	Anniston, Alabama
Phillip Earl Mason	Pine Hill, Alabama	Stephen Wayne Street	Birmingham, Alabama
Kenneth Gip Massey	Tuscaloosa, Alabama	Kathryn Helen Sumrall	Birmingham, Alabama
Gina Kaye Matthews	Guntersville, Alabama	Dan William Taliaferro	Dothan, Alabama
Forrest Talma McConnell III	Montgomery, Alabama	Robert Douglas Tambling	Montgomery, Alabama
Claud Eugene McCoy, Jr.	Lanett, Alabama	Teresa Karen Tanner	Huntsville, Alabama
Dwight N. McDaniel, Jr.	Tuscaloosa, Alabama	Leah Oldacre Taylor	Prattville, Alabama
Peter Allen McNish	Dothan, Alabama	Flora Louise Thompson	Moss Point, Mississippi
Susan McKinney	Mobile, Alabama	Mark Elliott Tippins	Birmingham, Alabama
William Dennis McKinnie	Bolivar, Tennessee	J. Wallace Tutt III	Mobile, Alabama
David James Middlebrooks	Birmingham, Alabama	Michael Upchurch	Mobile, Alabama
Howard Moss Miles	Birmingham, Alabama	Johnnie Frank Vann	Birmingham, Alabama
William Allen Millican	Gadsden, Alabama	Joseph H. Varner III	Birmingham, Alabama
James Wilson Mitchell	Florence, Alabama	Cynthia Waites	Birmingham, Alabama
Nan Elizabeth Mitchell	Birmingham, Alabama	Raymond D. Waldrop, Jr.	Huntsville, Alabama
Larry Brooks Moore	Huntsville, Alabama	R. Jeffrey Wallace	Birmingham, Alabama
Harold Dean Mooty, Jr.	Montgomery, Alabama	Michael B. Walls	Birmingham, Alabama
Robert Stanley Morrow	Birmingham, Alabama	Robert Livingston Walter	Montgomery, Alabama
Thomas Julian Motes	Montgomery, Alabama	Michael Randolph Wamsley	Birmingham, Alabama
Ellen J. Mullins	Mobile, Alabama	John Keith Warren	Lineville, Alabama
Lindsey Gay Mussleman	Florence, Alabama	Patricia Caroline Kellett Warren	Fort Payne, Alabama
Richard Evans Neal	Birmingham, Alabama	Ann Morris Watson	Birmingham, Alabama
Stephen McKay Nesmith	Montgomery, Alabama	John Deforest Watson III	Birmingham, Alabama
Mark Abell Newell	Mobile, Alabama	William Wadsworth Watts III	Mobile, Alabama
Charles Frank Norton, Jr.	Birmingham, Alabama	Joel William Weatherford	Dothan, Alabama
David Michael O'Brien	Mobile, Alabama	Jean Alexandra Webb	Atmore, Alabama
M. Margaret O'Brien	Mobile, Alabama	Kitty Borland Whitehurst	Northport, Alabama
Timothy Donald Osburne	Birmingham, Alabama	Turner Butler Williams	Tuscaloosa, Alabama
James Layton Parris	Mobile, Alabama	Sherrie Greene Willman	Madison, Alabama
David Rowles Peeler	Huntsville, Alabama	Frank C. Wilson III	Selma, Alabama
Laura Petro	Birmingham, Alabama	Greta Harrell Wilson	Selma, Alabama
Christopher Alan Pettey	Decatur, Alabama	Wade Kyle Wright	Guntersville, Alabama
William H. Philpot, Jr.	Mobile, Alabama	Bruce Hinson Wynn	Birmingham, Alabama
Cheryl L. Price	Birmingham, Alabama	Carlton Chenault Young	Bessemer, Alabama
James Louis Priester	Birmingham, Alabama	Alex William Zoghy	Mobile, Alabama
Alicia Adams Putt	Birmingham, Alabama		
Joan Crowder Ragsdale	Tuscaloosa, Alabama		
Lynn Britt Randall	Tuscaloosa, Alabama		
Sammye Oden Ray	Birmingham, Alabama		
Amy Slayden Rayburn	Huntsville, Alabama		
Dwight Kirk Rice	Oxford, Alabama		
James Lee Richey	Birmingham, Alabama		
Clyde E. Riley	Birmingham, Alabama		
F. Timothy Riley	Albertville, Alabama		
Jerry D. Roberson	Birmingham, Alabama		
James Earl Robertson, Jr.	Mobile, Alabama		
Judith Young Robertson	New Orleans, Louisiana		
Anne Dishuck Rodenberry	Tuscaloosa, Alabama		
Mary Christine Roemer	Montgomery, Alabama		
Alan T. Rogers	Birmingham, Alabama		
Bruce F. Rogers	Birmingham, Alabama		

July 1983

Bar Exam Statistics of Interest

Number Sitting for Exam	362
Number Certified to Supreme Court	261
Certification Rate	72%

Certification Rate From:

University of Alabama	90%
Cumberland	75%
Alabama Non-accredited Law Schools	32%

Lawyers in the Family



Robert D. Beck (1983), W.M. Beck Jr. (1961) and W.M. Beck, Sr. (1932) (Admittee/Brother/Father)



Frank Tucker Burge (1983) and Frank O. Burge, Jr. (1953) (Admittee/Father)



Julie Van Comfort (1983) and Van R. Comfort, Jr. (1965) (Admittee/Father)



Leah Marie Harper (1983) and Henry J. Harper (1960) (Admittee/Father)



J. Frank Head (1983) and Oliver P. Head (1956) Admittee/Father



Truman M. Hobbs, Jr. (1983), Truman M. Hobbs, Sr. (1948) and Dexter C. Hobbs (1980) (Admittee/Father/ Brother)



Steve Jackson (1983) and Lew Garrison (1983) (First Cousin Admittees)



Alicia Adams Pull (1983) and Larry O'Neil Pull (1981) (Admittee/Husband)



James Lee Richey (1983) and Benjamin H. Richey (1980) (Admittee/ Brother)



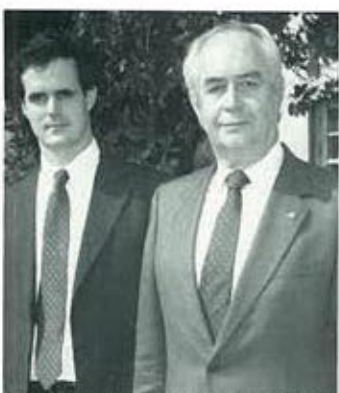
Mary Christine Roemer (1983), Mary Parmer Roemer (1955) and Albert L. Roemer (1938) (Admittee/Mother/ Father)



Anne Dishuck Rodenberry (1983) and Jane Kimbrough Dishuck (1947) (Admittee/ Mother)



Ann Morris Watson (1983) and John D. Watson III (1983) (Husband and Wife Admittees)



Joel W. Weatherford (1983) and A. Dean Weatherford (1965) (Admittee/Father)



Jean Alexander Webb (1983) and Douglas S. Webb (1951) (Admittee/Father)



Kilty Borland Whitehurst (1983) and J. Paul Whitehurst (1979) (Admittee/ Husband)



Cheryl Lynn Payton Crisona (1983) and Charles Richard Payton (1980) (Admittee/Father)



Kenneth Dudley Davis (1983) and Clark Stanley Davis (1978) (Admittee/Brother)



Wyman O. Gilmore, Jr. (1983), Wyman O. Gilmore, Sr. (1951) and V. Wyllyn Gilmore (1979) (Admittee/Father/Sister)



William B. Hairston III (1983) and William B. Hairston, Jr. (1950) (Admittee/Father)



Theresa Berg Johanson (1983) and Charles R. Johanson III (1975) (Admittee/Husband)



Lucy McNeill LeMaster (1983) and Sally McNeill Ebaugh (Spring 1983) (Admittee/Sister)



Peter Allen McInish (1983) and H. Dwight McInish (1948) (Admittee/Father)



J. Wilson Mitchell (1983), Melinda Mitchell Waters (1977) and Michael D. Waters (1977) (Admittee/Sister/Brother-in-law)



Gary Steven Schuff (1983) and Wallace H. Cohen (1949) (Admittee/Father-in-law)



James D. Smith (1983) and William H. Saliba (1960) (Admittee/Father-in-law)



Alyce Manley Spruell (1983) and Richard S. Manley (1958) (Admittee/Father)



Patricia Caroline Kellett Warren (1983) and Joseph Cabot Kellett (1950) (Admittee/Father)



Frank Cunningham Wilson III (1983) and Greta Harrell Wilson (1983) (Husband and Wife Admittees)



Wade K. Wright (1983) and Harvey J. Wright (1951) (Admittee/Father)

Three of the Fall 1983 admittees to the bar are the children of Alabama State Bar officers. Included in the group are President Bill Hairston's son, Bill; Vice President Rick Manley's daughter, Alyce; and Commissioner Oliver Head's son, Frank.

Those wishing to order the family or group picture may contact Scott Photographic Services, P.O. Box 1361, Montgomery, Alabama 36102. Phone 262-8761.

Bar Briefs

Gain CLE in Las Vegas

For the first time, the American Bar Association will offer a wide selection of accredited continuing legal education courses in conjunction with an ABA Midyear Meeting. Called CLE '84, the showcase is a special project and priority effort of ABA President Wallace D. Riley, and is set for February 9-10, 1984 in Las Vegas, Nevada, the site of the 1984 Midyear Meeting, February 8-15.

In cooperation with the ABA Division of Professional Education, sixteen ABA sections and one forum committee will present five full-day and six half-day courses over the two-day period at the Las Vegas Convention Center. Each course is independently produced with its own faculty of experts, includes course materials and will meet mandatory CLE requirements. The ABA has gathered over ninety experienced, successful attorneys from across the country to identify and impart the most important developments in their fields.

Search and seizure theme of essay contest

The law of search and seizure, including such issues as whether the exclusionary rule should be preserved, is the theme of the 1984 *American Bar Association Journal* Ross Essay Contest, which will carry a \$9,000 cash prize.

The formal topic, "The Warrant Clause: Roots, Rights and Remedies," is described in the November edition of the *ABA Journal*, published monthly for the nearly 300,000 members of the ABA. The title refers to a clause in the Fourth Amendment to the U.S. Constitution.

The contest is sponsored annually by the Association, with the *Journal's* board of editors delegated to administer it. Each year the amount of the prize is determined by the board of editors, and depends upon

the proceeds of a bequest established in the will of Erskine Mayo Ross. The contest is open to any member of the association, including its Law Student Division, excluding previous winners and officers and employees of the ABA, the American Bar Foundation and the American Bar Endowment.

"The warranty clause is deeply rooted in the rights of the individual and in legal liberty," stated the board in announcing the theme. "Its three great principles of governmental prohibition — neutrality, sufficiency and particularity — are indelibly inscribed in the Fourth Amendment. How should these guarantees be constitutionally preserved? Is it only the . . . peculiar duty of our courts to enforce them? Is the exclusionary rule the only remedy for the evil a warrant clause was designed to prevent? Should there be a relaxation of the rule or should it be 'repealed' altogether?" asked the board. Contestants may write on any one or more issues relevant to the warrant clause.

In addition to receiving the cash prize, the contest winner will be brought to Chicago in August 1984 to appear in a program to be co-sponsored by the *ABA Journal* and the ABA Section of Criminal Justice during the ABA's 1984 Annual Meeting.

Contestants are limited to one entry per person, of a maximum of 5,000 words, including quoted material and citations. While each entrant is required to file an assignment of rights to the essay to the ABA, along with the essay, all entries that are not selected for the prize will be returned, and the ABA will relinquish all rights to them. Entries must be original works, drafted for the contest. The deadline for entries is April 1, 1984.

Entry forms and additional contest information are available from Linda Castle, assistant editor of the *Journal*, at (312) 621-1685, or at 33 West Monroe, 7th Floor, Chicago, Illinois 60603.

A first for Alabama

On February 6-9, 1984, the newly created United States Court of Appeals for the Federal Circuit will sit in Montgomery for the first time. The court will be held in the Court of Appeals courtroom on the fourth floor of the Federal Building.

The Court of Appeals for the Federal Circuit was formed on October 1, 1982, upon the merger of the Court of Customs and Patent Appeals and the Court of Claims. This court is a true "Circuit" Court and sits at various locations throughout the United States. The Montgomery County Bar Association plans to host a reception for the judges and court personnel.

The jurisdiction of this court is varied and involves complex and often technical matters. Its jurisdiction includes appeals from the Court of International Trade, from the United States District Courts on government contract matters, from the Claims Court, from the International Trade Commission, from the Patent and Trademark office, from the Merit Systems Protection Board, and from Boards of Contract Appeals.

The Court will offer admissions to its bar during its session in Montgomery and any attorney desiring admission may obtain an admission form from the Honorable Curtis Kaver, Clerk, U.S. District Court, P.O. Box 711, Montgomery, Alabama 36101, or contact the Honorable George Hutchinson, Clerk, U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, NW, Washington, DC 20439.

Chief justice elected to executive committee

C.C. Torbert, Jr., Chief Justice of the Supreme Court of Alabama, has been elected to the Executive Committee of the American Judicature Society, a national organization for improvement of the courts.

Founded in 1913, AJS is supported by more than 30,000 concerned citizens. Through research, educational programs, and publications, the Society addresses concerns related to the selection and retention of judges, court management and the public's understanding of the judicial system.

General counsel named

Florence attorney Robert L. Potts has been named general counsel for the University of Alabama, replacing Rufus Bealle who recently retired.

Potts received his J.D. from the University of Alabama School of Law in 1969, and LL.M. from the Harvard Law School in 1971.

He has been a member of the Alabama Law Institute Council since 1975. He has served as president of the Alabama Law School Alumni Association and the Alabama State Bar Young Lawyers Section. He presently is chairman of the Alabama State Bar Board of Bar Examiners. Potts, also, is a frequent author of book reviews for *The Alabama Lawyer*.

District judge appointed

Robert G. Wilson of Fort Payne has recently been appointed district judge for DeKalb County. He replaces Judge Richard C. Hunt who retired on October 31, 1983.

Wilson is a graduate of the University of Alabama and received his law degree from the Cumberland School of Law in 1973. He was in private practice in Fort Payne prior to his appointment.

Interested attorneys may submit applications

Applications are now being accepted for eight seats on the Legal Services Corporation of Alabama's Board of Directors to be appointed by the Board of Bar Commissioners. New Board members will be seated in July 1984. There is no compensation for Board members, but travel expenses will be paid.

Applicants must be members in good standing of the Alabama State Bar, must have a genuine desire to serve on the Board of Directors, and must agree to attend quarterly Board meetings in Montgomery.

The Bar Commissioners are seeking to appoint members from a wide variety of legal backgrounds and from all parts of the state. All interested lawyers, regardless of type of

practice, and especially women and minorities, are invited to apply.

To apply, interested lawyers should submit to Mary Lyn Pike a letter detailing their qualifications and including a brief statement of their reasons for wishing to serve on the Board and their past experience, if any, with the delivery of legal services to the poor. Applications must be submitted by March 31, 1984.

Association of corporate counsel elects leaders

The annual meeting of the Alabama Association of Corporate Counsel was held on October 18, 1983, at which time the following officers were elected for 1983-84: Dudley C. Reynolds, president (Alabama Gas Corporation); Jerry W. Powell, president-elect (Central Bancshares of the South); and Anita L. Miller, secretary-treasurer (South Central Bell).

Additionally, the following were elected as directors: L. Daniel Morris, Jr., (Blount); Patricia Boyd Rumore (Torchmark Corp.); Robert E. Minor (Coal Systems, Inc.); William A. Smith (Sonat, Inc.); Rufus H. Craig (MacMillan-Bloedel, Inc.); and Kenneth E. Little (Southern Life and Health Insurance).

Organized in 1981, the association is comprised of 124 corporate counsel, representing some 47 corporations located in Alabama and Georgia.

Membership is open to attorneys employed by corporations qualified to do business in Alabama who are engaged in the performance of legal matters on behalf of their employer, or who manage personnel performing such functions.

Interested corporate counsel should contact the association's secretary-treasurer, Anita Miller, at 3196 Highway 280 South, Room 304N, Birmingham, Alabama 35243.

Further immunity granted

On November 7, 1983 the Supreme Court ordered that a proposed amendment to Rule 9 of the Code of Professional Responsibility

of the Alabama State Bar Rules of Disciplinary Enforcement be adopted and become effective immediately. The amendment, submitted by the Board of Bar Commissioners, grants immunity from civil suit to any attorney acting in compliance with DR 1-103.

Disciplinary Rule 1-103 relates to the disclosure of information to authorities empowered to investigate or act upon an attorney's misconduct in violation of DR 1-102 which states that a lawyer shall not: (1) Violate a Disciplinary Rule; (2) circumvent a Disciplinary Rule through actions of another; (3) engage in illegal conduct involving moral turpitude; (4) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, nor be guilty of willful misconduct; (5) engage in conduct that is prejudicial to the administration of justice; nor (6) engage in any other conduct that adversely reflects on his fitness to practice law.

Law related quotations to be published

The editor of a forthcoming book on the best 3,000 quotes on the law, lawyers and justice is seeking contributions from the legal profession. Recent quotes would be especially helpful, the editor says.

Contributions of quotes used in the book, titled *The Quotable Lawyer*, will be given credit for their suggestions and notified upon publication, which is scheduled for early 1985.

Quotations, preferably including the source, should be sent to Elizabeth Frost Knappman, President, New England Publishing Associates, P.O. Box 39, Old Lyme, Connecticut 06371.

Bar examiner elected

S. Dagnal Rowe of Huntsville has been elected to the Board of Bar Examiners to replace Winston V. Legge, Jr., whose term recently expired. Rowe will serve a four-year term, examining in the area of taxation. He is with the law firm of Cleary, Lee, Morris, Evans & Rowe.

Riding the Circuits



Birmingham Bar Association

On December 9, 1983, the following were elected as officers of the Birmingham Bar Association:

President: Thomas W. Christian
Vice president: J. Mason Davis
Secretary/Treasurer: M. Clay Osball
Executive Committee: James W. Gewin
James S. Lloyd
L. Stephen Wright, Jr.
Charles W. Gorham

Baldwin County Bar Association

Officers of the Baldwin County Bar Association for the 1983-84 year are:

President: Thomas W. Underwood, Jr.
Vice president: James H. Reid, Jr.
Treasurer: Charles C. Simpson III

The Baldwin County Bar Association is sponsoring the placement of portraits in the county courthouse of deceased members of the Baldwin County bench and bar with ten years of service to the community. Recently these portraits were presented at two separate ceremonies attended by the relatives of those being honored. At the ceremonies held on September 6 and December 5, 1983, attorney Taylor D. Wilkins, Jr., assisted Judge Harry J. Wilters, Jr., with the program during which the portraits, compiled by attorney Samuel N. Crosby, were hung.

This year Baldwin County celebrates its 175th birthday. Baldwin County attorney Sam Crosby plans on commemorating the year by publishing a book of historical sketches of the Baldwin County Bar, a collection of stories he has been working on over the past two years.

Calhoun-Cleburne County Bar Association

Nineteen eighty-three was a good year for the Calhoun-Cleburne County Bar Association under the leadership of President Richard Cater. The local bar embarked on an ambitious course for the Law Day Activities in the spring which included a bar association sponsored debate on the death penalty at the Anniston High School Auditorium for area high school students, a local radio talk show with host

Rex Gardner and Law Day chairperson Brenda Smith Stedham, a television interview program with Bill Hagler and Mimi Butler, and several other events.

The Calhoun-Cleburne County Bar Association was also active in continuing legal education in 1983. The first seminar offered concerned Consumer Related Law and was presented on August 5 and 6, 1983 in conjunction with the Alabama Bar Institute for Continuing Legal Education. The seminar was sponsored during the Twelfth Annual Alabama Shakespeare Festival. On October 20, 1983 the local bar association co-sponsored another seminar with the Cumberland Institute for Continuing Legal Education on the topic of Worker's Compensation. Additionally monthly bar meetings often sponsored special speakers to inform local practitioners on topics of interest.

On the lighter side with bar association support the Lawyers softball team was organized and participated in the Anniston Industrial League with some success; however, the Annual Doctor-Lawyer softball game in August, sponsored by the legal secretaries, resulted in a resounding bar association victory. Unfortunately the Lawyers did not fare as well against the Bankers in their annual contest.

The final events of the year involved the local bar association participation in Anniston's Centennial. Several members were participants in the Centennial pageant as Civil War soldiers and roaring twenties dancers. Much of the historical information on the early history of Calhoun County was supplied by retired Circuit Judge William Bibb who also authored a portion of the historical Centennial booklet. The celebration was a tremendous community success and the bar association was an important contributing organization.

With 1983 such a success for the Calhoun-Cleburne County Bar Association, the organization can only look forward to an even more challenging and exciting 1984.

Covington County Bar Association



The Covington County Bar Association held a 25th anniversary celebration on October 26, 1983, to honor Judge F.M. Smith for his many years of service as circuit judge of the 22nd Judicial Circuit. He assumed the office on October 27, 1958. Pictured is (right) John B. Givhan, president of the Covington County Bar Association, presenting an anniversary gift to Judge Smith. In the background, attorney Reuben W. Cook, chairman for the event, looks on.

Dale County Bar Association

STATE OF FRIENDSHIP
IN THE SUPREME COURT OF
OPTIMISTIC COUNTY
(DALE COUNTY BAR ASSOCIATION DIVISION)

At a session of said Court
held in said County on a
Sunny Day at the close of
the year, 1983.

ORDER

TO THE LEGAL COMMUNITY OF ALABAMA:

This cause coming on to be heard on the testimony of all parties and witnesses and it being understood by the Court that you may have had some hard times lately; and, further, that there is probable cause to believe that you deserve happiness, fun times and great prosperity; and, further, it being known that you are hard-working, honest, intelligent, concerned, in-touch, fair of face, upright, brilliant, lovable and several other things,

NOW THEREFORE, it is ORDERED, ADJUDGED AND DECREED that you deserve the best New Year ever; and, further, that you are released from the doldrums and that things will be great for you in this New Year, commencing IMMEDIATELY, if not sooner.


SAWYER SMILE
TOP COURT JUDGE

SUBSCRIBED AND SWORN

TO BEFORE ME:


HUGH R. GRAND

Jackson County Bar Association

Officers of the Jackson County Bar for the 1983-84 year are:

President: Jack Livingston

Vice president: Tommy Armstrong

Secretary/Treasurer: Gerald R. Paulk

In October the Jackson County Bar Association held a seminar on estate planning and the new Probate Code, instructed by L.B. Feld. The turnout was very good and the seminar very helpful and informative.

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Mobile Bar Association

Mobile Bar Association officers for 1984 were unanimously elected October 19, 1983. They are:

President: G. Sage Lyons

President-elect: Ben H. Kilborn

Vice president: Mitchell G. Lattof, Sr.

Secretary: Lawrence M. Wettermark

Treasurer: Stephen C. Olen

The Young Lawyers have also elected the following officers:

President: James B. Newman

Vice president: Mary Beth Mantiplly

Secretary/Treasurer: J. Harley McDonald, Jr.

On the sports side, a word from the Mobile County Bar sports information director and local attorney Ben H. Harris, Jr.: "The famed Barristers of the Mobile Bar captured the coveted Sage Avenue City Park Softball Crown. The Purple and Maroon wrapped up the title with a devastating 13-1 rout of Omar's Tent Shop. The Barristers' victory, their ninth straight league triumph, upped their regular season mark to 11-2 and overall record to 16-2. Field Manager Jay York's stalwarts were led to the Throne Room by the timely hitting of Edgar Walsh, Mallory Mantiplly, Buddy Brown and Sid Jackson, while the league champion's airtight defense helped stymie the opposition. Flanked by representatives of the local media at the champagne-flowing post-game celebration at Riverview Plaza, President James Duffy accepted the first place cup and remarked that the Barristers' climb from a disappointing fourth place finish at Miller's Park last season to the pinnacle of the Mobile softball world was one of the highlights of his administration. The 1982 Field Skipper Walsh refused to answer a probing inquiry as to why the team had fared so much better in 1983.

The final statistics on the 1983 Barristers, the best contingent since the 1951 team that mauled the doctors, revealed a sparkling .486 team batting average. Brown and Mantiplly appeared to be locked in a tight struggle for league MVP honors, which include the award of a new sports car and a Caribbean cruise. The final league statistics batting averages are as follows: Sid Jackson .695; Buddy Brown .675 (team high 18 RBI's and 2 HR's); Mallory Mantiplly .641 (led league with 3 HR's and tied with Brown for team high total of 18 RBI's); Edgar Walsh .585 (team high 18 runs scored); Mickey Smith .521; Danny Barlar .517; Charlie Fleming .505; Eddie Greene .472; George Walker .461; Dale Stone .448; Steve Stine .444; Corky Ollinger .378; Craig Pittman .375; Tommy Bear .347; Mike Harris .286; Steve Terry .250; Jim Green .000 (2 at bat's); and Buddy Jay .000 (played with a broken hand but looked like a lawyer most of the season).

Field Manager York was unable to confirm or deny rumors that the Barristers might venture into post-season tournament action. Coach York did announce plans to move the club's spring training facility from the Texas Street Recreation Center to the Grand Hotel."□

cle opportunities



january

19-20

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26 thursday

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26-28

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27 friday

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27-28

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february

9 thursday

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17 friday

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23-25

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24 friday

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march

2 friday

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8-9

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9-10

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11-16

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21-22

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28 wednesday

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30 friday

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30-31

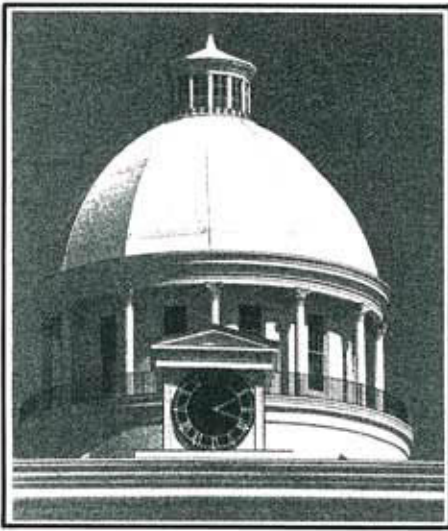
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31 saturday

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LEGISLATIVE WRAP-UP

Lawyers return to state legislature . . . or did they?

The three judge federal court hearing Alabama's reapportionment plan ruled that the legislature elected in 1982 was elected for only one year. As a result, new elections were held resulting in twenty-three new legislators being elected and new committee assignments being made.

The Senate now has fourteen lawyers compared to seventeen a year ago. Not returning to the Senate were: Spencer Bachus (now in the House), Don Harrison, Larry Keener, Reo Kirkland, Wendell Mitchell and Lister Hill Proctor. New senators include: Charles Langford of Montgomery (who moved over from the House of Representatives where he was chairman of the Judiciary) and first time legislators Frank "Butch" Ellis of Columbiana and Hank Sanders of Selma. They are joined by returning lawyer senators: Gary Aldridge, Decatur; John Amari, Birmingham; Roger Bedford, Russellville; Steve Cooley, Cullman; Ryan deGraffenried, Tuscaloosa; Michael Figures, Mobile; Earl Hilliard, Birmingham; Ted Little, Auburn; Mac Parsons, Birmingham; Richmond Pearson, Birmingham; and Jim Smith, Huntsville.

The House of Representatives has twelve lawyers — the same as a year ago. New lawyer representatives include: John Tanner, Pelham; Bill Fuller, LaFayette; Michael Onderdonk, Chatom; Beth Marietta, Mobile; and Spencer Bachus, Birmingham (who moved over from the Senate). These legislators join representatives: Tom Drake, Cullman; Jim Campbell, Anniston; Tom Nicholson, Jasper; Morris Brooks, Huntsville; Mike Box, Satsuma; Albert Johnson, Phenix City; and Phil Poole, Moundville.

In an opinion of the justices, the Supreme Court ruled the newly elected legislators took office on November 9, 1983 and will be serving for three years. The court also said the respective houses could organize as they saw fit.

In the Senate the committee chairman stayed virtually the same with the top four posts being: John Teague, Chil-

dersburg, President Pro Tem; Charles Bishop, Jasper, chairman of Rules; Hinton Mitchem, Albertville, chairman of Finance and Taxation; and attorney Earl Hilliard, Birmingham, chairman of Judiciary.

The House of Representatives saw two of its five top officers change due to the Representatives not seeking reelection to their House seat. Attorney Tom Drake of Cullman remains Speaker, Roy Johnson, Tuscaloosa, remains Speaker Pro Tem and Tom Colburn, Sheffield, chairman of Ways and Means. New appointments went to Jimmy Clark of Eufaula, who is chairman of Rules, and to attorney Jim Campbell, Anniston, who is chairman of Judiciary.

Senate Judiciary: Earl Hilliard, chairman, Birmingham; Frank Ellis, vice chairman, Columbiana; Gary Aldridge, Hartselle; John Amari, Birmingham; Roger Bedford, Russellville; Jim Bennett, Homewood; Steve Cooley, Cullman;

(Continued on page 46)



Earl Hilliard takes care of business during the first special session of the new legislature in November. Hilliard serves as chairman of the Senate Judiciary.

Section 1983 Actions: A Practical Overview For the General Practitioner

by David F. Daniell and
John T. Mooresmith

This article is intended to provide the reader with a general overview of the practical considerations involved in handling claims arising under 42 U.S.C. §1983 (hereinafter §1983). Section 1983 and its jurisdictional counterpart, 28 U.S.C. §1343(3), began as Section 1 of the Ku Klux Klan Act of 1871 which was enacted by Congress to enforce the newly ratified Fourteenth Amendment. Section 1983 reads as follows:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Although the Federal Rules of Civil and Appellate Procedure govern §1983 litigation in the federal courts, jurisdictional requirements are specially set out in 28 U.S.C. §1343(3), which

provides in its pertinent portions as follows:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person; . . .

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity, secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

It is important to note that §1343(3) contains no jurisdictional amount. This is in line with the stated purpose of §1983 which is to interpose the federal courts between the States and the people, as guardians of the people's federal rights in order to protect the people from deprivation of any right, privilege, or immunity secured by the Constitution and certain federal statutes under color of state law.

The phrase "under color of state law, statute, ordinance, regulation, custom or usage" requires state action as a condition precedent to an action

founded on §1983. In evaluating whether a potential plaintiff can assert a claim under §1983, the lawyer's analysis must initially focus on the extent of state action involved. State action is obvious in cases where state officials are acting in their official capacities and in capacities authorized by state law. However, the question of state action becomes more obscure where state officials have acted in official capacities, but in a manner *not* authorized by state law. The most complex questions of state action arise where the potential claim is based on the acts of a purely private person, but with some governmental involvement. In these cases, the question becomes whether the action of the private person should be treated as if it were governmental conduct.

While the determination as to whether state action is involved must necessarily be made on a case by case basis, the United States Supreme Court has formulated several tests to determine whether state action is involved in the offending conduct of a private person. Among these tests are whether

the private person is exercising a function which has traditionally been exercised by the State; whether the State has required, supported or is significantly involved in the conduct; or whether there is a strong degree of interdependency between the private person and the State. An excellent example of the analytical process used in resolving the question of state action is presented in *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), which found state action sufficient to support a §1983 claim in a situation involving racial discrimination by a private person operating a restaurant located in a building which was leased from a state agency.

Parties

A §1983 plaintiff may be "any citizen of the United States or other person within the jurisdiction thereof . . ." Although the United States Supreme Court has held that a corporation cannot assert a violation of the privileges and immunities clause of the Fourteenth Amendment in a §1983 action, a corporation has been held to be an "other person" for §1983 purposes within the meaning of the equal protection and the due process of law clauses when suing in its own right. Municipalities, on the other hand, cannot be §1983 plaintiffs, just as a state may not sue in its own right as a §1983 plaintiff. *City of Safety Harbor v. Birchfield*, 529 F.2d 1251 (5th Cir. 1976); *Buda v. Saxbe*, 406 F. Supp. 399 (E.D. Tenn. 1974). Aliens may be §1983 plaintiffs as "other persons," but an unborn fetus is neither a "citizen" nor an "other person." *McGarvey v. Magee-Woman's Hospital*, 340 F. Supp. 751 (W.D. Pa. 1972), *aff'd*, 474 F.2d 1339 (3rd Cir. 1973). Section 1983 claims may also be asserted as class actions. This can be an important element for a plaintiff in financing a §1983 action on behalf of groups such as teachers, employees of public agencies, individuals holding licenses from governmental entities, or groups seeking privileges at public facilities.

Almost all natural persons, corporate entities and associations are proper §1983 defendants. Since the United States Supreme Court's ruling in *Mo-*

nell v. Department of Social Services, 436 U.S. 658 (1978), cities, counties and other local government entities are also potential defendants in many circumstances. Despite this extension, states and their agencies have not yet been construed as "persons" suable *directly* under §1983, the Eleventh Amendment being held to bar such suits. *Alabama v. Pugh*, 438 U.S. 781 (1978); *Quern v. Jordan*, 440 U.S. 332 (1979). However, where an individual or class has been denied constitutional or federal statutory rights by a state or its agencies, the state officials involved may be suable in their *individual* capacities under §1983.

Pendent Jurisdiction

State or federal claims for which jurisdiction is not otherwise proper under §1983 and 28 U.S.C. §1343(3) may be joined with a proper §1983 claim under the doctrine of "pendent jurisdiction." Pendent jurisdiction is discretionary with the federal district court, and may be exercised by the court without regard to the plaintiff's success or failure on his §1983 claim. For example, in the Southern District of Alabama, pendent jurisdiction is liberally asserted, but pendent claims are often dismissed if the underlying federal claim is dismissed prior to trial. Liberal exercise of pendent jurisdiction is generally favorable to both plaintiff and defend-

ant in a §1983 action since all facets of the case can then be disposed of in a single proceeding.

Selecting the Forum

State courts may exercise concurrent jurisdiction over §1983 claims. Where §1983 claims are submitted to and heard by state courts, relevant §1983 substantive law must be applied. Though §1983 plaintiffs rarely select Alabama state courts as their forums, serious consideration should be given by a §1983 plaintiff to the selection of state courts where pendent party defendants are present against whom no viable §1983 action exists. By instituting the action in state court, the plaintiff can save the time and expense of maintaining two separate actions. An additional consideration when selecting the forum is the test for sufficiency of evidence which the court will apply. As a procedural matter, the test applied will be determined by the forum selected. Hence, a §1983 plaintiff pursuing a pendent state claim in federal court will be denied Alabama's liberal "scintilla rule" and will be required to come forth with more than a "scintilla" of evidence in support of his position to take his case to the jury. *Walker v. American Motorists Ins. Co.*, 529 F.2d 1163 (5th Cir. 1976); *Boeing Co. v. Shipman*, 411 F.2d 365 (5th Cir. 1969).



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John T. Mooresmith is a member of the Mobile law firm of Brown, Hudgens, Richardson, Whitfield and Gillion. He received a B.A. degree from Huntingdon College and J.D. degree from the University of Alabama School of Law in 1972.

Where the plaintiff originally institutes his action in state court under §1983, however, the defendant has the choice of defending in the state court or removing the action to the federal district court for the district and division embracing the place where such state action is pending. This results from 28 U.S.C. §1441(b) which provides that "any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removed without regard to the citizenship or residence of the parties."

Federal Venue and Procedural Rules

An action under §1983 may be brought only (1) in the jurisdictional district where all of the defendants reside; (2) the district in which the claim arose; or (3) where the defendants reside in different districts of Alabama, in any of those districts. Under 28 U.S.C. §1391(c), a corporation may be sued in any district in which it is incorporated, is licensed to do business, or is doing business. Of course, just as in other federal actions, the district court may transfer the action to any other district or division where it may have originally been brought for the convenience of the parties and witnesses, if such a transfer would be in the interest of justice under 28 U.S.C. §1404(a). Federal provisions relating to venue are very important in selecting a forum. For example, in the case where a resident of Lauderdale County has a potential assault claim against an officer of the City of Florence, the injured party would, under *Ala. Code* §6-3-2 (1975) be limited to bringing his action in Lauderdale County if he chose to proceed in state court. If, however, he chose to bring the action in federal court under §1983, he would be able to file the action within the Northern District of Alabama, providing him an opportunity to have his case heard outside of Lauderdale County by a jury selected from outside the boundaries of that county.

As stated previously, the Federal Rules of Civil Procedure and Appellate

Procedure govern the trial and appeal of §1983 claims in the federal district courts. 28 U.S.C. §1257 provides an avenue for review of state court decisions under §1983 by the United States Supreme Court through appeal and certiorari. In these instances, the procedural rules of the United States Supreme Court apply.

Relief

A §1983 plaintiff may seek declaratory or injunctive relief, as well as damages, both compensatory and punitive. In an action against a state, its officials or its agencies, however, a §1983 plaintiff must first overcome the hurdle of governmental immunity afforded by the Eleventh Amendment to the United States Constitution. An excellent discussion of the immunity afforded under the Eleventh Amendment may be found in the dissenting opinion of Justice Powell in *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1982). In Alabama, a §1983 plaintiff faces the additional hurdle of Article I, §15, of the *Constitution of Alabama of 1901*, which provides that the State of Alabama shall never be made a defendant in any court of law or equity.

In an effort to avoid the bar presented by the Eleventh Amendment, plaintiffs have frequently named as defendants the individual public officials, members of a board, or other such persons. As discussed earlier, public officials or board members in their individual capacities may be subject to injunctive relief, and, depending upon the circumstances, answerable in damages. Even in circumstances where the public official taking the challenged action is shielded by Eleventh Amendment immunity, a §1983 action may still lie against private parties who conspired or acted in concert with the immune official. *Dennis v. Sparks*, 449 U.S. 24 (1980).

The United States Supreme Court has recognized that some degree of immunity, absolute or qualified, is necessary for public officials to enable them to make decisions when they are needed or to implement decisions when they are made. *Scheuer v. Rhodes*, 416 U.S. 232 (1974). In determining the extent of immunity which should be ac-

arded a public official, the United States Supreme Court has refused to allow immunity from the imposition of damages under §1983 where the defendant knew or should have known that the action taken within his sphere of official responsibility would violate a person's Constitutional rights or where the defendant took the action with the malicious intention to cause deprivation of Constitutional rights or other injury to the person. *Wood v. Strickland*, 420 U.S. 308 (1975). This standard, however, does not permit liability to be placed upon a public official on the basis of respondent superior or vicarious liability. *Thompson v. Bass*, 616 F.2d 1259 (5th Cir. 1980).

In many instances, the federal courts will look to state law to determine allowable elements of damages. Compensatory damages claimed in §1983 actions may be either special or general. In many §1983 actions, however, the plaintiff will not be able to prove special or general damages even though there may have been a violation of constitutional or statutory rights, leaving only nominal damages to be awarded. In these cases, it may be possible for a §1983 plaintiff to be awarded punitive damages without actual loss and even despite local law to the contrary. *McCulloch v. Glasgow*, 620 F.2d 47 (5th Cir. 1980). The determination of whether punitive damages will be awarded depends in large part upon the specific conduct of the defendant and the potential deterrent effect of the imposition of punitive damages. In the case of *Silver v. Cormier*, 529 F.2d 161 (10th Cir. 1976), the Tenth Circuit Court of Appeals upheld an award of punitive damages against an urban renewal official who threatened to withhold legally required payments if the plaintiff sought legal redress upon another matter.

In the Eleventh Circuit, §1983 actions survive the death of either the plaintiff or defendant if that would be the law or result under the applicable state law. Since Alabama has no survival statute, an action brought under §1983 arising out of the death of an individual would naturally have to be brought under the Alabama Wrongful Death Statute with its corresponding damage limitation.

Relief of any type, however, may be unavailable for the §1983 plaintiff who has delayed too long in bringing an action. Since §1983 does not contain a limitation period itself, federal courts look to and apply the appropriate limitation period under state law. *Rubin v. O'Koren*, 644 F.2d 1023 (5th Cir. 1981).

Attorney's Fees

Certainly of interest to plaintiff's counsel is the Civil Rights Attorney's Fees Awards Act of 1976, an amendment to 42 U.S.C. §1983, which authorizes the court to award attorney's fees in §1983 cases in certain circumstances. The Act provides that in "any action or proceeding to enforce Section 1983 and any other civil rights statute the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." This Act applies not only to actions brought in federal court, but also to actions brought in state courts. *Maine v. Thiboutot*, 448 U.S. 1 (1980).

Although the Act speaks of "the prevailing party" so as to give an illusion of equal treatment to both the plaintiff and defendant, the standards for awards of attorney's fees under 42 U.S.C. §1988 are very different for a prevailing plaintiff and a prevailing defendant. On the one hand, a prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968). On the other hand, a finding by the court that the plaintiff's action was frivolous, unreasonable or without foundation is required before the court, in its discretion, may award an attorney's fee to a prevailing defendant. *Christianburg Garment Co. v. EEOC*, 434 U.S. 412 (1978). This distinction protects the defendant from groundless litigation, but is still consistent with the purpose of §1983, which is to encourage the protection of constitutional and federal rights. Through this distinction, a plaintiff who has some reasonable basis for a §1983 claim is not penalized simply because his case is lost at trial.

The award of attorney's fees applies to work performed both at the trial level and at the appellate level. While

the amount of the fee is discretionary with the court, a number of factors are generally considered in determining what is reasonable. These factors include but are not limited to:

1. The time and labor required;
2. the novelty and difficulty of the case;
3. the skill required;
4. the customary fee;
5. whether or not the fee is fixed or contingent;
6. the time limitations involved;
7. the amount of money involved;
8. the nature and length of the professional relationship with the client;
9. the result obtained;
10. the experience, reputation and ability of the attorney;
11. the undesirability of the case; and
12. awards in similar cases.

Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974).

As a practice pointer, counsel for a §1983 plaintiff would be well advised to keep careful time records during the pendency of his client's action since

the trial court may require the attorney seeking fees under the Act to file an extensive work schedule with the relevant details set out in the event he prevails on the merits. *King v. Greenblatt*, 560 F.2d 1024 (1st Cir. 1977), cert. denied, 438 U.S. 916 (1978). In some cases, where a plaintiff has prevailed against a defendant on some but not all claims, courts have prorated or apportioned fees corresponding to the degree of the plaintiff's success on the various claims. Just as in any other federal litigation, costs are recoverable by the prevailing party in a §1983 action subject to the court's discretion.

Conclusion

The preceding overview was designed to give the general practitioner a working knowledge of §1983 actions — a roadmap to areas to be considered and explored in evaluating a client's potential claim. In this era of ever increasing government regulations and involvement in our day-to-day lives, §1983 can provide a sword as well as a shield against those who would exceed or abuse the public trust. □

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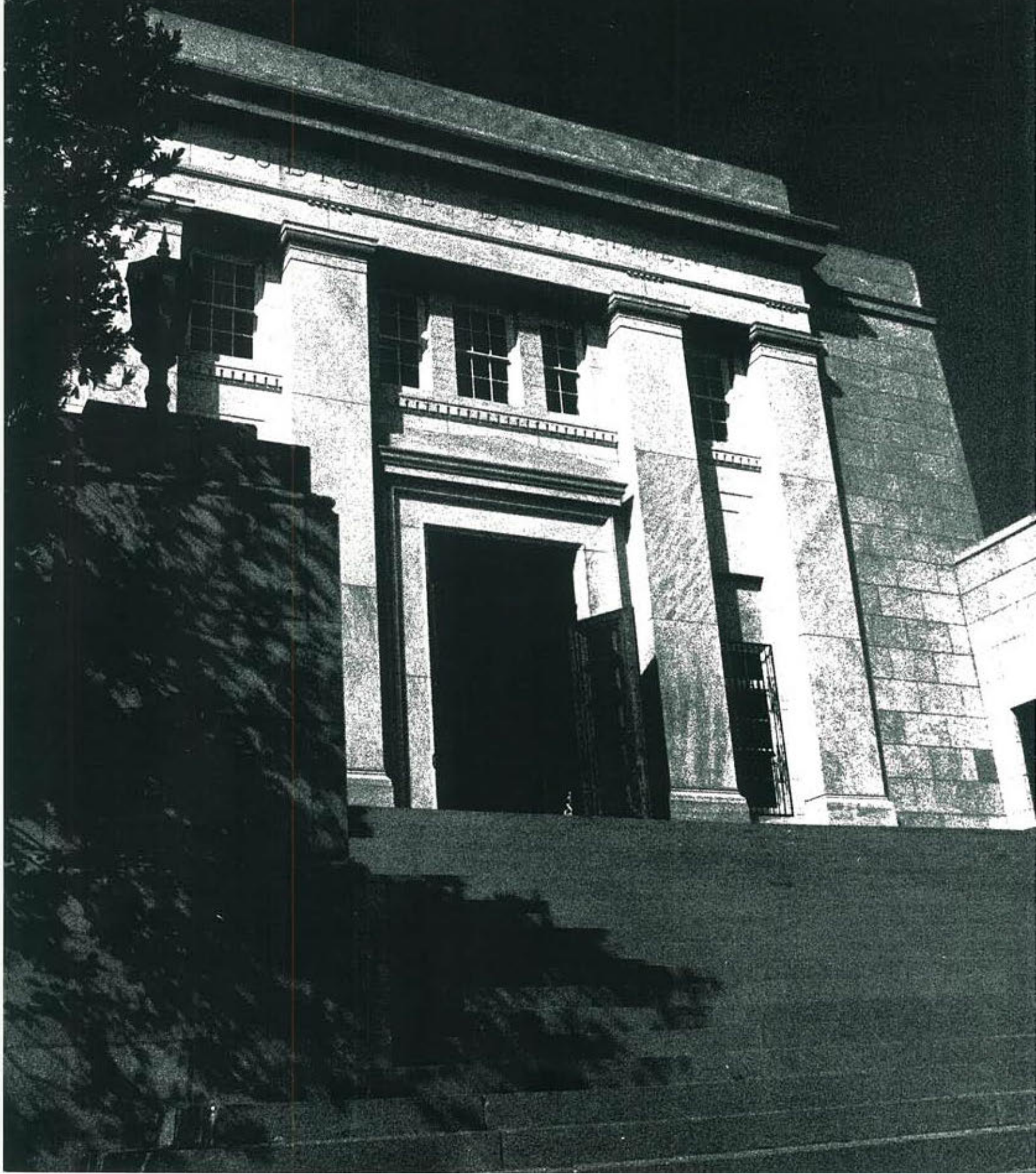
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Ala L



Recent Decisions

by John M. Milling, Jr.
and David B. Byrne, Jr.

Recent Decisions of the Alabama Court of Criminal Appeals

Miranda requires a knowing and intelligent waiver

Eddings v. State, 7 Div. 132 (October 4, 1983). The defendant was indicted for burglary in the third degree. He was granted youthful offender status and following a non-jury trial was found guilty.

On appeal, the appellate court was asked to examine whether the defendant had knowingly and intelligently waived his constitutional rights. Since confessions are prima facie involuntary, the court looked to see if the state proved that the defendant's waiver and confession were understandingly, knowingly and intelligently waived. *Garrett v. State*, 369 So.2d 833 (Ala. 1979); *Hines v. State*, 384 So.2d 1171 (Ala. Crim. App.), cert. denied, 384 So.2d 1184 (Ala. 1980).

Prior to trial, a hearing was held on the defendant's motion to suppress his statement. At the hearing, the director of Special Education for Talladega County testified that the defendant had last been tested on April 9th, 1981 and withdrew from school on March 23, 1982. His last testing revealed his IQ to be 49 which places him in the trainable mentally retarded classification. The court of appeals found that persons in this classification were only able to learn basic skills but would not be able to understand complex instructions.

One of the defendant's former teachers testified that the defendant could not read or write but could copy. How-

ever, the defendant was unable to understand what he was copying. In her opinion, the defendant would not understand the *Miranda* rights without further and significant explanation. Specifically, she testified that the defendant would not understand the words "waiver," "coercion" or "rights."

A divided Court of Criminal Appeals reversed. Judge Tyson, writing for the majority, reasoned: "In this case, it is clear from the record that the appellant could not understand his constitutional rights without adequate explanation . . . Since it is impossible for the appellant to knowingly, intelligently and voluntarily waive his constitutional rights without understanding their meaning or the consequences of the waiver of those rights, we must hold the appellant did not, in fact, knowingly, intelligently and voluntarily waive his constitutional rights. Therefore, we find that the appellant's confession was involuntarily and inadmissible at trial and his conviction must be reversed."

Misdemeanor . . . right to trial by jury

Day v. City of Mobile, 1 Div. 547 (decided October 4, 1983). Leslie Day was convicted in the Municipal Court of Mobile County of driving while intoxicated. The defendant gave notice of appeal and filed a written demand for trial by jury with the clerk of the circuit court. The City moved to strike the demand for trial by jury and this motion was granted.

The appeal concerned but one point of law, i.e., whether one who has been

found guilty of violating a municipal ordinance in city court has a right to trial by jury if he appeals the case to the district court. In an opinion authored by Judge Hubert Taylor, the Court of Criminal Appeals held that the defendant was entitled to a trial by jury.

The court of appeals reasoned "that §15-14-39, Ala. Code 1975, clearly states that 'all misdemeanor cases in the circuit court . . . shall be tried by the judge . . . except in cases where a trial by jury is demanded in writing by the defendant. Such written demand shall be filed . . . within 30 days after the defendant has appealed if the case is brought to the circuit court by appeal.' The language of this section does not limit its operation to those cases appealed from district court."

Laying the predicate for intoximeter results

Moore v. State, 8 Div. 840 (November 29, 1983). The single issue raised on this appeal was whether the trial court committed reversible error in allowing the results of a photoelectric intoximeter test into evidence. The defendant contended that the proper predicate was never laid for such evidence since it was never proven that the test was performed according to the methods approved by the State Board of Health. The officer who performed the test testified that, an hour after the collision, the defendant had a blood alcohol level of .14.

A unanimous Court of Criminal Appeals held that the record did not support a finding that the evidentiary foundation was laid for the admission of the toximeter test results. The court reasoned that there are *two methods* by which the results of a photoelectric intoximeter test can be placed into evidence. *Either* it must be shown that the test was administered in conformity with the statute, or the traditional evidentiary foundation used to admit results from scientific tests must be laid. *Whetstone v. State*, 407 So.2d, 854 (Ala. Crim. App. 1981).

Nowhere in the state trooper's testimony was the foundation laid to indi-

cate that he had conducted the test according to methods approved by the State Board of Health. A copy of the Board's rules and regulations governing the administration of the test was never offered into evidence even though the witness was licensed to run the intoximeter. Hence, the test was not shown to be performed in conformity with the requirements of the statute. Nor did the State establish the traditional, non-statutory foundation required for the introduction of scientific test results.

The court of appeals held that in order to establish a predicate for admitting test results without reliance on the statute, there should be evidence that:

- (1) The theory underlying the photoelectric intoximeter test is valid and generally accepted as such;
- (2) the intoximeter is a reliable instrument and generally accepted as such;
- (3) the intoximeter test was administered by a qualified individual who could properly conduct the test and interpret the results; and
- (4) the instrument used in conducting the test was in good working condition and the test was conducted in such a manner as to secure accurate results.

Recent Decisions of the Supreme Court of Alabama—Civil

Animals . . .

section 3-1-13, *Ala. Code* 1975, unconstitutional

Humane Society of Marshall County v. Adams, 17 ABR 4202 (September 30, 1983). In this opinion, the Supreme Court struck down Alabama's 1961 Animal Neglect Statute on due process grounds. Section 3-1-13, *supra*, authorized Humane Society officers to seize any animal which is sick or disabled due to neglect or cruel treatment. Although recognizing that the State of Alabama has a legitimate interest in seeing that animals are treated hu-

manely, the legislation must meet procedural due process requirements. In this case, the cattle were seized and the only "notice" the owner received was of the seizure and the sale. The statute provided no opportunity for the owner to contest the seizure or the sale of the animals.

Attorney's fees . . . reasonableness determined

Peebles v. Miley, 17 ABR 4242 (September 30, 1983). In a case of importance to the Bar, the Supreme Court adopted the criteria set forth in American Bar Association Disciplinary Rule 2-106, Section (B), as additional yardsticks to be used in determining the reasonableness of counsel fees. The Supreme Court noted that Alabama previously had seven criteria to consider but that it had been over thirty years since the criteria were last examined. The five additional criteria set forth in Rule 2-106, Section (B), *supra*, are:

- (1) Whether a fee is fixed or contingent.
- (2) The nature and length of a professional relationship.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The likelihood that a particular employment may preclude other employment.
- (5) The time limitations imposed by the client or by circumstances.

Civil procedure . . . no election of remedies required

Adams v. Warwick Development Co., 18 ABR 39 (October 7, 1983). The purchasers of a home sued the contractor/seller seeking rescission and cancellation of the sale and money damages. On motion of the contractor/seller, the trial judge required the purchasers to elect their remedy prior to submission of the case to the trier of fact. The Supreme Court stated that the trial judge erred in requiring the election

and noted that recent Alabama cases interpreting Rule 8(a), ARCP, clearly evidence an erosion of the former practice of requiring an election as between alternative remedies or theories of recovery. The plaintiff, therefore, is entitled to have the trier of fact pass on two alternative causes of action and if the proof sustains either, the plaintiff can recover damages. Of course, the plaintiff is not entitled to concurrent recoveries on inconsistent theories (rescission and damages for the breach).

Dead man's statute . . . withstands constitutional attack

Beddingfield v. Central Bank of Alabama, Supreme Court No. 82-842 (November 4, 1983). Noting that the constitutionality of the Dead Man's Statute is a novel one for the court, the Supreme Court applying the "rational basis" test, found that the statute furthers a proper governmental purpose and that the provisions of the statute are rationally related to that purpose. The underlying policy of the statute is to prevent testimony by living witnesses as to transactions with a person who is no longer alive to confront the witness nor to contradict his testimony. The Supreme Court took note of the fact that Rule 601 of the Federal Rules of Evidence completely rejects the principle of dead man statutes, as does Rule 601 of the Uniform Rules of Evidence, which has been adopted by at least twenty jurisdictions. Nevertheless, it is not the function of the court to determine the wisdom of specific legislation.

Torts . . . trade secrets doctrine recognized

Drill Parts and Service Co. v. Joy Manufacturing Co., 17 ABR 3780 (September 23, 1983). In a case of first impression, the Supreme Court recognized the Trade Secrets Doctrine in

Alabama, *Restatement of Torts*, Section 757 (1939). The *Restatement, supra*, provides that one who discloses or uses another's trade secret without privilege is liable if (a) he discovered the secret by improper means, or (b) his disclosure or use constitutes a breach of confidence, or (c) he learned the secret from a third person with notice that it was a secret and that the third person discovered it by improper means or that the third person's disclosure of it was a breach of his duty to the owner, or (d) he learned the secret with notice that it was a secret and that its disclosure was made to him by mistake.

Comments to the *Restatement* note that the exact definition of a trade secret is not possible. Furthermore, a determination of what constitutes a trade secret is a question of fact for the court. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

Workmen's compensation . . . negligent inspection

Armstrong v. Aetna Insurance Co., 17 ABR 4017 (September 30, 1983). This case raises the novel question in Alabama of whether a worker's compensation carrier can be held liable on a negligent inspection theory for injuries incurred by an employee of an independent contractor who was not covered by the worker's compensation policy. The Supreme Court answered this question in the negative, stating that in making the safety inspection, the carrier does not assume the insured employer's duty as a premises owner to employees of the independent contractor.

When a worker's compensation carrier inspects its insured's workplace, it does so to promote its interest in underwriting, rating, and loss prevention with respect to the policy of insurance. Therefore, the duty of care to third persons is limited to those persons covered by the worker's compensation insurance policy.

Recent Decisions of the Supreme Court of Alabama—Criminal

Felony possession of marijuana . . . not a crime of moral turpitude for purposes of impeachment

Ex parte McIntosh, 17 ABR 3828 (September 23, 1983). The Supreme Court of Alabama granted the writ of certiorari to determine if the defendant's prior conviction for felony possession of marijuana is a conviction of a crime involving moral turpitude for purposes of impeachment. Justice Jones, writing for the majority, held that such a conviction is not a crime involving moral turpitude, and, thus is admissible into evidence for impeachment purposes.

As a general rule, a defendant who takes the stand in his own behalf during a criminal trial can be questioned on cross-examination about prior convictions for crimes involving moral turpitude. *Sims v. State*, 51 Ala. App. 183, 191, 283 So.2d 635, 642 (1973). In this case the Supreme Court undertook a close analysis of the moral turpitude impeachment rule and invoked a balancing test in light of the high probability of prejudice against a defendant. Thus, a defendant wishing to testify in his own behalf faces the dilemma of whether to testify and run the risk of greatly prejudicing his defense by introduction of prior convictions or whether to refrain from testifying and damaging his defense by not telling his side of the story.

In reaching its conclusion, the majority of the court was unable to see how felony possession of marijuana for personal use differed from misdemeanor possession for personal use as an "inducement of a witness's future trustworthiness."

Mental competency . . . constitutional right to jury trial

Ex parte LaFlore, 18 ABR 209 (November 10, 1983). The defendant was

charged with theft of property in the first degree in violation of §13A-8-3, *Ala. Code* 1975. At arraignment she pled not guilty and not guilty by reason of insanity. Later the defendant's attorneys filed motions requesting a hearing to determine mental competency to stand trial. A licensed psychiatrist and a licensed psychologist both testified that the defendant was unable to cooperate with counsel and assist in the preparation of her defense. One of the defendant's attorneys testified that she did not understand the nature of the charges pending against her and was unable to assist in the preparation of her defense.

The trial judge initially entered an order finding the defendant competent to stand trial. Upon reconsideration of this order, the judge ordered an independent examination of the defendant and scheduled a jury trial to resolve the issue. The jury trial did not take place because of the issuance of the writ of mandamus by the Alabama Court of Criminal Appeals.

The defendant asserted that the circuit court has inherent authority to order a jury trial to determine competency and that, absent an abuse of discretion, a circuit court's order granting such a trial could not be reversed. Alternatively, the defendant argued that §15-16-21 is violative of the equal protection clause of the U.S. Constitution because it arbitrarily denies the defendant who is not confined to jail the benefit of a jury trial to determine his competence to stand trial while granting a jury trial to confined defendants.

Justice Almon, writing for the majority, gives a scholarly overview of the common-law determination of competence to stand trial. Justice Almon's review spans from 1821 in the opinion of *Rex v. Little*, Russ. and Ry. 430, 168 Eng. Rep. 881 (1821) to the present. The court concluded that the right to jury trial on the issue of competence is preserved to the citizens of Alabama by § 11 of the Constitution of 1901.

In its ruling the Supreme Court held that the defendant was constitutionally entitled to a jury trial on the issue of her mental competency to stand trial. The statutes in Article II, Chapter 16, Title 15, *Ala. Code* 1975,

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are to be considered modified to the extent that they are in conflict with the constitutional right to trial by jury.

Recent Decisions of the Supreme Court of the United States—Criminal

The Reach of RICO

U.S. v. Russello, 52 L.W. 1069 (November 8, 1983). Several federal circuits have split on the issue of whether the forfeiture provisions of the Racketeer Influenced and Corrupt Organizations (RICO) statute should be interpreted to authorize the forfeiture of illegal profits and proceeds of a racketeering enterprise. The statute further provides that assets, including buildings, bank accounts, equipment, etc., may be forfeited to the government where the government can show that

the business organization, though seemingly lawful, is funding or continues to exist because of illegal activities. The split in the decisions of the circuit courts had arisen over how far the courts will go in defining "any interest" as it is set forth in 18 USC §1963(a)(2) which provides for forfeiture of "any interest in" an illegal racketeering enterprise.

The Supreme Court of the United States unanimously concluded that insurance proceeds received by a defendant as a result of his participation in an arson scheme are forfeitable under 18 USC §1963(a)(1) as an "interest" acquired in violation of the statute. Justice Blackmun explained that the clear intent of Congress in enacting the RICO Statute was to eradicate organized crime through an attack on its sources of economic power. That purpose would be frustrated by exempting profits and proceeds from forfeiture provisions. In short, the Supreme Court's decision operates to extend the reach of RICO to permit profits and proceeds to be tapped. □



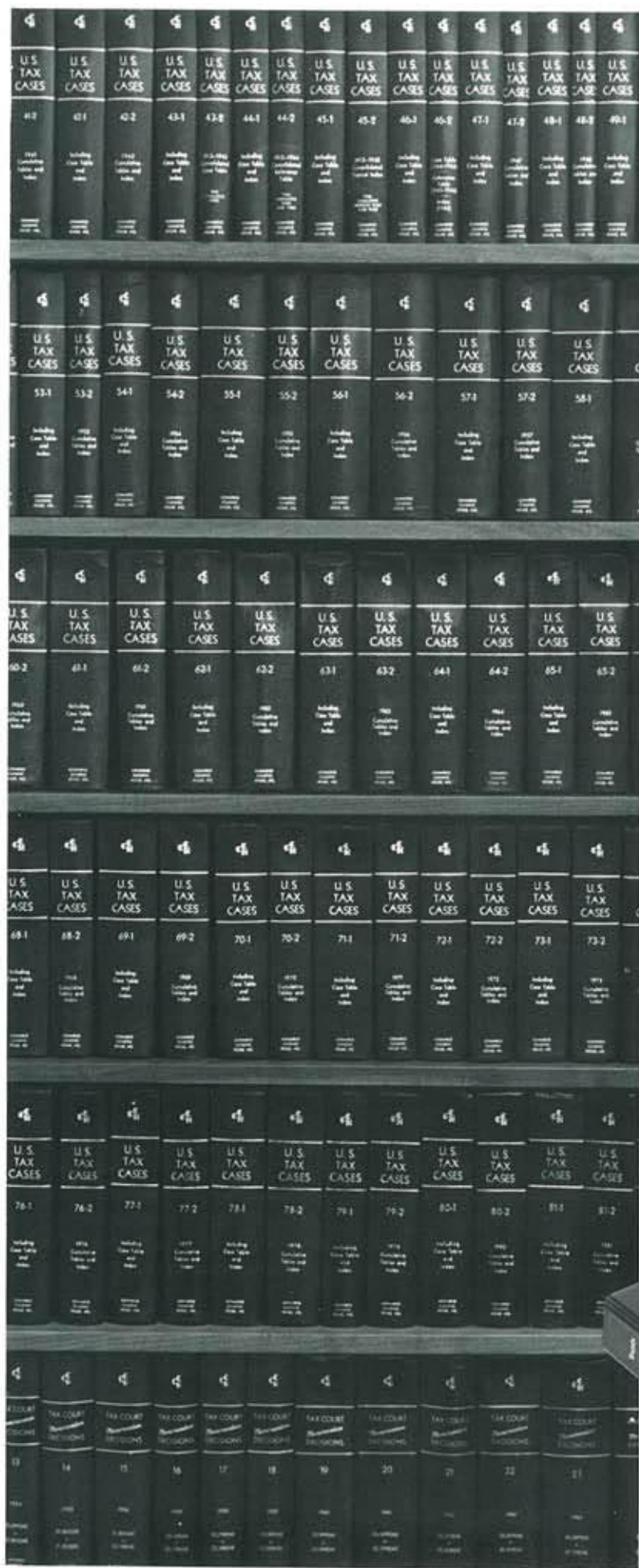
John M. Milling, Jr., a member of the Montgomery law firm of Hill, Hill, Carter, Franco, Cole & Black, received his B.S. degree from Spring Hill College and J.D. from the University of Alabama. As a co-author of significant recent decisions, he covers the civil portion.



David B. Byrne, Jr., a member of the Montgomery law firm of Robison & Belser, received his B.S. and LL.B. degrees from the University of Alabama. He covers the criminal law portion of significant recent decisions.

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About Members Among Firms

About Members

Vanzetta Penn Durant, of Montgomery, recently served as a faculty consultant at a conference hosted by the Washington State Legislature, entitled *The Economics of Child Support, Paternity and Custody: A Problem Solving Conference*. The conference was held in Olympia, Washington October 10-12, 1983. Mrs. Durant spoke on the subject of constitutional issues in the determination of paternity.

After serving for almost three years as Counsel on the U.S. Senate Committee on the Judiciary Subcommittee on Security and Terrorism, **Bert W. Milling, Jr.**, has returned to Mobile where he has accepted the position of Assistant U.S. Attorney for the Southern District.

The following members of the Alabama State Bar were inducted into the American College of Trial Lawyers at its July meeting in Atlanta: **Edgar M. Elliott** (Birmingham), **William F. Gardner** (Birmingham), **Richard Bounds** (Mobile), **Robert H. Harris** (Decatur) and **Sam A. LeMaistre** (Eufaula).

Frank O. Burge has been named Lawyer of the Year by the Birmingham Legal Secretaries Association. He is with the law firm Burge & Florie. Also, **Donald N. Spurrier**, a partner in the law firm of Williams, Spurrier, Rice, Henderson & Grace, has been named Boss of the Year by the Huntsville Legal Secretaries Association.

Louis B. Feld, who has served as a visiting Associate Professor of Law at the University of Alabama School of Law for the past two years, has returned to Birmingham to enter the private practice of law. He will remain as an adjunct Professor of Law teaching in the University of Ala-

bama School of Law's LL.M. (Taxation) program in Birmingham.

In November, **N. Gunter Guy, Jr.**, was appointed as city attorney for Montgomery, Alabama. Previously, he was an assistant district attorney for Montgomery County.

Among Firms

Caddell, Shanks, Harris, Moores and Murphree takes pleasure in announcing that **Barnes F. Lovelace, Jr.**, has become associated with the firm. Offices are located at 230 East Moulton Street, Decatur, Alabama 35601.

The firm of **Sirote, Peritt, Friend, Friedman, Held and Apolinsky** announces the relocation of their Huntsville office to #1 Washington Square, Huntsville, Alabama 35801. **D. Scott McLain** is a new associate of the firm and **Joe H. Ritch** will serve as managing attorney in the Huntsville office. The firm, also, is pleased to announce that **Judith F. Todd, John R. Chiles, David J. Middlebrooks, Richard E. Neal, Joan C. Ragsdale, Carol M. Gray, and Dale B. Stone** have joined the firm as associates in the Birmingham office.

The law firm of **Eyster, Eyster, Key and Tubb** takes pleasure in announcing that **Larry C. Weaver** and **Nicholas B. Roth**, formerly associates with the firm, have become partners in the firm. The new name of the firm is **Eyster, Key, Tubb, Weaver and Roth**.

The law firm of **Bryant, Edwards, McNeill & Poole**, with offices in Selma and Demopolis, announces that **Frank C. Wilson III** has become an associate in the firm and that **Allen B. Edwards, Jr.**,

has accepted a position in private industry and will remain of counsel with the law firm on an interim basis. The firm will operate under the name of **Bryant, McNeill & Poole**.

Robert M. Hill, Jr., and **Margaret Helen Young** are pleased to announce the formation of a partnership for the general practice of law under the firm name of **Hill & Young**. Offices are located at 215 West Alabama Street, Florence, Alabama 35603. Phone 767-0700.

Corley, Moncus, Bynum and De Buys takes pleasure in announcing that **Steve R. Forehand, Nancye Scott Alley** and **William Lewis Garrison, Jr.**, have become associated with the firm located at 2100 Avenue South, Birmingham, Alabama.

Sam W. Irby, Attorney at Law, announces that **W. Kenneth Heard** has become associated with him in the general practice of law. Offices are at 317 Magnolia Avenue, Fairhope, Alabama.

The law firm of **Carnes and Carnes** is pleased to announce that **Michael R. Wansley** has become an associate of the firm. Offices are located at 140 South 9th Street, Gadsden, Alabama 35901.

The law firm of **Lyons, Pipes and Cook** takes pleasure in announcing that **Braxton C. Counts III, J. Wallace Tutt III, and James E. Robertson, Jr.**, have become associated with the firm. Offices are located at 2 North Royal Street, Mobile, Alabama.

Johnstone, Adams, May, Howard & Hill, 8th Floor, Merchants National Bank Building Annex, Mobile, Alabama, is pleased to announce that **Charles R. Mixon, Jr.**, has become a member of the firm; **Richard P. Petermann, Jr.**, is now licensed to practice in Florida; and **M. Margaret Brien** and **W. Alexander Gray, Jr.**, have become associates of the firm.

Leonard Wertheimer III and **Louis B. Feld** are pleased to an-

nounce the formation of a general partnership, **Wertheimer and Feld**, for the practice of law with offices at 1100 Bank for Savings Building, Birmingham, Alabama 35203. Phone 328-3355.

Margaret G. Thomas is pleased to announce the opening of her office for the general practice of law at 302 Magnolia Avenue, Fairhope, Alabama 36532. Phone 928-5887.

The firm of **Stanard and Mills** is pleased to announce that **Stephen Paul Coleman** is now an associate with the firm. Offices are located at 7th Floor, SouthTrust Bank Building, Mobile, Alabama.

W. Borden Strickland, Attorney at Law, announces the relocation of his office to the offices of **Chase R. Laurendine** and **George A. Tonsmeire** to practice law under the name of **Strickland, Laurendine and Tonsmeire**. Offices are located at 800 Hillcrest Road, P.O. Box 16748, Mobile, Alabama 36616. Phone 344-9987.

Theodore L. Hall wishes to announce that he is now engaged in the general practice of law with offices at 210 One Office Park, Mobile, Alabama 36609. Phone 343-8363.

George H. Wakefield, Jr., is pleased to announce that **Margaret L. Givhan** has joined him as an associate in the general practice of law with offices located in Suite 210, Bell Building, Montgomery, Alabama 36104. Phone 834-1616.

The law firm of **Burke & Mullis** is pleased to announce that **Howard G. Hawk** has become an associate with the firm. Offices are located at 120 South Main Street, Arab, Alabama 35016. Phone 586-4152.

The law firm of **Bolt, Isom, Jackson & Bailey** takes pleasure in announcing that **W. Kirk Davenport** has become a member of the firm and **Jeffrey M. Gray** has become associated with the firm. Offices are located at 822 Leighton Avenue, Anniston, Alabama 36202. Phone 237-4641.

Henry F. Lee III and **Charles W. Fleming, Jr.**, announce the formation of a partnership for the general practice of law under the firm name of **Lee and Fleming**. Offices are located at The Chapman Building, 500 South Commerce Street, P.O. Box 129, Geneva, Alabama 36340. Phone 684-6406 or 684-6260.

The law firm of **Engel and Smith** takes pleasure in announcing that **Alex W. Zoghby** has become associated with the firm. Offices are located at Suite 910 Van Antwerp Building, P.O. Box 1045, Mobile, Alabama 36633.

J. Scott Boudreaux, Harwell G. Davis III, and **Stephen G. Mahon**, former deputy district attorneys for the Tenth Judicial Circuit, are pleased to announce the formation of a partnership for the general practice of law under the firm name of **Boudreaux, Davis and Mahon** with offices at 1607 Twenty-First Street South, Birmingham, Alabama 35205. Phone 933-2760.

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Young Lawyer's Section

(Continued from page 19)

numerous discussions about this seminar, and I am very excited about the topics which will be discussed. I won't take a lot of space in this issue to outline the seminar for you, but just let me encourage each of you to mark the March 30th seminar as one of the best this year and encourage you to make plans to attend it. It will be a "nuts and bolts" seminar for the young lawyers.

Plans Being Made for Annual Bar Meeting in Mobile

The Mobile young lawyers are busy planning the social activities for the young lawyers who will be attending the



LEGISLATIVE WRAP-UP

(Continued from page 33)

Ryan deGraffenried, Tuscaloosa; Charles Langford, Montgomery; Ted Little, Auburn; Bill Menton, Irvington; Mac Parsons, Hueytown; Hank Sanders, Selma; Jim Smith, Huntsville; and Francis Strong, Demopolis.

House Judiciary: Jim Campbell, chairman, Anniston; Michael Onderdonk, vice chairman, Chatom; Spencer Bachus, Birmingham; Mike Box, Satsuma; Charles Britnell, Russellville; Morris Brooks, Huntsville; Ken Kvalheim, Mobile; Richard Laird, Roanoke; Beth Marietta, Mobile; Nat Mathus, Slocomb; Max Newman, Millport; Tim Nicholson, Jasper; Phil Pool, Moundville; and John Tanner, Pelham. □



Robert L. McCurley, Jr., director of the Alabama Law Institute, received his B.S. and LL.B. degrees from the University of Alabama. In this regular column, Mr. McCurley will keep us updated on legislation of interest and importance to Alabama attorneys.

annual meeting. As you all remember, the last convention held in Mobile was one of the nicest in recent times and the hospitality extended by the members of the Mobile Bar Association was without equal. John Donald, of the Executive Committee, is the liaison to the Mobile Young Lawyers for this event.

The various Young Lawyers Section subcommittees which are responsible for the different seminars are always anxious to have speakers on topics which are pertinent to and interesting to the lawyers in attendance. Therefore, if you have a suggestion for a seminar topic, please just drop me a short letter indicating the topic area and, if possible, a suggested speaker. In closing, just let me say that all of the various Young Lawyer affiliates in Alabama are just as busy as your Executive Committee, and they are to be commended for their energy and fine projects. □

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Committees Take Charge

The Alabama State Bar building has been buzzing with activity. Bar committees and task forces have been diligently working in Montgomery and at other meeting places across the state, carrying out the varied and numerous purposes for which they were created. Committees and task forces have been charged to help research and remedy concerns facing the legal profession in Alabama, to evaluate and expand services to the public, to meet the needs of our association and the particular needs of its members, to deal with the concerns of the courts and judicial system, and yet more. Following is a brief synopsis of what some of these committees and task forces have set out to accomplish thus far:

The Committee on the Future of the Profession, chaired by Dr. Richard Thigpen, has recommended to the Board of Bar Commissioners that a demographic survey of the membership be conducted regularly, and that the information collected be disseminated and utilized. Chairman Ernest Potter and the members of the **Task Force to Evaluate the Lawyer Explosion** have reviewed data on Alabama law school applications, admissions, and graduates over the last five years. The task force has also heard reports from the placement directors of two Alabama law schools regarding the employment of new graduates over the same five year period. Informal polls of the local bar associations to which task force members belong are seeking opinions on the adequacy of attorneys' workloads, local supplies of lawyers, and plans for hiring new lawyers within the next three years. Gordon Tanner, chairman of the **Committee on Legal Education and Admission to the Bar**, has formed subcommittees on law schools, internships, bar admission rules, and a law professor-

practitioner exchange program. The subcommittees are formulating plans and recommendations in anticipation of a January meeting of the committee as a whole.

The Committee on Lawyer Public Relations, Information and Media Relations, under the chairmanship of Jim Hart, has set as its goals the establishment of a speakers bureau, improved dissemination of attorney-client brochures, media coverage of Bar meetings, and improved relations with the Alabama Press and Broadcasters Associations. Wade Morton, Jr., chairman of the **Task Force to Evaluate the Place of Lawyer Advertising and Solicitation**, has appointed subcommittees on the status of laws pertaining to advertising and solicitation, correlation of Alabama rules with the ABA's model code and rules of other states, liaison with other Bar committees, and drafting of possible revisions of the Alabama Code of Professional Responsibility. Subcommittee reports have been received and recommendations are being formulated. **The Task Force to Study Lawyer**

Political Action Committees (PAC) has been divided into four subcommittees by its chairman, Richard Gill. They are to address questions of the legality of state bar PAC's, the scope of permissible activities, the desirability of an Alabama State Bar PAC, and possible organization, functioning and governance of such a committee.

The Insurance Programs Committee has evaluated numerous plans over the last few months. New major medical and professional liability programs have been recommended to the Board of Bar Commissioners and subsequently endorsed. It is the belief of the committee and its chairman, J. Mason Davis, that these new programs will enhance coverage at competitive prices.

The Alabama State Bar Foundation Committee, chaired by Drew Redden, is studying the Bar's need for a new tax exempt entity to provide a mechanism for using donations to fund such projects as teaching institutes, scholarships, public service programs, and, possibly, a client security fund. A preliminary draft of articles of incor-



The Committee on the Future of the Profession met at the University of Alabama Law Center in November. Pictured (L to R) are Bill Howell, David Caughen, Billy Cook, Richard Thigpen, Jack Drake, Penny Parker (Career Planning and Placement Director of the University of Alabama Law School), Harold Speake and Jim Kierce.

poration has been circulated to the members of the committee and refinements of it were made at the committee's December 9 meeting. The establishment of a client security fund has been recommended to the Board of Bar Commissioners by the task force appointed to study the matter. The Board has approved the concept and authorized the **Task Force on a Client Security Fund for the Alabama State Bar** to draft proposed legislation to be reviewed at the Board's January 20th meeting. Chairman James S. Ward and task force members have also drafted proposed rules for such a fund and are in the process of finalizing them.

Confidential assistance will be available to Alabama attorneys struggling with alcohol and other drugs if the funding can be made available. Implementation of a telephone "hotline" program for information and referral has been recommended to the Board of Bar Commissioners by chairman Val McGee and the **Task Force on Lawyer Alcohol and Drug Abuse**. The Board approved the concept and forwarded the question of funding to the Finance Committee. Additionally, the task force is working with the Editorial Board of *The Alabama Lawyer* to develop an issue of the journal focused on the problem. **The Task Force on Disciplinary Functions**, chaired by Harry Gamble, Jr., has met and formulated an interim report to the President. Among its recommendations is the formation of a permanent standing committee to consider changes in the Code of Professional Responsibility and the Rules of Disciplinary Enforcement. It has also recommended that consideration be given to the establishment of a state-wide fee arbitration system, expansion of the disciplinary panels to include lawyers other than Bar Commissioners, and attention to the near fifty percent increase in caseload for the Center for Professional Responsibility over the last two years without a concomitant increase in staff.

The Task Force on Legal Services to the Poor, chaired by Hollis Geer, has developed a procedure for selecting the Bar's eight representatives to the Board of the Legal Services

Corporation of Alabama. The Board of Bar Commissioners has approved the procedure and potential applicants for the positions will find application information elsewhere in this issue. Chairman John C. Watkins has appointed two subgroups of the Committee on Correctional Institutions and Procedures. The subcommittee on Sentencing and Procedures is studying the issue of finality of sentences in Capital cases, inmate litigation, and sentencing policies. The subcommittee on Offender Treatment and Assistance is reviewing alternatives to incarceration, legal services and counseling needs of inmate families, and the possible role of the Alabama State Bar in the successful re-entry of inmates into society. In relation to the latter topic, the committee recently met with David Rothenberg, President of the Fortune Society, an inmate-self help organization. Mr. Rothenberg stressed that society has an obligation to see that convicted criminals do not become more antisocial, i.e. more adept criminals, as a result of incarceration. **The Indigent Defense Committee**, chaired by Dennis Balske, is studying a proposal by the State Comptroller to utilize part of the Fair Trial Tax Fund to offset the cost of administering the Fund. Other concerns include the for-



The Honorable Thomas S. Lawson, Sr., retired justice of the Supreme Court of Alabama, discusses objectives of the Task Force on Judicial Evaluation, Election and Selection at their first meeting in August. Justice Lawson serves as chairman of the task force.

mulation of guidelines for attorneys handling indigent defense cases, uniform vouchers, and standards for approval of expenses. Under the leadership of Larry Childs, the **Task Force on Citizenship Education** is considering projects on youth education, post-high school education, and media relations.

The Committee on Family Law is well on the way to establishing an Alabama State Bar section of the same name. Proposed by-laws have been adopted and chairman Sam Rumore has appointed subcommittees for proposed legislation, a committee report for *The Alabama Lawyer*, and a program for the 1984 Annual Meeting of the State Bar. Prospective charter members are presently being recruited. **The Bankruptcy Law Committee**, chaired by Richard Carmody, is working to establish an Alabama State Bar section on bankruptcy and commercial law. Prospective charter members have been recruited, a convention program is being planned, and at least one scholarly article will be contributed to *The Alabama Lawyer* in the near future.

Meeting Unjust Criticism of Bench and Courts is the concern of a committee chaired by Patrick Richardson. Information gathering sessions have been conducted with the trial judges of Jefferson and Mobile counties as well as with the state's appellate judges. It is anticipated that every judge in Alabama will be given the opportunity for input by way of a confidential questionnaire. Chairman Thomas S. Lawson has divided the **Task Force on Judicial Evaluation, Election and Selection** into two subcommittees. Ralph Knowles chairs a group that is considering possible modifications of Alabama's system of electing judges. Gene Tomlin's subcommittee is studying methods of evaluating judicial performance. **The Federal Bankruptcy Courts Liaison Committee**, chaired by George Finkbohner, is endeavoring to meet with each judge on the bankruptcy bench in Alabama to gather information on how the committee might help both the bench and the bar. Among the many areas of interest and concern for the **Federal**

Judiciary Liaison Committee are the differences between the local rules of the various district courts of the state, the lack of uniformity in admission procedures for lawyers who practice before district courts, the need for a procedure to handle conflicts between federal and state trial dockets, and the need for more seminars on federal practice. This committee is chaired by Bill Clark.

Charles Adair, chairman of the **Committee on Programs, Priorities and Long-Range Planning**, has assigned each committee member the task of reviewing the work of three committees and task forces of the bar. Each member is to report to the committee as a whole prior to the midyear meeting of the bar. By evaluating the work of these committees and task forces, this committee will serve as an agency to coordinate the state bar's activities, work with the Finance Committee to determine the financial resources available to fund the recommended programs, and develop a long range plan for the operation of the Alabama State Bar in the years to come. □



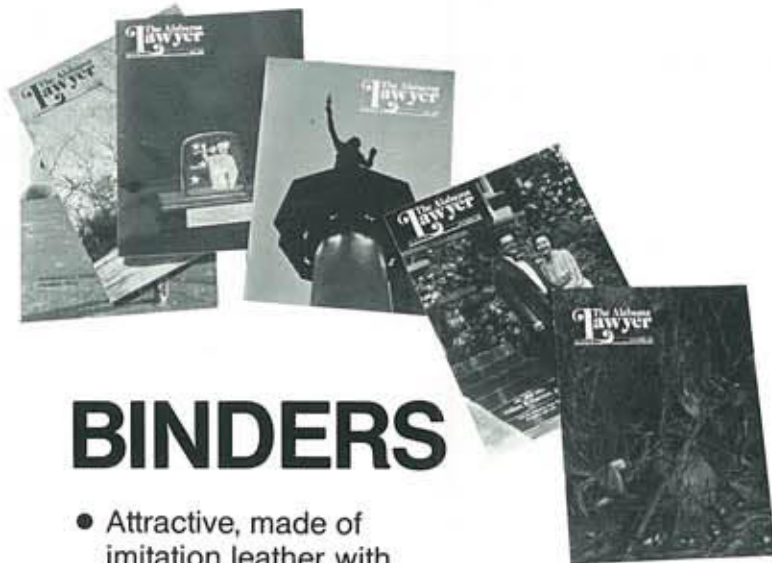
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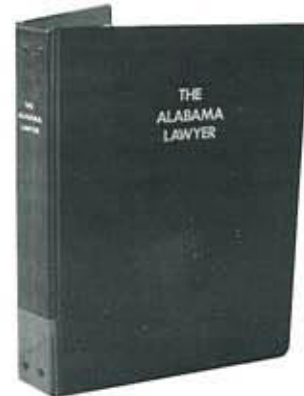
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Disciplinary Report

Suspension

Walter L. Davis, of Mobile, was suspended from the practice of law for a period of six months, effective December 19, 1983, for having violated DR 1-102(A)(4), DR 1-102(A)(6), DR 6-101(A), DR 7-101(A) (1), and DR 7-101(A) (2), by having accepted a fee from a client in an adoption matter but then having both failed to take the action legally necessary to accomplish the adoption and having failed to refund the legal fee to the client.

Public Censure

On December 2, 1983, Selma attorney **Bruce Carver Boynton** was publicly censured by the Disciplinary Board of the Alabama State Bar for several violations of the Code of Professional Responsibility arising from his representation of several Selma residents in an employment discrimination action. The Disciplinary Board found that Mr. Boynton had violated Disciplinary Rule 5-106(A) which prohibits a lawyer, who represents two or more clients, from making an aggregate settlement of the claims of or against his clients unless each client has been advised of the extent and nature of all claims involved in the proposed settlement, the total amount of the settlement, the participation of each person in the settlement, and has agreed to the settlement based upon being furnished all relevant information. The Board found that Mr. Boynton withheld detailed information from his clients and encouraged individual settlements among his clients without each client being aware of the participation of the other clients in the total settlement. The Board also found that Mr. Boynton had furnished misleading information to the Office of the General Counsel during the investigation into this matter and that he had been abrasive and unprofessional in his dealings with his clients, with these actions constituting violations of Disciplinary Rules 1-102(A)(4), 1-102(A)(5) and 1-102(A)(6) of the Code of Professional Responsibility.

Private Reprimands

On December 2, 1983, private reprimands were given before the Board of Bar Commissioners for the following violations:

- A lawyer was privately reprimanded for having violated DR 1-102(A)(4) by having given inconsistent testimony, first, at a court hearing and, second, at a hearing before the Disciplinary Board as to the same issue of fact and thus gave false testimony before the court, or in the alternative gave false testimony before the Disciplinary Board.
- A lawyer was privately reprimanded for violation of Disciplinary Rules 6-101(A) and 7-101(A)(1) for failing to file a garnishment for a client and for holding court costs paid to the attorney for the filing of the garnishment for several months. The lawyer was also reprimanded for refusing reasonable requests by the client for information regarding the case and for refusing to communicate with the client in a reasonable fashion.
- A lawyer was privately reprimanded for having violated DR 2-111(B)(2) by having failed to withdraw from a real estate breach of warranty case even though the client "requested that the litigation be dropped" after fire destroyed the subject property, and by having ultimately collected a substantial fee from the fire insurance proceeds that were paid to the client.
- A lawyer was privately reprimanded for having violated DR 1-102(A)(6), prohibiting conduct that adversely reflects on fitness to practice law, by having falsely told opposing counsel in a divorce case that the proceeds from the sale of the parties' home were not sufficient to pay off a debt that the husband owed to the wife's father.

Reinstatement

Mayer William Perloff was reinstated as an attorney authorized to practice law in the courts of Alabama by a panel of the Disciplinary Board of the Alabama State Bar effective December 2, 1983.

Transferred to Disability Inactive

Michael S. Sheier, of Birmingham, was transferred to disability inactive status by order of the Disciplinary Board, dated October 28, 1983, based upon a finding that he was incapacitated from continuing to practice law by reason of mental infirmity or illness.

General Counsel Opinions

William H. Morrow, Jr.

QUESTION:

"When a lawyer is precluded from accepting employment or must withdraw from employment because he knows or learns or it is obvious that he or a lawyer in his firm ought to be called as a witness, may the lawyer or a member of his firm sit at the counsel table with the new lawyers and assist him in the trial of the case so long as there is no formal participation such as examination of witnesses, arguments to the court or jury, etc.?"

ANSWER:

A lawyer or a member of his law firm who is to be a witness in a trial may not sit at counsel table with the new lawyer and assist him in the trial of the case even though there is no formal participation such as examination of witnesses, arguments to the court or jury, etc. since DR 5-102(A) provides that such lawyer "shall withdraw from the conduct of the trial" and "shall not continue representation in the trial, . . .", and the reasons set forth in the Ethical Considerations and Disciplinary Rules apply whether or not the lawyer participates in examining witnesses, presents arguments to the court or jury, etc.

DISCUSSION:

Ethical Consideration 5-9 provides:

"Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively."

Ethical Consideration 5-10 provides:

"Problems incident to the lawyer-witness relationship arise at different stages; they relate either to whether a lawyer should accept employment or should withdraw from employment. Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectionable for a law-

yer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony will relate only to an uncontested issue. In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness. In making such decisions, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment. Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate."

Disciplinary Rule 5-101(B) provides:

"A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify;

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case."

Disciplinary Rule 5-102(A) provides:

"If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from *the conduct of the trial* and his firm, if any, shall not *continue representation in the trial*, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B)(1) through (4)." (emphasis added)

Although our research reveals no opinions of courts or ethics committees dealing with the precise question which you pose, we reach the foregoing conclusion for at least two reasons. First, the language of DR 5-102(A), namely, "... shall withdraw from the conduct of the trial ..." and "... shall not continue representation in the trial, ..." is quite comprehensive and would appear to be controlling. Second, the reasons for the rule as set forth in EC 5-9 would appear to apply in the instant case. (1) An attorney-witness who participates in the case would become more easily impeachable for interest, (2) the opposing counsel would be handicapped in challenging the credibility of a lawyer who participates in the trial of the case and (3) trial counsel would be placed in the unseemly and ineffective position of arguing the credibility of his co-counsel.



QUESTION:

"Can house counsel for an insurance carrier ethically and legally accept salaries, employee benefits, payment of all office overhead and render for the carrier exclusive legal services that involve in-court representation of its insureds in the same fashion and to the same extent as if the case was referred to and handled by private, independent counsel?"

ANSWER:

House counsel as described in your request for opinion may ethically render for the insurance carrier exclusive legal services that involve in-court representations of the carrier's insureds in the same fashion and to the same extent as if the case were referred to and handled by private, independent counsel, if extreme caution is exercised to advise the insured and take the necessary steps to protect the interests of the insured when conflicts of interests, or potential conflicts of interests between the insured and the insurer arise.

DISCUSSION:

Pertinent provisions of the Code of Professional Responsibility of the Alabama State Bar are the following:

Ethical Consideration 5-17 provides:

"EC 5-17 Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer, and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the

lawyer being adversely affected by the slight possibility that the interests will become actually differing in other circumstances, the chance of adverse effect upon this judgment is not unlikely."

Ethical Consideration 5-22 provides:

"EC 5-22 Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than this client."

Disciplinary Rule 5-105(A), (B), and (C) provides:

"DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, except permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if he reasonably determines that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each."

Our research reveals no opinions of courts of last resort hold that the practice you describe in your request for opinion is unethical.

The case of *In Re Proposed Addition to the Additional Rules Governing the Conduct of Attorneys in Florida* (Fla. 1969), 220 So. 2d 6 is significant. The Florida Bar proposed the following rule:

"An attorney employed in a master servant or employer-employee relationship by a lay agency, such as a bank, savings and loan association, trust company or insurer, shall not render in the scope of his employment legal services on behalf of or in the name of customers, patrons or insureds of the lay agency unless it shall clearly appear that the sole financial interest and risk involved is that of the lay agency." (emphasis added)

In the opinion the Supreme Court of Florida stated:

"The problem occurs when a conflict develops between insurer and insured, such as when a

claim exceeds policy coverage or when a compromise settlement is in the making. In such situations the Bar insists that the best interests of an insured require the service of independent counsel. They claim that the compulsive economic pressure of retaining one's full time means of livelihood precludes the possibility that a lawyer under such circumstances can give unadulterated devotion to divergent interests.

The rule, as suggested, seems to emphasize the employer-employee relationship as the element which would distinguish the lawyer's responsibility to one of two clients whose interests might develop conflicts. It appears to us that the ethical problem might well arise regardless of the nature of the employment relationship between the lay agency and the lawyer. That is to say, in resolving an ethical conflict between a lay agency and one of its customers it would not be material whether the lawyer is employed as the attorney for the lay agency on a full-time master-servant basis, or merely on an isolated attorney-client basis. The ultimate problem is the same. There may come a time when the lawyer must decide which of two 'masters' he will continue to serve because the presence of a conflict makes it ethically impossible to serve both. Consequently, the proposed rule does not completely solve the problem which the Bar seeks to remedy. It merely discriminates against a class with no reasonable basis for the distinction.

We understand, of course, that there is a difference between lay agency and lawyer inter se when the employment is full time and salaried as contrasted to a particular case, special fee arrangement. The point we make merely is that when a conflict does arise the ethical decision which the lawyer faces is the same in both relationships — if he is employed to represent two clients. He simply cannot serve two masters in either situation.

There is, of course, in addition the obligation of the insurance contract which delineates the rights and duties of insurer and insured between themselves. When their interests collide, the lawyer, regardless of the quantum of his employment, must make the ethical decision.

The moral considerations should not be exploited as to develop a double standard of ethics for salaried and non-salaried lawyers."

In the Opinion Number 282, dated May 27, 1950, the American Bar Association Committee on Professional Ethics addressed itself to several questions appropo to this opinion. The ABA Committee first addressed the question of whether an insurance company could employ exclusively, upon a salaried basis, an attorney to defend lawsuits against assureds on behalf of the insurance company, within the limits of the policy, without making any charge to the assured, and without acquiring the request or approval of the assured. The committee answered this question affirmatively. The committee noted the commonality of interest between the insured and the insurance company in law-

suits which involve claims which are completely covered by the insurance policy. It further noted that the insurance contract expressly required the insurance company to defend such actions and it noted that the consent and approval of the insured were implicitly consumed in this contract as well.

In answer to related inquiries, the ABA Committee also opined that a lawyer, employed on a salaried basis by an insurance company, may simultaneously prosecute the company's subrogation claims against a third party and the claim recoverable by the insured under a deductible policy. The committee added that any fees paid by the insured for such representation should be made directly to the lawyer and not the insurance company. In reaching these opinions the ABA Committee specifically considered Canons 6, 27, 34, 35, and 47 of the Code of Professional Responsibility.

See also Opinion 109 (June 10, 1969), New York State Bar Association Professional Ethics Committee and *Downing v. Insurance Company of North America* (Ct. App. Ohio, 8th District, November 16, 1973) case number 32527.

In summary, there is nothing unethical in the arrangement which you propose in your request for opinion. Although in theory counsel employed by an insurer on a fee basis and counsel employed by an insurer on a salary basis are subject to the identical provisions of the Code of Professional Responsibility and should take the necessary steps to protect the interests of an insured when a conflict of interest between insured and insurer arises, because of the intimate relationship between house counsel and the insurer special vigilance should be exercised in this regard. □

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Opening of Court Ceremony Appellate Courts of Alabama October 3, 1983 Memorial Address

*As Delivered by the Honorable William B. Hairston, Jr.
President of the Alabama State Bar, 1983-84*

May it please the Courts.

Since the last annual meeting of the Supreme Court and the courts of appeal of this state, forty-six of our brothers have been summoned to join our creator in a life so wondrous, so glorious, that it defies the limits of our imagination. Mr. Chief Justice, Presiding Judge Wright, Presiding Judge Bowen, Madame Clerk, Honored Guests:

As we stand on the threshold of another year, it is well that we pause — with bowed head and grateful heart — to honor that of our heritage that is inculcated in the lives and deeds of these our brothers of the bench and bar who have concluded their work on this sphere. This hallowed moment is a privilege in which we reflect on those lives, so dear and important to our own, mindful that such reflection can do no less than contribute to a better morrow for each of us.

What we do here, what we are and what we think is largely the product of that which has gone before. That which we call heritage is the accumulated total of the affairs of mankind in its attempt to live together and justify its existence. As lawyers and judges our profession plays a dominant role in the creation of this heritage.

And not by eastern windows only
When daylight comes
Comes in the light,
In front the sun climbs slow
How slowly
But westward look, the land is bright.

There is a small gravestone in England that was erected after one of the devastating air raids of World War II. On that stone there is carved the words, "There is not enough darkness in all the world to put out the light of one small candle . . ."

Mr. Chief Justice, the light cast by those of our profession who left these man-made halls this past year will illuminate our footsteps for years yet unmeasured. As the eye goes down the names of those giants of the law, the mind is amazed with the magnitude of their contributions.

In the words of Sam W. Pipes, in a memorial address given here seven years to the month before his death, "Alabama is blessed in so many ways but no way more abundantly than in the character and ability of her judiciary and of her bar." It was true then, it is true now.

These were the builders of our society. The things of our world that have value and excellence are the product of a very few people at best. A few candles out of the billions of human beings that have walked this earth. The lives honored this morning, to a man, represent those volunteers who were determined that excellence would not perish from this earth. These were men, who took our system of justice as they found it — worked it, loved it, improved it, through the trials and tribulations that our society has been heir to — and delivered it to us. They, and the few like them, are the salvation of our democracy.

Though the weave of each of these lives turned out different, each contained that common thread represented by a love for the law. They each worshipped at this altar of law in a manner recalled in the words of Abraham Lincoln:

Let this reverence for law be taught in schools
and written in almanacs — let it be preached
from the pulpit, proclaimed in legislative halls,
and enforced in courts of Justice — and in short
let it become the political religion of the nation.

They expressed their devotion to this North Star in many different ways. They each expressed in their own language, their lives, their fortunes and their sacred honor, a dedication to a better society and a better tomorrow.

Some found their place in the daily practice of law, giving generously of their precious hours and of their talents to the cause of others. As doctors of society they ministered to their patients in the way they knew best. They, with their brothers and sisters on the bench, sought to find the truth of the conditions which caused the illness in order that those conditions could be corrected.

Some found their calling in the courts as great and good judges, loyal to the trust imposed in them and faithful to the God who gave them the strength of their convictions. Some used their legal training in the cause of productivity and employed

their talents in business and industry. Some fulfilled their obligation to our society by taking a place in our government. Each, in his own way, has made a valuable contribution to the legal profession and our world. Each is enshrined in the hearts of those they served. I can think of no more appropriate tribute to these outstanding lives than the one which was said of another great Southerner, Henry W. Grady:

I have seen the light that gleamed at midnight
from the headlight of some giant locomotive
rushing onward through the darkness, heedless
of opposition, fearless of danger — and I
thought it was grand.

I have seen the light come over the eastern
hills in glory, driving the lazy darkness
like mist before a seaborne gale until leaf
and tree and blade of grass glistened and
glittered in the myriad diamonds of the
morning's ray — and I thought it was grand.

I have seen the light that leaped and flashed
at midnight athwart the storm-swept sky, mid
coyotic clouds and howling winds 'til clouds
and darkness in the shadow-haunted earth
flashed into noon day splendor — and I knew
it was grand.

But the grandest thing, next to the radiance
that flows from the Almighty's throne, is the
light of a noble and beautiful life wrapping
itself in benediction round the destinies of
men and finding its home at last in the blessed
bosom of the everlasting God.

That man is great who has the strength to serve,
the patience to suffer, and who, seeking not to
conquer the world, masters himself and devotes
his life in unselfish service to his fellow man.

Four of these noble men were predecessors in the office I now hold. Two of the four served our Supreme Court as special justices. I think it is symbolic that the leadership of the bar and the keystone of our judiciary be fused together in one soul — symbolic of the dual aspect of our profession out of which truth, justice and mercy become a living element of our society. Both lawyer and judge spend the better part of life for the benefit of others. Hand in hand as brothers in a common purpose, their destinies meet at their terrestrial conclusion.

As we look back on the life lived by these whose capacity, labors and perseverance was a valued and good experience that will abide through eternity, we are mindful of the words of Isaiah: "Hearken unto me you who would pursue deliverance, you who seek the Lord; look to the rock from whence you are hewn, and the pit from which you are digged." That which they have agonized and struggled and sought after for good, abides as assuredly as the reality of God.

For while the tide waves, vainly breaking,
Seen here no painful inch to gain,
Far back through creeks and inlets making,
Come silent, flooding in, the main.

This year the list of those to whose memory we dedicate this sacred hour seems longer than ever before. Perhaps it is because so many of these personalities make up that circle that I am proud to call my friends. And as I pour over the list one by one, the words of the poet come to mind. Words that might have been said as to each name on this list.

When I go forth upon the great adventure,
And those who knew me speak of me as "dead,"
'Twill be full recompense for all life's trials,
If in my memory then it should be said:
"He did his best in every field of labor.
He was a steadfast, faithful friend.
He was a kind and sympathetic neighbor.

Whatever he had, he'd gladly give or lend.
His life touched mine and I am made the better."
Dear friends, if all these things you may well say,
The grave for me will be no prison fetter,
My soul shall quick go singing on the way.

As Emerson put it — a person's life is a progress and not a station.

Life is a continual experience of the new. We look at life as a traveler looking toward the west, viewing before us the arc of the horizon. As we move, the horizon moves, shrouded in mystery, an undiscovered country. We cannot know into what we move, but we can have faith that there is a guiding spirit that goes with us. The supreme moments of life come when we cannot know, cannot understand, but still must march on; we can only trust the leading of a good and faithful companion who will be with us all this journey through.

Each generation of lawyers is indebted to the one who precedes it, those who ventured in this faith and trust. Each of us is the recipient of the benefit of learning, dedication, zeal and standard of professional responsibility that our deceased brethren have contributed to our system of justice. These memories we honor here made their contribution to our profession, and we are grateful and appreciative of their stewardship of the law. We are saddened that they are no longer physically in our midsts, but we are privileged to have known them and have shared their comradeship over the years.

There is no death! The stars go down,
To rise upon some other shore,
And bright in heaven's jeweled crown,
they shine forever more!

There is no death! The leaves may fall,
the flowers may fade and pass away;
They only wait, through wintry hours,
the coming of the May.

LIST OF DECEASED ATTORNEYS AND JUDGES

October 1, 1982-September 30, 1983

Albritton, Robert B.	Andalusia	Morton, Wade Hampton	Birmingham
Albritton, William H.	Andalusia	Nichols, George W., Jr.	Tuscaloosa
Applebaum, Kelvie	Miami, FL	Nicol, Frederick Walter	Tuscaloosa
Barron, Bishop N.	Montgomery	Noel, James Barney, Jr.	Birmingham
Belcher, William Richard	Phenix City	O'Rear, William Gunter	Montgomery
Booker, John William, Sr.	Birmingham	Parker, Thomas F., Jr.	Montgomery
Chappell, Billy Frank	Huntsville	Pipes, Sam Wesley, III	Mobile
Cleveland, Grady Garland, Jr.	Eufaula	Pitts, William McLean	Selma
Copeland, Albert Whiting	Montgomery	Redden, Arthur Drew	Tallassee
Dortch, William Brice	Gadsden	Rives, Richard Taylor	Montgomery
Feibelman, Herbert P., Jr.	Mobile	Ross, Carl Ira, Sr.	Bessemer
Foshee, John Alwyn	Montgomery	Smith, John Alexander, Jr.	Fayette
Foster, John Strickland	Birmingham	Smith, Larry Eugene	Arlington, VA
Giles, Robert Clinton, Jr.	Mountain Brook	Sparks, F. Guy, Jr.	Anniston
Gordon, Robert Scott	Birmingham	Spinks, Glen Edd	Tarrant
Grant, George M.	Washington, D.C.	Stahmer, Harry Joseph, Jr.	Birmingham
Hare, Francis H.	Birmingham	Stapp, Jerry Lee	Huntsville
Hocklander, Joseph Monroe	Mobile	Strong, Dan C.	Birmingham
Lee, Mickey Martin	Huntsville	Thomason, Charles T.	Anniston
Love, Joel Moore	Sheffield	Tidwell, Ira F.	Leeds
Maxwell, Albert R., Jr.	Elberton, GA	Walds, L.P.	Oneonta
McLendon, Clyde Patterson	Montgomery	Williams, Jesse M., Jr.	Montgomery
Miller, George Oliver, Jr.	Montgomery	Woolf, Roy Michael	Anniston

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The Final Judgment



W.J. Adams, Jr.

William Jackson Adams, Jr., of Clayton died on October 30, 1983. He was thirty-six.

Mr. Adams was born on April 23, 1947, in Barbour County. He is a graduate of the University of Alabama and the Cumberland School of Law. He was admitted to the bar in 1972, and practiced in Clayton until his death.

Adams was a former municipal judge in Clayton.

As well as an attorney, Adams was a farmer. He enjoyed operating the family farm at Texasville.

Adams was a member of the Barbour County, Alabama, and American Bar Associations and the Alabama Trial Lawyers Association. He was active in the work of the Texasville United Methodist Church where he served as a trustee. He belonged to the Barbour County and Alabama Cattle-men's Associations. He was a Shriner and a 32nd Degree Mason. He also was a former chairman of the Barbour County Democratic Executive Committee. As well, he was involved in numerous other organizations.

Mr. Adams is survived by his mother, Mrs. William J. (Irene) Adams of Clayton, and two sisters, Jane A. Darrigan of Eufaula and Anne Adams of Montgomery.



R.A. Ball

Richard Arledge Ball, Sr., a lifelong resident of Montgomery, died on October 22, 1983. He was seventy-seven.

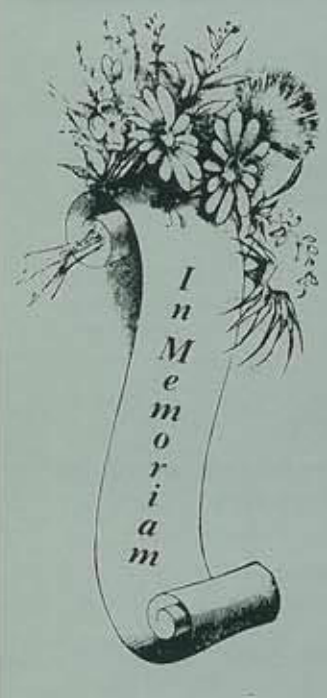
Mr. Ball was born in 1906 in Montgomery. He was a graduate of Vanderbilt University and earned his law degree at Emory University in Atlanta. He joined his father, Fred S. Ball, and his two brothers, Fred and Charlie, in the firm of Ball and Ball in 1931. At his death he was the senior member of that law firm now known as Ball, Ball, Duke and Matthews. In 1981, he was honored for fifty years of service to the bar.

Both friends and strangers alike were often recipients of his loving generosity. Mr. Ball's kind spirit resulted also in years of continuous support for many charities and organizations. This was a man loved and admired by many. Perhaps his most constant companion was his smile, and he had the unique ability to share his state of warmth and good humor with those around him. He will long be remembered for his sincerity and compassion for his fellow man.

His adversaries in the legal arena were never his enemies. Invariably he concluded his legal disputes with a hand shake, new friendships, and a well served and satisfied client.

Mr. Ball was an avid fisherman, an outstanding golfer, and was generous to a fault. He will be sorely missed, but the fond memories he has left to all whose lives touched his are a surviving gift.

Mr. Ball is survived by his two sons, Richard A. Ball, Jr., who is also an attorney, and Fred S. Ball II. □



Adams, William Jackson, Jr.—Clayton
Admitted: 1971 Died: October 31, 1983

Appelbaum, Kelvie—Miami, Florida
Admitted: 1924 Died: August 23, 1983

Ball, Richard Arledge, Sr.—Montgomery
Admitted: 1931 Died: October 22, 1983

Cooper, Ernest Eugene, Jr.—Montgomery
Admitted: 1947 Died: October 4, 1983

Farmer, Alliegene Edwards—Abbeville
Admitted: 1958 Died: November 29, 1983

Gross, Charles William—Tuscaloosa
Admitted: 1928 Died: November 2, 1983

Seay, Thomas—Memphis, Tennessee
Admitted: 1927 Died: October 19, 1983

Starnes, Stencil Rose—Birmingham
Admitted: 1949 Died: December 16, 1983

Stewart, Charles Andrew, Jr.—Birmingham
Admitted: 1949 Died: November 14, 1983

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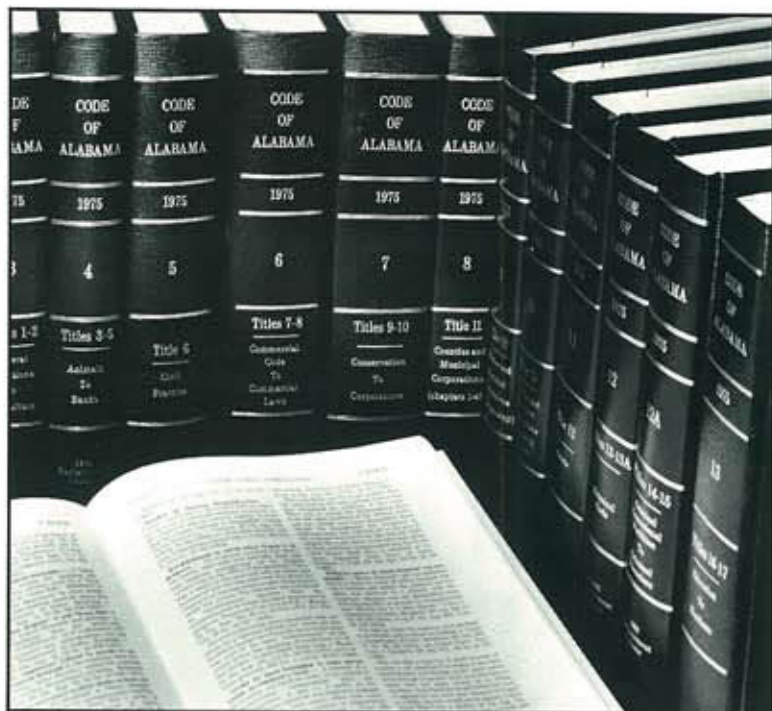
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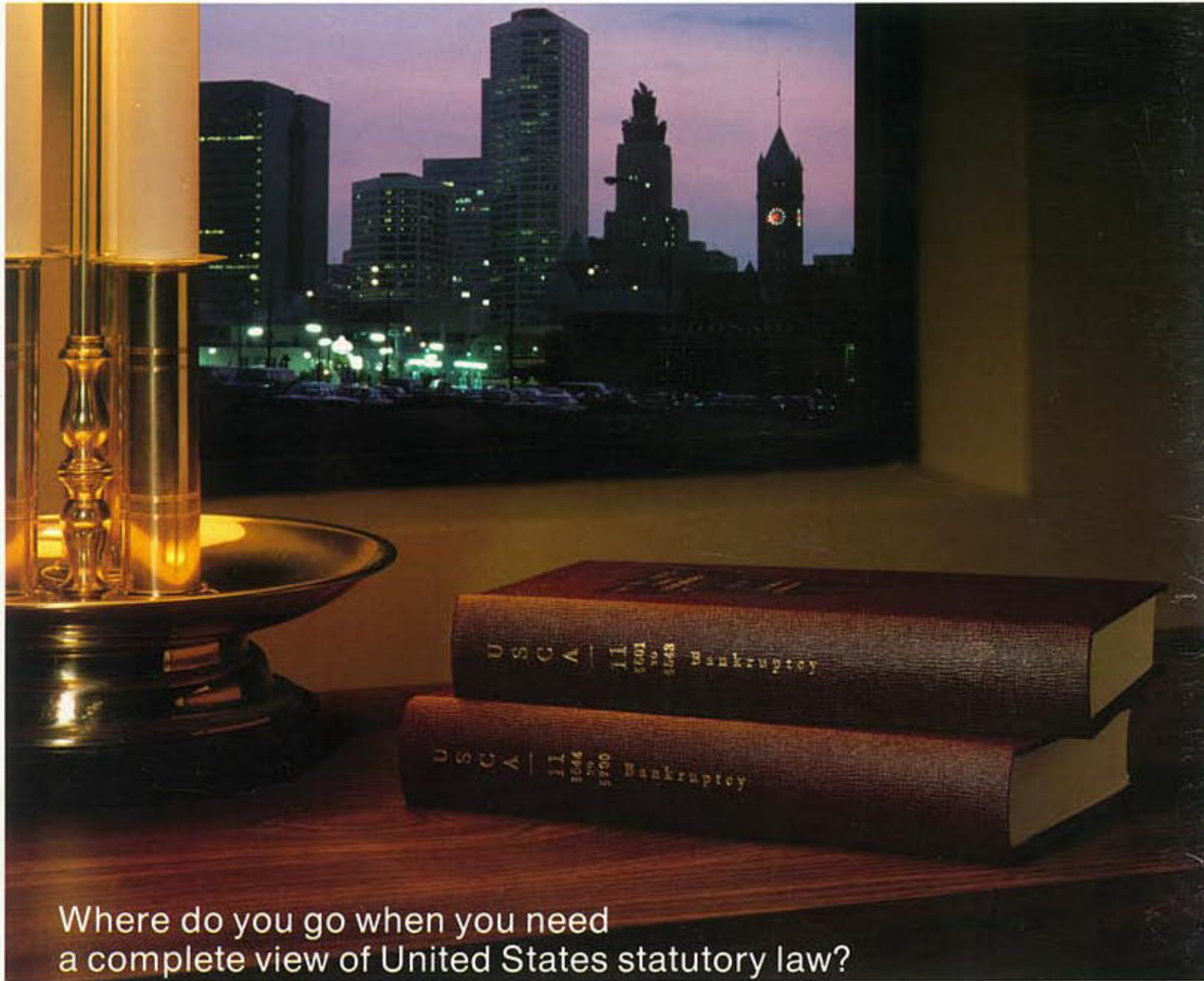
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