

# The Alabama Lawyer

Vol. 46, No. 1

JANUARY 1985

**Child Abuse ...**  
*a dilemma for society  
and the judicial system*



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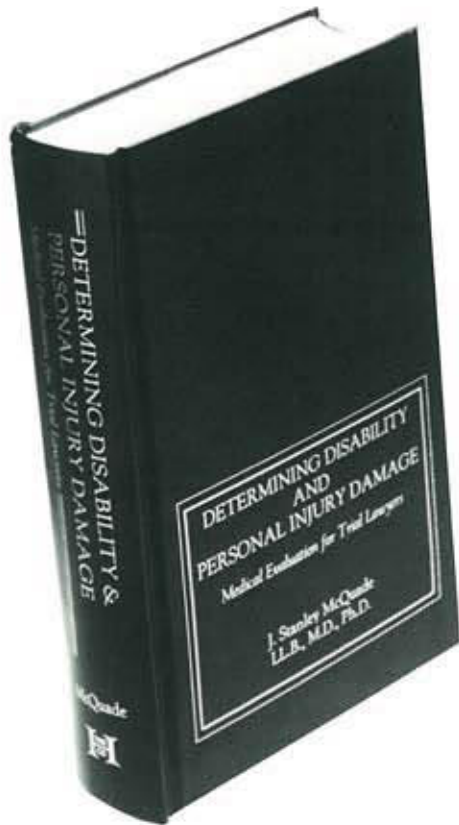
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## GENERAL INFORMATION

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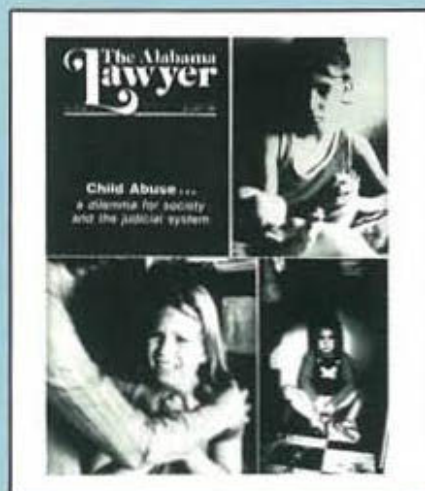
# THE JANUARY 1985



## Newest Attorneys Admitted to the Bar

— pg. 16

October 29 marked the day 301 admittees were certified to the Supreme Court of Alabama. Names, exam statistics and pictures are inside.



## On the Cover

Thanks go to the Children's Trust Fund for providing these photographs depicting child abuse. These are not taken from actual cases, but simply represent what can and does occur in some Alabama families.



## Sexual Abuse — A Conspiracy of Silence

— pg. 30

Sexual child abuse is a "whispered" subject. It's time for open discussion of this problem.



# ISSUE IN BRIEF



## Child Abuse and the Juvenile Courts — pg. 35

The juvenile court is the principal forum for handling child abuse cases. What are the applicable rules and procedures that govern these proceedings?



## Prevention: A New Legislative Approach to Child Abuse — pg. 33

Has the legislature been responsive to the child abuse problem? Additional legislation may be needed to remedy the evils of child abuse.



## The District Attorney as a Mobilizer — pg. 37

In Huntsville the district attorney's office has been the driving force in directing public attention to the problems of child abuse. Some of the programs initiated have sparked national interest.

## Special Thanks

*For contributions to this issue, special thanks go to Myra Schmidbauer, Mary Carswell, Tom McGregor, Ruth Strickland and Connie Manoliu.*

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BYARS

# President's Page

My year as your president has reached its halfway mark. I wish I could report half of our work has been completed. Despite the many hours of hard work by the various committees, task forces and sections, there is still much to be done, and there are still many challenges facing our bar, our profession and our judicial system.

On the affirmative side, the Task Force on Judicial Evaluation, Election and Selection has submitted, and the board of bar commissioners has approved, the subcommittee recommendation that the Alabama State Bar propose a constitutional amendment relating to appointments for all judicial vacancies on the appellate level (supreme court, court of criminal appeals and court of civil appeals), as follows:

Nominations for all appellate vacancies would be made by one statewide nominating commission of 11 citizens of the state — six lawyers and five non-lawyers — appointed:

- (1) One lawyer and one non-lawyer by the governor
- (2) One non-lawyer by the lieutenant governor
- (3) One non-lawyer by the speaker of the house of representatives
- (4) One lawyer and one non-lawyer by the chief justice of the Alabama Supreme Court
- (5) One lawyer by the chief judge of the Alabama Court of Civil Appeals

- (6) One lawyer by the chief judge of the Alabama Court of Criminal Appeals
- (7) Two lawyers and one non-lawyer by the Alabama State Bar.

The members of the nominating commission would serve terms of six years, which would be staggered. The chief justice of the Supreme Court of Ala-

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*“Lawyers, above all others, must recognize the importance of and embrace the highest ethical principles.”*

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bama would be the *ex officio* (non-voting) chairman of the nominating commission, and the Administrative Office of Courts would house the ministerial operations of the commission. This commission would nominate to the governor three qualified persons, and the governor would appoint one of these three nominees. In the event of his failure to make an appointment within 30 days, the Alabama chief justice would make the appointment from these three nominees.

This plan is similar to the well-established, successful nominating commissions in Jefferson, Mobile and

Madison counties, relating to circuit and district judges.

The board of bar commissioners further approved the recommendation your bar propose legislation which would provide non-partisan election for all judicial offices. The recent experience in several jurisdictions, where state judges running for reelection at the time of the 1984 presidential election were swept from office, indicates the wisdom of pursuing non-partisan judicial elections in Alabama.

Both of these proposals are aimed at guaranteeing a free, competent and efficient judiciary. This proposed legislation will be a step in the right direction, but this work is by no means completed. Our study relating to judicial evaluation and retention is continuing. Further, there is another task force at work considering the restructuring of the appellate courts in this state. Only with your help at the local and state levels can any of the proposed changes be cleared through the legislature.

The Midyear Meeting of your bar will be held in Montgomery on March 1-2, 1985. At that meeting, we are planning an indepth report from each of the committees and task forces. Your bar staff and the program committee have an outstanding program planned for you and your spouses.

As your president, I continue my travel of the state of Alabama because I

*(Continued on page 6)*



# Executive Director's Report



HAMNER

## 1985 Crucial to Bar Finances

Our board of commissioners has approved the largest budget in the history of the Alabama State Bar for submission to the 1985 Alabama Legislature. The budget is for fiscal year 1986 which begins October 1, 1985, and calls for expenditures totalling \$915,799.

This budget cannot be met unless the legislature approves legislation to enhance bar revenues. For three years, we have submitted this legislation to see it die on the calendar of the house and senate. Basically, the bills will raise your annual license fee from \$100 to \$150, the first increase in six years. Another bill will remove an exemption currently granted new bar members who pay no dues to the bar for the first two years of admission.

The fiscal year operations, which began October 1, 1984, are based upon a budget with current revenues of \$725,715 and expenditures of \$771,261, an approximate \$46,000 deficit. This is the minimum expenditure which can be made and still fulfill our statutory responsibilities. Our reserves will be reduced to approximately \$71,000, barring any unexpected financial needs.

For two years, the board has been

forced to defer action on numerous committee recommendations to continue the growth of our bar programs. Increased activity in the professional re-

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*"We cannot afford to stagnate; too many of our members have given too many hours developing worthwhile projects to move our profession forward."*

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sponsibility area, plus inflation, has taken those additional revenues which accrue each year as 400-450 members begin to pay dues.

I am proud of the comments we receive from the examiners of public accounts, following our audits, which generally compliment the bar's fiscal policies and constantly reflect our getting the "greatest bang for the buck."

Our bar has made great progress through the years, but continued growth will not be possible without adequate funding. We cannot afford to stagnate; too many of our members have given too many hours developing worthwhile projects to move our profession forward. We need to follow through.

How can you help? Each of you has a state representative and state senator. Please contact these persons, and encourage their early and favorable action on our bills. If there is a special session in January 1985, we will seek to pass these bills then. If we do not succeed in January, the bills will be introduced in the regular session.

— Reginald T. Hamner

P.S. Our 1984 fiscal year figures show we received \$707,686 in revenues. We spent \$753,429. In our March issue, I will utilize my column to discuss these expenditures in detail. □



## President's Page *(From page 4)*

am convinced firmly the success of all programs of the Alabama State Bar necessarily relies on support at the grassroots. On December 14, I attended the annual meeting of the Birmingham Bar Association. From my standpoint, this was an outstanding occasion, including the annual business meeting and climaxing with the annual Christmas party. As your president, I welcome and appreciate invitations and the opportunity to appear at local bar meetings.

The pursuit of excellence in our profession moves forward. However, there is one alarming negative feature. At the first meeting of the board of bar commissioners during my tenure as your president, I disciplined more lawyers than any previous president during an entire year, and disciplined half that many more at the second meeting. As if that were not enough, there are more pending complaints than at any other time in the history of the organized bar in Alabama. This is an appalling situation which calls for the assistance of all of our members. We lawyers must sit in peer review of our associates from a standpoint of ethics as well as competency, giving them guidance and counsel when needed. We must push forward our "buddy program" at the local level, enlisting the aid and counsel of experienced lawyers to serve as a mentor or buddy for recent admittees. Obviously, the need is there, and I enlist the aid of each of you.

When I think of lawyers, I cannot overlook the address of the Honorable John P. Tillman at the annual convention of the Alabama State Bar held June 17, 1899, where he observed:

"Without lawyers, the science of jurisprudence would languish, if not die; without honor, lawyers would make that science a menace, instead of a protection, to the best interests of the state; and the administration of justice would become an agency of oppression, rather than a means for the enforcement of rights and the remedying of wrongs . . .

". . . [W]ithin the limits of their professional duties, they deal with large interests, public and private, and their duties bring them to the very

source and fountain of justice. Inspired with the honor which should ever inspire them, the trusts reposed in them, public and private, will ever be guarded and protected, and the fountain of justice will ever become purer and clearer. Take from them that honor, and trusts will be betrayed, and justice will become a mockery; and all this at the cost of the people."

As lawyers, it is essential we conduct ourselves ethically, professionally and competently, and that we see our fellow lawyers have proper guidance toward this goal. Lawyers, above all others, must recognize the importance of and embrace the highest ethical principles. If we fail to accept our responsibility, we will cease to be a profession. □

— Walter R. Byars



### Grace B. McIntosh 1916-1984

Mrs. Grace B. McIntosh, longtime secretary at the Alabama State Bar serving both Judge John B. Scott and Reginald Hamner as their personal secretary, died in Prattville, Alabama, on Thursday, November 29, 1984, following a brief illness.

Mrs. McIntosh was a devoted employee of the bar and had many friends among its membership.

She is survived by a son and daughter and several grandchildren.

## Editor's Comments

In recent months there has been widespread media attention devoted to various aspects of the societal dilemma of child abuse. Indeed, it has been viewed in some quarters to be a "fashionable" subject. The subject is far from being fashionable — it is a matter of serious concern nationwide and is a problem which permeates all segments of our society, both young and old, rich and poor.

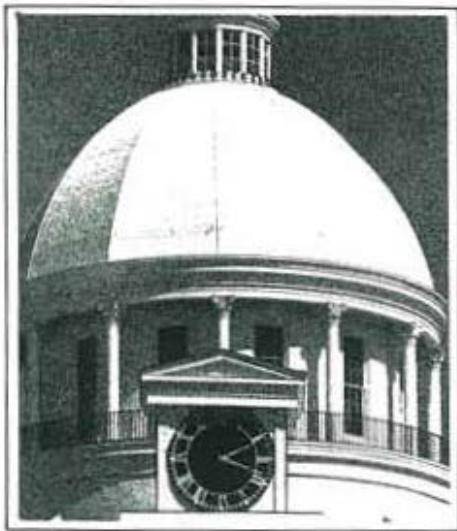
Have the legislative processes in Alabama adequately addressed the problems of child abuse? Does our judicial system have the mechanics in place to punish the child abuser while safeguarding the constitutional rights afforded to all citizens? What is the role of the bar in this state in formulating solutions to the child abuse problem? There are no each answers to these inquiries. Yet some solutions must be

forthcoming if the judicial and legislative processes are to function in addressing child abuse grievances. In this issue of **The Alabama Lawyer** distinguished Alabama jurists and bar members recount the problems confronting our state in this area and offer suggestions on how the bar can cope with this problem.

With this issue **The Alabama Lawyer** welcomes a new managing editor, Margaret Dubberley, who has replaced the magazine's original managing editor, Jen Nowell. Jen was one of the guiding forces in implementing the new format for **The Alabama Lawyer** in 1983, and her contributions to the success of this publication will be missed. We wish her continued success in her new job as editor of the **Louisiana Bar Journal**.

Editor





# LEGISLATIVE WRAP-UP

by Robert L. McCurley, Jr.

The legislature recently created 43 interim committees to study various issues. These additions bring the total number of house and senate temporary and permanent interim committees to 100. Many of these committees have limited application, such as the Coosa River Navigational Project and the Governors Mansion Advisory Board, while others are permanent and extremely active, as with the Legislative Council, Administrative Procedures Review Committee and the Legislative Committee on Examiners of Public Accounts.

The legislature has one interim committee studying "aging," compared to five committees studying "children." However, the most heavily studied areas are in "industrial development" and "agriculture and fishing," having 13 and nine committees, respectively. Each committee is studying health. Six committees are studying education matters, with five committees studying crimes and prisons and five studying finances and budgets of state agencies. In addition, there are five executive oversight committees.

The supreme court has asked the legislature to assist them in four areas. One committee is studying the feasibility of a new judicial building. This committee has visited various judiciary buildings around the country and has obtained the services of an architect. The chief justice requested a select committee on the judiciary be formed, but this committee has not yet reported. Two more standing joint committees are active each year. The Judiciary Compensation Commission annually recommends to the legislature any pay raises for judges. The Judicial Study Commission assists in future planning for the judiciary.

The Interim Insurance Committee is studying compulsory automobile insurance laws. The Prison Oversight Committee has been studying Alabama's habitual offender law for any possible revisions. The Constitutional Revision Committee is still in existence, but has not met in the past year.

The Interim Committee studying co-employee law suits has met several times to hear presentations from various groups. The committee heard separately from industry, labor and trial lawyers. A subcommittee is drafting a bill for presentation to the full committee; however, it is doubtful a

consensus bill can be reached that would be supported by all factions.

Although legislators in Alabama are part-time, during the past several years their committee activity between sessions has increased dramatically. It can be expected when the legislature moves to new quarters in the old Highway Building in December 1985, there will be an increase in the trend towards a more full-time legislature with additional staff. □

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# Riding the Circuits



## Dallas County Bar Association

The Dallas County Bar Association had its quarterly luncheon meeting on Thursday, October 25, at the Holiday Inn. Honorable H.W. "Bucky" McMillan, recently elected to the Court of Criminal Appeals, was the guest speaker.

The new 1984 members of the Dallas County Bar Association are Robert Emerson Armstrong, III, and John David Brady, Jr., both graduates of the University of Alabama School of Law, and Thomas ap Roger Jones, graduate of the Cumberland School of Law.

The Dallas County Bar Association is in the process of having a portrait made of the recently retired Judge Edgar P. Russell, Jr., who served as a Circuit Judge for the Fourth Judicial Circuit for 15 years (1969-1984).

## Etowah County Bar Association

The Etowah County Bar Association recently elected new officers. These include Benny L. Roberts, president; Douglas Burns, first vice president; Charles Y. Boyd, second vice president; and Michael L. Allsup, secretary-treasurer.

## Jackson County Bar Association

The Scottsboro-Jackson County Bar Association honored retiring attorney Andy Hamlet with a retirement dinner on Tuesday, November 27, 1984. The dinner, held at the Scottsboro Golf and Country Club, honored the attorney who retired after 35 years of practice in Scottsboro.

## Huntsville-Madison County Bar Association

In August 1984, the Huntsville-Madison County Bar Association elected as their new executive committee the following members:

President: W.H. Griffin  
Vice President: Jim Tatum  
Secretary: Jim Hess  
Treasurer: Donna Pate  
Appointed Member: Pat Graves  
Appointed Member: Dick Richardson  
Appointed Member: Charles Shaver, Jr.

New committee chairmen and members were appointed by the new executive committee for all standing and special committees.

Harvey Morris, the outgoing president, was presented a

## A PERSONAL INVITATION

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I invite you, our leaders of the local bar associations statewide, to attend a very special meeting to be held during the Alabama State Bar Midyear Meeting, March 1 & 2, 1985, in Montgomery. The purpose of this meeting is to exchange ideas and aim to achieve the maximum liaison between the local bar associations in Alabama individually and with the Alabama State Bar. Please make plans to attend the March meeting.

Sincerely,

Walter R. Byars  
President



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plaque at the August meeting in appreciation for the time and effort spent by him during his term. Mr. Morris thanked David Meginnis for the tremendous Law Day program presented by his committee.

A free Continuing Legal Education program is scheduled for December 17 and 18, which will provide eight hours of credit.

### Marshall County Bar Association

In July the Marshall County Bar Association elected a new slate of officers for 1984-85. They are:

President: Clark E. Johnson, III, Arab  
Vice President: David Lee Jones, Guntersville  
Secretary/Treasurer: T.J. Carnes, Albertville

Four new members were welcomed to the Marshall County Bar at the meeting. The organization now has a total of 39 members.

Several items of business were discussed, including the microfilming of documents in old cases by the circuit clerk to replace the old court files.

### Mobile Bar Association

The Mobile Bar Association had Walter R. Byars, president of the Alabama State Bar, as guest speaker for the October monthly luncheon. At this same meeting, the Admiralty Committee of the Mobile Bar Association announced that, on behalf of the Mobile Bar Association, an award will be given annually at the University of Alabama

Law School and the Cumberland School of Law. The award will be presented to the student at each school who writes the best examination paper in the course on admiralty law.

In addition, recognition was given to Judge Daniel H. Thomas for his long devotion to the admiralty law, and an award has been named the "Judge Daniel H. Thomas Award in Admiralty."

Mobile Bar Association officers for 1985 are as follows:

President:  
Ben H. Kilborn  
President-elect:  
Mitchell G. Lattof, Sr.  
Vice President:  
Marshall J. DeMouy  
Secretary:  
James H. Frost  
Treasurer:  
Lionel C. Williams



Ben Kilborn

The Young Lawyers' Section of the Mobile Bar Association elected officers for 1985 at their October meeting. They are:

President: Mary Elizabeth Mantiply  
Vice President: J. Harley McDonald, Jr.  
Secretary/Treasurer: Walter M. Cook, Jr.

Mrs. Mantiply has the distinction of being the first female president of the Young Lawyers' Section of the Mobile Bar Association even though two of her female colleagues have served as president of the Mobile Bar Association. □

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# Bar Briefs



**KNIGHT**

## New association presidents

William C. Knight was elected recently as president of the Alabama Defense Lawyers Association during their annual meeting in Palm Beach, Florida.

Knight, a Birmingham native, is a partner with the firm of Thomas, Taliaferro, Forman, Burr and Murray. Previously, he worked in industrial relations with Alabama Power Company.

A graduate of the University of Alabama, Knight earned his law degree from the Birmingham School of Law in 1966.

Other ADLA officers elected are Joe C. Cassady of Enterprise, executive vice president; Bert S. Nettles of Mobile, secretary and treasurer; and vice presidents William L. Lee, III, of Dothan; Eugene P. Stutts of Birmingham; and A. Danner Frazer of Mobile.

Alva C. Caine was elected president of the Alabama Trial Lawyers Association during their recent meeting.

Caine graduated from the University of Alabama in 1964 and earned his J.D. degree from Cumberland School of Law in 1970 and his LL.M. degree from Harvard Law School in 1971.

He practices with the Birmingham firm of Hare, Wynn, Newell and Newton.

Also elected to serve as ATLA officers were Gregory S. Cusimano of Gadsden, president elect; M. Clay Alspaugh of Birmingham, first vice president; L. Andrew Hollis, Jr., of Birmingham, second vice president; Larry W. Morris of Alexander City, secretary; and John T. Crowder, Jr., of Mobile, treasurer.

## Law firms donate \$250,000 to endow five scholarships

Gifts totaling \$250,000 from the Birmingham legal community have established five endowed scholarships at Samford University's Cumberland School of Law. The five scholarships honor three living and two deceased members of the legal profession. Honorees gathered at a recognition dinner with law dean Brad Bishop include Mrs. Betty Eshelman (representing her late father, Maj. Harwell G. Davis); attorney Abe Berkowitz; Judge James O. Haley; Mrs. Stancil R. Starnes (representing her late husband); and attorney Herbert W. Peterson.

## Committee re-elects Torbert

C.C. Torbert, Jr., chief justice of the Supreme Court of Alabama, has been re-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.

A graduate of Auburn University and the University of Alabama Law School, Chief Justice Torbert serves on the Committee to Establish a State Judicial Institute and on the Conference of Chief Justices. He also is a member of the American Bar Association and the Executive Committee of the Alabama Law Institute.



*Eshelman, Berkowitz, Haley, Starnes, Peterson and Bishop*





NAJJAR



PEARSON



THORN



HANES



SUTTLE



ADAMS



KENDALL



DORROUGH



NORTON



JOHNSON

### Governor appoints new judges

Ten new state judges were appointed in September by Governor George C. Wallace to fill positions created by an act of the Alabama Legislature. Selected were Charles Najjar, J. Richmond Pearson, Wayne Thorn and Arthur Hanes, of the 10th judicial circuit; Mike Suttle of the 11th judicial circuit; Sam Adams of the 12th judicial circuit; Robert Kendall of the 13th judicial circuit; Richard Dorrough of the 15th judicial circuit; Tom Norton of the 28th judicial circuit; and Al Johnson of the Russell County District Court.

**Najjar**, a Georgia native, received his law degree from the University of Alabama School of Law. He has been a partner in the Birmingham law firm of Najjar, Najjar, Boyd, Pate & McWhorter since 1958 and has served in various capacities as a judge.

Prior to this selection, and since 1974, **Pearson** served as a state senator. During the administrations of Johnson and Kennedy, he was an assistant United States attorney. Pearson, a native of Birmingham, graduated from law

school at Howard University in Washington D.C., in 1958.

A graduate of Cumberland School of Law, **Thorn** is from Birmingham. Previously he served as a district judge for Jefferson County, as a municipal judge for Irondale and as a partner with the law firm of Jenkins & Wallis.

**Hanes**, a 1967 graduate of the University of Alabama School of Law and a 1967 admittee to the Alabama State Bar, was also admitted to the Florida Bar in 1972. Before his appointment, Hanes was in private practice, for 17 years, with the Birmingham firm of Hanes & Hanes.

**Suttle** graduated summa cum laude from Indiana University School of Law in 1976, and prior to his appointment, was a partner in the law firm of Potts, Young, Blasingame, Suttle & Putnam in Florence. He also was admitted to the Tennessee State Bar and practiced for the Tennessee Valley Authority.

Before his appointment, **Adams** was assigned to staff judge advocate at Fort Benning, Georgia. He is a 1982 graduate of the University of Alabama School of Law and worked as an executive assistant

to Chief Justice C.C. Torbert and as assistant district attorney for the 12th judicial circuit.

A native of Evergreen, **Kendall** graduated from the University of Alabama School of Law in 1963. He was an associate and partner in the law firm of Johnston, Johnston & Kendall until 1984, and a United States Magistrate for the southern district of Alabama (1968-71).

**Dorrough**, of Montgomery, graduated in 1970 from the University of Alabama Law School. Previously he has worked as a partner in two Montgomery law firms, as an adjunct instructor for Auburn University at Montgomery and as an acting county judge.

After serving three years of active duty, **Norton** entered and graduated from the University of Alabama School of Law. Norton served as assistant district attorney and district attorney for Baldwin County.

Until 1983, **Johnson** served in the house of representatives. Previously, he was assistant district attorney for Russell County. Johnson is a native of Seale, Alabama, and a graduate of Cumberland School of Law.



# About Members, Among Firms

## About Members

**H. Kenan Timberlake**, of the Huntsville firm Timberlake & Gammons, recently was named Boss of the Year by the Huntsville Legal Secretaries Association.

**Jack B. Hood**, formerly of Birmingham, has been appointed as an assistant United States attorney for the middle district of Georgia (civil division), with offices in Macon.

**Richard Volentine, Jr.**, of Tampa, Florida, was named recently as assistant general counsel to Citicorp Savings of Florida. Previously he served as regional counsel for Citicorp Person-to-Person, Inc. Volentine was admitted to the Alabama State Bar in 1980.

**David A. Nihart** is pleased to announce the relocation of his office to Suite 204, Title Insurance Building, 164 St. Francis Street, P.O. Box 8101, Mobile, Alabama 36689. Phone 433-1986.

**William Roberts Wilson, Jr.**, recently was named public relations chairman for the Mississippi Trial Lawyers Association.

## Among Firms

The law firm of **McDermott, Slepian, Windom & Reed** is pleased to announce the association of **T. Julian Motes** and **Steven L.**

**Nicholas** with the firm for the practice of law. Offices are located at 211 North Conception Street, P.O. Drawer 2025, Mobile, Alabama 36652. Phone 432-1671.

**Roy Johnson, III**, and **Joel C. Watson** are pleased to announce their partnership, with offices at Jessup Building, P.O. Box 987, Alabaster, Alabama 35007.

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**Barry Gordon Terranova** announces the opening of his law office. Offices are located at 150 Government Street, Suite 3002-A, The Laclede, Mobile, Alabama 36602. Phone 432-6111.

**Paul M. Heffler**, attorney at law, formerly assistant attorney general, State of Alabama Surface Mining Commission, announces the opening of his office for the general practice of law at 7216 First Avenue North, Birmingham, Alabama 35206. Phone 836-9522.

**Sarah Kathryn Farnell** announces the relocation of her legal research practice to Birmingham. Offices are located at 1905 Woodlane Place, Birmingham, Alabama 35216. Phone 979-3648.

The law firm of **Turner, Onderdonk & Kimbrough, P.A.**, takes pleasure in announcing that **Halron W. Turner** and **Frank Woodson, Jr.**, are associated with the firm.

The law firm of **Bryant, McNeill & Poole** takes pleasure in announcing that **John David Brady, Jr.**, and **Amy Lee Inglis** have become associated with the firm.

The firm of **Carnes & Carnes** is pleased to announce **Tim Riley** has become associated with the firm. Offices are located at 104 North Emmett Street, Albertville, Alabama 35950. Phone 878-2461.

**Daniel N. Thomas** and **Robert E. Ison** are pleased to announce the formation of a firm for the general practice of law under the name of **Thomas and Ison, P.S.C.**, with offices located at 1302 South Main Street, P.O. Box 675, Hopkinsville, Kentucky 42240.

**Jerry Hudson**, attorney at law, announces the opening of his office at 601 Seventeenth Street, Tuscaloosa, Alabama 35401. Phone 752-0501.

The law firm of **Bradley, Arant, Rose & White** is pleased to announce **Mary Louise Ahearn; Joseph B. Mays, Jr., Braxton Schell, Jr., and John K. Molen** have become members of the firm, and **Ralph H. Yielding, Patricia T. Mandt, John D. Watson, III, Jay D. St. Clair, Robert M. Couch, J. Barry Jones** and **Gregory H. Hawley** have become associated with the firm. Offices are located at 1400 Park Place Tower, Birmingham, Alabama 35203. Phone 252-4500.

The firm of **Stephens, Millirons, Harrison & Williams** is pleased to announce **Bruce E. Williams** has become a member of the firm. Offices are located at 333 Franklin Street, Huntsville, Alabama 35801. Phone 533-7711.

**Announcements for this column must be received by the first day of the month prior to publication date.**

## How to Avoid the Disciplinary Board

Following are 17 ways to avoid having to come before the Disciplinary Board of the Alabama State Bar Association, as prepared by Assistant General Counsel John A. Yung, IV. (These guidelines are based on a similar article appearing in the July 1983 edition of *The Colorado Lawyer*.)

1. Do not undertake any matter you are not competent to handle.
2. Do not undertake any matter you do not have time to properly handle.
3. Put all fee agreements in writing, clearly worded.
4. Keep clients completely informed, and provide clients with copies of all pleadings and correspondence.
5. Be modest in predictions of success.
6. Do not make any agreements or settlements without the client's informed consent.
7. Never lie to a client about anything — and never understate or exaggerate a situation.
8. Withdraw promptly if it becomes apparent the client is too demanding or if your personalities clash.
9. Do not ever commingle funds from your personal account or business account with a client's trust account.
10. Bill clients periodically, if possible.
11. Have an effective calendar and docket system to monitor statutes of limitations, and filing and appearance dates.
12. Do not hide from the client problems that arise.
13. Do not hesitate to refer a matter to other counsel or to associate counsel, when the matter is beyond your expertise.
14. Do not get involved in business deals with clients.
15. Do not get involved in sexual relationships with clients.
16. Do not accept bequests from a client where you, or your partners or associates, draw the will, unless you are closely related to the testator.
17. Return phone calls and promptly answer letters.



# The Trial

By Sandy J. Grisham

I awoke this morning at 6 o'clock in a cold sweat, anticipating what could well be the biggest challenge thus far in my fledgling legal career. A big court case? a conference with a judge? my first deposition? None of these, but rather, the "Firm Dove Hunt."

This event was designed to bring the lawyers in the firm closer together — a chance to have some good clean fun. However, as the first woman lawyer in a firm of 11, I had found myself wondering if the purported camaraderie was worth it.

Everyone started out assuming I was some sort of great white hunter for at least two reasons: 1) I am from Clarke County (you know what we all do for entertainment there), and 2) my father was a crack shot in his heyday (and that sort of thing has to be passed down, even to a daughter). My ego being what it is, I had done nothing to dispel the notion I could shoot a fly off the back of a moving cow at 150 yards, but today the time had come to prove it.

I felt I was confronted with an anomalous situation — notwithstanding the fact I had been graduated with honors from law school and my parents assure me I am loved and respected by one and all, I faced the possibility (albeit remote) of losing my precious job if I were unable to nail a few little gray birds. Talk about things they never taught us in law school!

My first hint of trouble was when my supposedly egalitarian-minded colleagues informed me I (the only woman, remember) was to be responsible for providing lunch and beverages. Their assurances that this task was assigned to me based on the order of the letterhead and not my gender did little to quell my skep-

ticism. Although they might have conjured up images of my slaving over baked ham and potato salad, I planned to have the last laugh on "the guys" — deli sandwiches, potato chips and Budweiser, all on the firm voucher.

Another problem area, as the time drew near, dealt with dilemmas my male counterparts had never even considered, to-wit: what color eye shadow goes with camouflage? what should I do with my hair? diamond earrings, or pearl? My mother had spent untold hours preparing me for every imaginable social encounter, from the high school prom to business meetings, but this was beyond her ken. "Dressing for Success" certainly offered no suggestions.

Despite these obstacles, I made it to the appointed meeting place from which we were to drive in one or two vehicles to the dove field, reportedly located miles from civilization somewhere in Baldwin County. My co-workers, ever mindful of the fragility and lack of navigational instinct found in females of the Southern school, set off without me, leaving me with only a hand-drawn map bearing cryptic references to fence lines and pecan orchards.

Nonetheless, I eventually found the dove field. After we savored the elaborate lunch I had "prepared," we took our appointed places around the perimeter of the field. My moment of truth was fast approaching. After long minutes of anxious waiting (this dove hunting business can really be quite boring), we spotted our prey. I shot and, of course, missed. No big tragedy. The problem was that after the first shot, the great white hunter

got a shell jammed in the chamber of her gun.

I smoked a cigarette (not a Virginia Slims, thank you), swallowed my pride and walked over to the nearest hunters on the field, explaining my predicament with a shy smile. The conspiratorial look my colleagues exchanged told me their worst fears concerning taking along "the woman" had been confirmed. At this point, I had definitely decided I should have stayed at home.

Happily, however, things picked up. The doves flew, and I managed to kill two birds with only four boxes of shells. My relief when the first dove fell was akin to the feeling I had when I learned I had passed the bar exam.

All in all, it was an extremely enjoyable and educational day. Among the things I learned:

1) If you are a female-type member of the bar association, you may as well cut your fingernails before you go dove hunting, because you will not have any left when you get back.

2) It is still a man's world, and it takes more than a J.D. for a woman to make it out there.

3) It is more important to be a good sport than to be a good shot, whatever your gender.

And, by the way — the camaraderie was worth it. □



*Sandy J. Grisham is a 1984 admittee to the bar and graduate of the University of Alabama School of Law, where she was a recipient of the Dean M. Leigh Harrison Award. She is associated with the Mobile law firm of Coale, Helmsing, Lyons & Sims.*



# Judge Johnson Receives Devitt Award



*"Frank Johnson is the law, and the law is America."*

Judge Johnson (center) with former U.S. attorney Dayle Powell (left) who led the effort to nominate Johnson, and Dwight D. Opperman (right), president of West Publishing Company

Citing courage and competence, especially for civil rights decisions made in the 1950s and '60s, Judge Edward J. Devitt described the 1984 recipient of the Devitt Distinguished Service to Justice Award. "He said what needed to be said and made it clear that the Constitution embraced all people, regardless of race, creed or color," said Devitt of the Honorable Frank M. Johnson, Jr., at the presentation ceremony in Montgomery November 29.

Early in his career, Johnson, now judge of the United States Court of Appeals for the 11th Circuit, pioneered judicial intervention to enforce constitutional guarantees. He held that separate but equal facilities in Montgomery's public bus system violated the due process and equal protection clauses of the U.S. Constitution. Johnson generally is credited with leading the peaceful judicial revolution in the states of the former Confederacy. According to Alabama Chief Justice C.C. Torbert, "Those who honor Frank Johnson honor the law, for Frank Johnson is the law, and the law is America."

Many in the audience during the ceremony were involved directly with the legal profession, either as lawyers or judges. Circuit Judge Joe Phelps stated, "I have

the distinction of losing more cases before him than any other lawyer!"

Johnson, a Winston County native, was appointed a federal judge in November 1955. Beginning with the bus boycott the next year, he heard some of the most important civil rights cases in the South.

In 1978, Johnson was named to his present position on the appeals court.

Citing his pride in being an Alabamian, Johnson stated, "I am proud of my roots, and I am proud of the progress this state has made in the past 25 years."

The Devitt Award, established in 1982, brings public recognition to the contributions to justice made by federal judges. The annual award is presented to a judge chosen by a panel of his peers, based on the judge's outstanding service to the cause of justice. The award was created in recognition of Edward J. Devitt, long-time chief U.S. district judge.

Previous recipients include U.S. Circuit Judge Albert B. Maris of Philadelphia and U.S. District Judge Walter E. Hoffman of Virginia; Chief Justice Warren Burger received a special award in 1982.

The final tribute to Judge Johnson included a stirring rendition of "The Battle Hymn of the Republic" by a Tuskegee student.





# Attorneys Admitted to Bar Fall 1984





Keith Alden Abercrombie, Sr. . . . . McCalla, Alabama  
Charlotte Dawn Adams . . . . . Phenix City, Alabama  
Steven Dodd Adeock . . . . . Talladega, Alabama  
Sara Eugenia Akin . . . . . Birmingham, Alabama  
Daniel Fredrick Aldridge . . . . . Birmingham, Alabama  
Turman Earl Allen, Jr. . . . . Birmingham, Alabama  
Lindsey Jackins Allison . . . . . Birmingham, Alabama  
Russell Quin Allison . . . . . Birmingham, Alabama  
Kenneth Ricky Alvis . . . . . Birmingham, Alabama  
Wallace Barry Alvis . . . . . Birmingham, Alabama  
Audrey Earlene Anderson . . . . . Decatur, Georgia  
Robert Emerson Armstrong III . . . . . Selma, Alabama  
Mannon George Bankson, Jr. . . . . Eastaboga, Alabama  
Charles Edward Barrett . . . . . Birmingham, Alabama  
Kenneth Wade Battles . . . . . Birmingham, Alabama  
Hoyt Luther Baugh, Jr. . . . . Rainville, Alabama  
Robert Wimberley Beasley . . . . . Birmingham, Alabama  
Beth Alexandra Beason . . . . . Birmingham, Alabama  
Henry Graham Beene . . . . . Birmingham, Alabama  
Val Hain Beers . . . . . Sardis, Alabama  
Michael Joseph Bernauer . . . . . Florence, Alabama  
Lynda Ann Bigler . . . . . Mobile, Alabama  
Ralph Clayton Bishop, Jr. . . . . Montgomery, Alabama  
Brett Norris Blackwood . . . . . Birmingham, Alabama  
Duncan Bissell Blair . . . . . Birmingham, Alabama  
Robert Curtis Blythe . . . . . Leighton, Alabama  
Robert Stephen Bolling . . . . . Town Creek, Alabama  
Christopher Peter Bolvig III . . . . . Birmingham, Alabama  
Pamela Chandler Booth . . . . . Birmingham, Alabama  
Alice Ann Boswell . . . . . Montgomery, Alabama  
Russell Hampton Bounds . . . . . Mobile, Alabama  
David Audie Boyett III . . . . . Mobile, Alabama  
John David Brady, Jr. . . . . Selma, Alabama  
Frederick Oscar Braswell III . . . . . Montgomery, Alabama  
Sarah Manning Brazzolotto . . . . . Ragland, Alabama  
Cecil Gordon Brendle, Jr. . . . . Birmingham, Alabama  
John Broughton Brewer, Jr. . . . . Birmingham, Alabama  
John Manley Britton . . . . . Smiths Station, Alabama  
Robert Carmichael Brock . . . . . Montgomery, Alabama  
Linda Elise Brown . . . . . Athens, Alabama  
Ben Elton Bruner . . . . . Washington, DC  
Dennis Ray Bullock . . . . . Birmingham, Alabama  
John Philip Burbach . . . . . Huntsville, Alabama  
Claire Ellis Burge . . . . . Birmingham, Alabama  
Stanley Greg Burge . . . . . Birmingham, Alabama  
Cecile Bernetta Shields Burton . . . . . Tuscaloosa, Alabama  
David Franklin Byers, Jr. . . . . New York, New York  
Sharon Lee Byrd . . . . . Meridianville, Alabama  
Sharon Kaye Campbell . . . . . Birmingham, Alabama  
Ruth Simmons Capra . . . . . Birmingham, Alabama  
Bernard Bruce Carr . . . . . Montgomery, Alabama  
Kay Lyn McNabb Cason . . . . . Cullman, Alabama  
George Edward Cassidy III . . . . . Birmingham, Alabama  
Joyce Ann Catrett . . . . . Andalusia, Alabama  
David Britnell Cauthen, Jr. . . . . Decatur, Alabama  
Charles Paul Cavender . . . . . Birmingham, Alabama  
Christopher Sims Chiepalich . . . . . Mobile, Alabama  
Michael Kuo Kaung Choy . . . . . Birmingham, Alabama  
Charles Lange Clark . . . . . Birmingham, Alabama  
Helen Brigance Clark . . . . . Birmingham, Alabama  
Wanda Jane Cochran . . . . . Mobile, Alabama  
Glen Marshall Connor . . . . . Birmingham, Alabama  
Lawrence Scott Coogler . . . . . Tuscaloosa, Alabama  
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Robert Murphy Couch . . . . . Birmingham, Alabama  
Holley Frances Crim . . . . . Montgomery, Alabama  
Michael Edward Criswell . . . . . Altoona, Alabama  
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Blane Horton Crutchfield . . . . . Mobile, Alabama  
George Colgan Cusick, Jr. . . . . Leeds, Alabama  
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Mitchell Hobart Damsky . . . . . Birmingham, Alabama  
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Timothy Carl Davis . . . . . Birmingham, Alabama  
Sarah Rosemary De Juan . . . . . Mobile, Alabama

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John Carney Dobbs . . . . . Mobile, Alabama  
Brenda Stone Donald . . . . . Irondale, Alabama  
William Scott Donaldson . . . . . Tuscaloosa, Alabama  
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Susan Roberta Gilman . . . . . Birmingham, Alabama  
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John Powell Hynds . . . . . Birmingham, Alabama  
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John Earby Ingram, Jr. . . . . Thomasville, Alabama  
Elizabeth Champlin Johnson . . . . . Birmingham, Alabama  
William David Johnson, Jr. . . . . Mobile, Alabama  
Joseph Sydney Johnston . . . . . Mobile, Alabama  
Joseph Barry Jones . . . . . Trussville, Alabama  
Millard Lynn Jones . . . . . Pellham, Alabama  
David Brian Karn . . . . . Clanton, Alabama  
Robert David Keahey, Sr. . . . . Gray Hill, Alabama  
Julia Elizabeth Kellum . . . . . Tuscaloosa, Alabama  
Gregory Kelly . . . . . Phenix City, Alabama  
Richard Michael Kemmer, Jr. . . . . Bay Minette, Alabama



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Melissa Paige Kent	Birmingham, Alabama	Mark Lynwood Rowe	Birmingham, Alabama
Christopher Kern	Birmingham, Alabama	Michelle Rowe	Walnut Creek, California
James Willard Killion	Mobile, Alabama	Cynthia Ann Rutledge	Florence, Alabama
James Raymond Kramer	Abolster, Alabama	Colleen Mitchell Samples	Birmingham, Alabama
LaBella Stewart Kyle	Birmingham, Alabama	Michael Wayne Sanderson	Birmingham, Alabama
Elizabeth Radcliff Latham	Mobile, Alabama	James Harold Sandlin, Jr.	Florence, Alabama
Patrick Mullins Lavette	Birmingham, Alabama	Robert Bruce Sanford, Jr.	Birmingham, Alabama
Madelene Marie Lawless	Birmingham, Alabama	Ellsworth Poindexter Scales III	Mobile, Alabama
Thomas James Lee, Jr.	Birmingham, Alabama	Charles Frederick Schneider	Shalimar, Florida
Karl William Leo	Greensboro, North Carolina	Thomas Edward Schooley	Granite City, Illinois
Elizabeth Anne Levan	Tuscaloosa, Alabama	Joseph Allen Schreiber	Birmingham, Alabama
Dean Alexander Levay	Cincinnati, Ohio	Douglas Harry Scofield	Birmingham, Alabama
Richard Henderson Loftin	Sweet Water, Alabama	Carl Michael Seibert	Huntsville, Alabama
Robert Lee Loftin III	Birmingham, Alabama	Jeffrey Monroe Sewell	Birmingham, Alabama
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Marcus David Owsley	Talladega, Alabama	Lelia Knight Webb	Mobile, Alabama
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Janine Richet Pearson	Birmingham, Alabama	James Lance Webster	Fayette, Alabama
Simcon Franklin Penton II	Montgomery, Alabama	Roy Manly West	Birmingham, Alabama
Haze Edward Persons	Tuscaloosa, Alabama	William Wayne Whatley, Jr.	Montgomery, Alabama
Marian Barber Phillips	Huntsville, Alabama	Alycia Gulas White	Birmingham, Alabama
Deborah Ann Pickens	Birmingham, Alabama	Kathryn Lee Widdop	Montgomery, Alabama
Mark Scott Pippin	Montgomery, Alabama	Gary Stuart Wiersma	Birmingham, Alabama
Farley Alston Poelnitz	Tuscaloosa, Alabama	Elizabeth Cecile Williams	Huntsville, Alabama
Melissa Ann Posey	Mobile, Alabama	Frank Williams, Jr.	Birmingham, Alabama
Arthur Tilton Powell III	Fairhope, Alabama	Mark Peery Williams	Tuscaloosa, Alabama
Clifton Sylvester Price II	Leeds, Alabama	Rebecca Golden Williams	Birmingham, Alabama
David Wooten Proctor	Birmingham, Alabama	Richard Russell Williams	Mobile, Alabama
James Moody Proctor II	Birmingham, Alabama	James Edward Wilson, Jr.	Montgomery, Alabama
David Rankin Quittmeyer	Mobile, Alabama	Kerri Johnson Wilson	Jasper, Alabama
Russell Kevin Ramey	Ozark, Alabama	Tommie Jean Wilson	Montgomery, Alabama
Robert Stephan Ramsey	Vicksburg, Mississippi	William Robert Windsor, Jr.	Dallas, Texas
Patricia Kidd Rea	Birmingham, Alabama	Thomas Schram Woodroof, Jr.	Birmingham, Alabama
Alicia Jo Hayes Reese	Daleville, Alabama	Ernest Franklin Woodson, Jr.	Mobile, Alabama
Elna Lee Reese	Montgomery, Alabama	Ralph Howard Yeilding	Birmingham, Alabama
George Daniel Reeves	Birmingham, Alabama	Richard Dean Yelverton	Enterprise, Alabama
Ferris Salim Ritchey III	Birmingham, Alabama	Edward Michael Young	Ozark, Alabama
John Douglas Rivers	Saraland, Alabama	Tamara Kaye Young	Tuskegee Institute, Alabama
James Vernard Roberts, Jr.	Mobile, Alabama	Thomas Hall Young	Centreville, Alabama





Audrey Earlene Anderson (1984) and Charles D. Langford (1953) (Admittee/Uncle)

# Lawyers in the Family



Van Hain Beers (1984) and Van Hain (1941) (Admittee/Uncle)



Russell Q. Allison (1984), Lindsey J. Allison (1984) and Thomas R. Allison (1975) (Admittee/Husband and Wife/Father and Father-in-law)



Claire Ellis Burge (1984), Frank O. Burge, Jr. (1953), Frank Tucker Burge (1983), Mary Burge (Spring 1984) and Courtney Burge Adams (Spring 1984) (Admittee/Father/Brother/Sister-in-law/Sister)



Lynda Bigler (1984) and Nicholas Nagrich (1984) (Wife and Husband Admittees)



Robert C. Broch (1984) and Thomas C. McGregor (1966) (Admittee/Father-in-law)



Dennis R. Bullock (1984) and Karen S. Bullock (1982) (Admittee/Wife)

July 1984	
<b>Bar Exam Statistics of Interest</b>	
Number Sitting for Exam	401
Number Certified to Supreme Court	301
Certification Rate	75%
Certification Rate From:	
University of Alabama	85%
Cumberland	83%
Alabama Nonaccredited Law Schools	43%



Alice Ann Boswell (1984), Edward W. Boswell (1947) and Daniel C. Boswell (1977) (Admittee/Father/Brother)



Robert Sommerville Wilkerson Given (1984), Sam Perry Given (1949) and Sam Perry Given, Jr. (1981) (Admittee/Father/Brother)





*Stacey S. Houston (1984) and Randall V. Houston (1984) (Wife and Husband Admittees)*



*Patrick M. Lavette (1984) and John H. Lavette (1957) (Admittee/Father)*



*John D. McCord (1984) and Roy O. McCord (1982) (Admittee/Brother)*



*Barbara Woodley Mountain (1984) and C. Delaine Mountain (1968) (Admittee/ Husband)*



*Gordon Griffith O'Rear (1984) and Caine O'Rear, Jr. (1949) (Admittee/Father)*



*Janine Richet Pearson (1984) and Judge J. Richmond Pearson (1958) (Admittee/ Father)*



*James M. Proctor II (1984) and John F. Proctor (1957) (Admittee/Father)*



*Robert S. Ramsey (1984) and William W. Ramsey (1951) (Admittee/Father)*



*James H. Sandlin, Jr. (1984) and Cindy S. Schuessler (1978) (Admittee/Sister)*



*George Howard Trawick (1984) and George Earl Trawick (1946) (Admittee/Father)*



*Mary Nera Warren (1984) and J. Ray Warren (1964) (Admittee/Father)*



*Ralph H. Yeilding (1984) and N. Mandy Yeilding, Jr. (1954) (Admittee/Father)*





*David Britnell Cauthen, Jr. (1984) and David B. Cauthen (1964) (Admittee/ Father)*



*John Carney Dobbs (1984) and Carney Hoyt Dobbs (1949) (Admittee/Father)*



*Mark Andrew Duncan (1984) and Celeste Weir Duncan (1983) (Admittee/Wife)*



*Julia M. Goyer (1984), James L. Goyer (1979) and J. Fairley McDonald III (1980) (Admittee/Husband/Brother)*



*Hugh Edwin Holladay, Jr. (1981), Judge Hugh Edwin Holladay (1950) and Carl Gibson Holladay (1984) (Brother/Father/Admittee)*



*W. Stanley Garner, Jr. (1984) and W. Stanley Garner, Sr. (1974) (Admittee/ Father)*



*Margaret Hornbeck Greene (1984) and John Scott Greene (1984) (Wife and Husband Admittees)*



*John Dearman Herndon (1984) and James Dennis Herndon (1952) (Admittee/Father)*



*Fred W. Killion III (1981), Fred W. Killion, Jr. (1959) and James W. Killion (1984) (Brother/ Father/Admittee)*



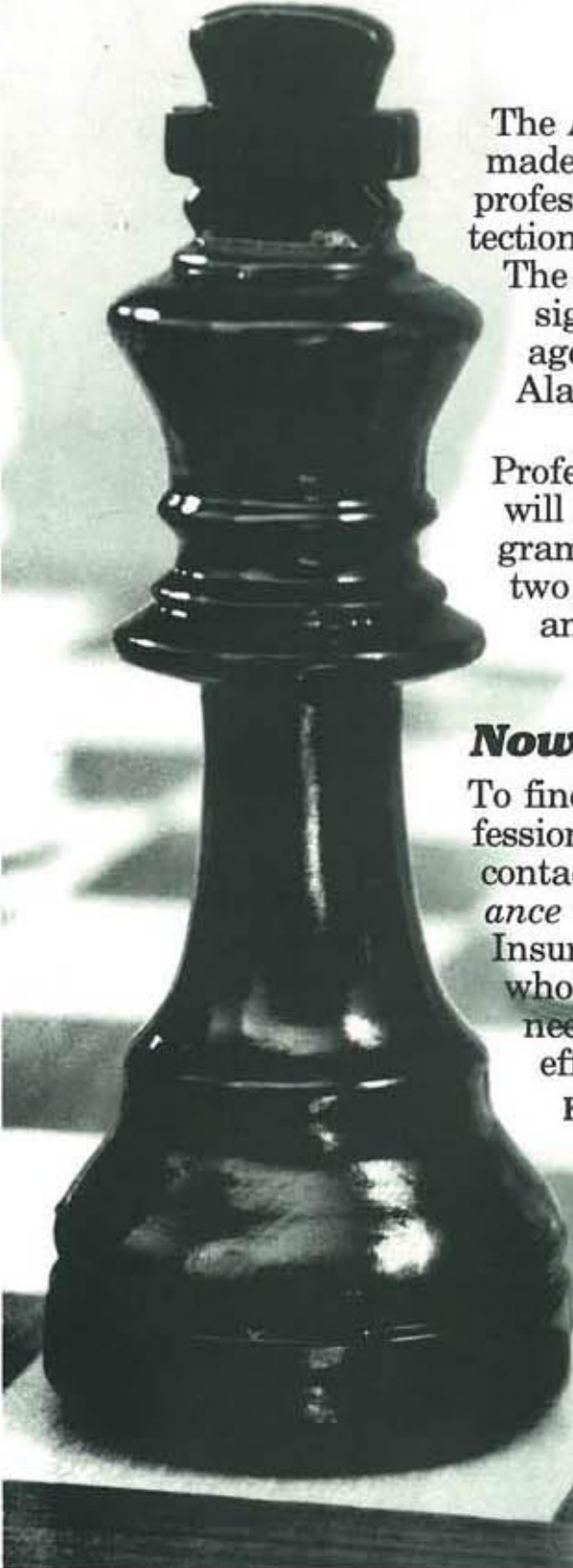
*Ferris S. Ritchey III (1984), Ferris S. Ritchey, Jr. (1951) and George M. Ritchey (1978) (Admittee/ Father/Cousin)*



*Alicia Jo Reese (1984), Charles N. Reese (1980) and Charles T. Reese (1948) (Admittee/Husband/Father-in-law)*



# ***They've made their move...***



The Alabama State Bar Association has made a decisive move to strengthen the professional liability insurance protection available to Alabama lawyers.

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# CLE News

by Mary Lyn Pike  
Staff Director, MCLE Commission

## Published CLE credits are the maximum available

While there is no requirement an attorney attend an entire course in order to earn the available CLE credits, it is required the credits claimed reflect time actually spent in class. Credits published or announced by a course sponsor are the maximum number of credits available for full attendance of a course.

For example, the Alabama State Bar sponsors section meetings each year during its annual meeting. Some of the section meetings last two or three hours, others last one and one-half hours. All, however, fit within a three-hour time frame, two until five p.m. It is not possible to attend overlapping section meetings and earn full credit for each of them.

Any portion of an accredited activity missed must be subtracted from the maximum number of credits available for the course at a rate of one credit per 50 minutes of instruction missed.

## Rules and Regulations to be published

An updated booklet of rules and regulations for mandatory continuing legal education will be mailed to members of the Alabama State Bar this month. Such a booklet was last published in January 1983.

The following regulations have been adopted by the Board of Bar Commissioners since that time and should be noted when the booklets are received:

**Regulation 4.1.12** Activities dealing with law office automation and management may be approved for one-half credit per hour of instruction. Activities designed to sell services or equipment or to enhance law office profits will not be approved.

**Regulation 4.1.13** Sponsors of approved CLE activities must refrain from advertising or encouraging the use of their products or services during accredited CLE activities. Sponsors must also seek participants' opinions regarding their adherence to this policy. Failure to adhere to this policy shall be grounds for withdrawal of accreditation of the course in question.

**Regulation 5.2** The Commission will permit amendments of reports of compliance through the last day of February of the year immediately succeeding the reporting year. Requests for amendments must be written and must specify the titles, sponsors, dates, and locations, as well as the credits earned. All credits

*(Continued on page 49)*

## A CONCERN OF THE BAR AND BENCH

The Task Force on Lawyer Alcohol and Drug Abuse is working to establish a permanent program to assist the Alabama legal community and its families in dealing with the impact of problems caused by alcoholism and drug abuse. We are endeavoring to increase awareness of the problem and educate the bar and bench on the complexities of the disease of chemical dependency.

We need input of fellow professionals and family members who are recovering from this illness and belong to AA, Al-Anon or other supporting groups. Therefore, on February 9, 1985, the Education and Awareness Committee of the task force will hold meetings in the Montgomery Civic Center, located at 300 Bibb Street, Montgomery, Alabama, to discuss participation in our program. The following is a schedule of meetings offered:

- 11 a.m.-12 p.m. — Closed AA meeting
- 11 a.m.-12 p.m. — Closed Al-Anon meeting
- 12-1:30 p.m. — Dutch luncheon
- 1:30-2:30 p.m. — Open discussion meeting

We all must increase our awareness of the nature of both the problems and potential solutions if we are to make progress in the treatment of alcoholism and drug addiction. Please join us in Montgomery on February 9. For additional information, call Mike at 793-3610.

*Education and Awareness Committee  
The Task Force on Lawyer Alcohol  
and Drug Abuse*



# Committees Continue Hard Work Into 1985

by Mary Lyn Pike

## Midyear Meeting 1985

Chairman William I. Hill and members of the **1985 Midyear Meeting Committee** are hard at work putting together an educational and entertaining weekend for members of the bar. The meeting, traditionally a working session for committees and board members, is scheduled for Friday and Saturday, March 1 and 2 at the Civic Center in Montgomery. Committees will meet in various Montgomery law firms on Friday morning. A CLE activity is planned for Friday afternoon, to be followed by an evening of socializing and entertainment. The board of commissioners and other interested members of the bar will hear progress reports on the work of the committees on Saturday morning.

At the Midyear Meeting, bar members will have an opportunity to participate in a hearing on the recommendations of the **Committee on Governance of the Alabama State Bar**. The committee will propose changes in the makeup of the board of bar commissioners, in the method of choosing the president-elect and in the legal authority for bar governance. For further information, see 45 *Alabama Lawyer* 252 (September 1984).

## Focus on the Profession

### The Task Force on Peer Review

recently surveyed section officers, bar commissioners, local bar presidents and state judges, seeking answers to the question of possible incompetence on the part of some members of the bar. It plans to use this information to make recommendations as to what the state bar should do, if anything, with regard to establishing peer review groups.

Faced with more complaints against attorneys than ever before, President Byars and the board of commissioners have appointed an **Ethics Education Committee** to recommend methods of increasing attorneys' adherence to the bar's standards of professional conduct. Chaired by Commissioner Roger Bedford, Sr., of Russellville, the committee has been apprised of the fact that in 1980, 300 complaints were filed against attorneys. By fiscal year 1983-84 that number had increased to 800. According to staff of the bar's Center for Professional Responsibility, the number of complaints warranting discipline has remained between 12 and 14 percent, yet every complaint must be fully investigated.

*"... educational and entertaining weekend (planned) for bar members."*

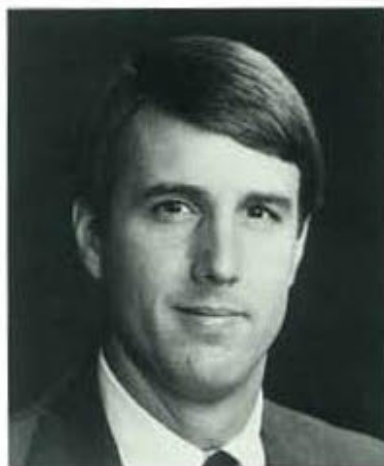
The **Task Force on Lawyer Alcohol and Drug Abuse** continues to

lay the groundwork for assistance to troubled lawyers and their families. As announced elsewhere in this issue, it is sponsoring both closed and open meetings of Alcoholics Anonymous and Al-Anon for lawyers and their families on Saturday, February 9 at the Civic Center in Montgomery. It is hoped these meetings will lead to the formation of a network of lawyers who are willing to assist their peers in dealing with alcohol addiction and the problems generated by it. Additionally, the board of commissioners recently authorized the task force to pursue formation of a nonprofit corporation or foundation for purposes of fundraising and education. Bar members will be treated to a "showcase" presentation by a nationally prominent recovering alcoholic at the July Annual Meeting in Huntsville.

Chairman Ralph Gaines and the **Task Force on Lawyers Specialization** have taken on four tasks for 1984-85: to investigate the benefits of specialization and present an educational report to the bar during its July 1985 meeting; to review and present suggestions as to a pilot program or other means of implementing specialization; to examine the attitudes and needs of small town and rural attorneys as to specialization; and to investigate insurers' attitudes and rates in states where attorneys designate specialties. □



# Young Lawyers' Section



by Robert T. Meadows III  
YLS President

The Young Lawyers' Section of the Alabama State Bar continues enthusiastically to move through the 1984-85 year with a view towards providing service to your profession, to you young lawyers and to the public at large. Our efforts in this regard primarily center on certain projects and activities. Briefly, let me bring you up to date on these projects and activities.

The section, through the able efforts of Jim Miller in Birmingham, is planning three (3) seminars for this coming year to better serve the profession. The first of these will be held at various times in February or March of 1985 in Birmingham and will be a basic legal skills seminar or a bridge-the-gap seminar. This will primarily be addressed to the Young Lawyers, though some of the "old" lawyers will no doubt gain from the stimulating program which we anticipate. The second seminar will be our Annual Sandestin Seminar which will be held in mid-May and is being handled by Caine O'Rear and Charles Mixon of Mobile. This seminar needs no introduction to the young lawyers who have attended it in the past. Without a doubt, this particular seminar combines the best that can be offered in terms of continuing legal education together with an exceptional social event. This year's seminar promises to be another significant event and one of which we in the Young Lawyers' Section are very proud. The third seminar will be conducted at the

annual meeting in Huntsville this coming summer. Jim Miller's committee is working to make this seminar a very informative one for all those who attend. The timing of this seminar is particularly appropriate and attractive to those who desire to kill two birds with one stone, namely, attending the bar convention and at the same time getting CLE credit.

The Young Lawyers' Section does not, however, stop at conducting seminars for the bar itself. Randolph Reaves of Montgomery has taken it upon himself to establish and conduct a Conference on the Profession. This seminar has become an annual affair and one that will be held this year in Gulf Shores for the second straight year. This seminar brings together members of a number of different professions to educate them on certain legal matters and to promote goodwill and harmony between those professions and the lawyers of Alabama. This seminar has been extremely successful in the past, and this year's promises to be bigger and better than ever. The Young Lawyers' Section has supported and continues to support enthusiastically this particular seminar.

The Young Lawyers' Section has had requests from various sources for a pamphlet which explains briefly what a person should consider when he or she is trying to decide on a legal career. Ron Davis of Tuscaloosa is currently chairing a committee which has as its

primary reason for being the printing of a pamphlet this year for distribution to the colleges throughout the state, as well as to other sources needing this type of information to pass on to prospective law students. Ron and his committee have committed themselves to a significant expenditure of time and effort in preparing this particular pamphlet. The Young Lawyers' Section anticipates this pamphlet will be published in time for use in the very near future.

At the Annual Midyear Meeting of the bar association to be held in Montgomery on March 1 and 2, 1985, the Young Lawyers' Section of the Alabama State Bar in conjunction with the University of Alabama School of Law and the Cumberland School of Law will sponsor the first Annual Midyear Interviewing Conference. At this conference, we hope to bring together prospective employers and employees at a convenient time and place. Again, this is an attempt to kill two birds with one stone by allowing those attending the midyear meeting to interview prospective employees at the same time. This particular endeavor is geared towards primarily second- and third-year law students. We encourage all prospective employers to participate in this endeavor so it may continue and become one of the annual portions of the midyear meeting.

More information will be provided later but you should be aware that the 1985 Midyear Meeting should be ex-



tremely interesting and informative. The committee in charge of the meeting tentatively has scheduled some excellent speakers for the seminar along with an outstanding social agenda. On top of this, the committee is pursuing well-known individuals for the keynote speaker.

Pat Harris of Montgomery has agreed to undertake the responsibility of establishing some type of project to be conducted statewide or on a local level which would provide legal services to senior citizens. Pat has been provided with a number of sample programs which have been used in Nebraska, California and Wisconsin as a beginning point. If any of you would like to participate in this particular project, please do not hesitate to contact either me or Pat in Montgomery.

By the time this article appears in *The Alabama Lawyer*, the Alabama Youth Legislature/Judicial Program should be just around the corner. James Anderson in Montgomery has been on this committee for several years, and he has become a real professional at this particular project. This year we hope to make this particular program bigger than ever by encouraging more participation from the young people throughout the state. We also hope to obtain a grant from the American Bar Association, Young Lawyers' Division, to use in this particular project, if not for this year, at least for the coming year. If any of you would like to assist in this project in your local area, please contact either me or James Anderson. Either of us will be happy to assist you in getting the project started in your particular area.

Law Week will be upon us in the very near future. As you know, Law Week was established as an outgrowth of Law Day which in turn was established as a response to the Communist countries' celebration of May Day. A number of activities can be planned for a Community Law Week, including such things as law symposiums, speakers to various civic clubs and school groups, law fairs to provide free legal services to different portions of the population and many others. Lynn McCain of Gadsden is handling the statewide Community Law Week for this year, and I am sure she will be glad

to provide you with whatever assistance you may need for your local Law Week programs.

As was mentioned in the previous article in this column, former Governor Albert P. Brewer of Decatur gave the luncheon address at the bar admissions ceremony in Montgomery on October 29, 1984. Governor Brewer gave a stimulating and enlightening talk and one which I am sure will be remembered for a long time by all those who attended. Additionally, President Walter Byars of the Alabama State Bar addressed the assembly prior to the new admittees receiving their certificates and did an outstanding job. Walter has an inimitable way of challenging a person to participate and give his best on behalf of his profession. It goes without saying that Walter Byars, as well as the rest of us associated with the Alabama State Bar, is proud of his profession. We

hope every new admittee is as proud.

Our hats are off to Myra Baker for her diligent efforts in this regard. Putting on a program for 311 new admittees and their families, complete with both the courts of appeal and the supreme court, is a tremendous undertaking and one which Myra handled with a great deal of success. We would be remiss if we did not also thank Chief Justice C.C. Torbert and Judge Richard Holmes for their part in what can only be characterized as an outstanding admissions ceremony.

The Young Lawyers' Section members, as has been noted in previous articles, regularly attend the ABA/YLD Affiliate Outreach Project Meetings held throughout the country. These meetings enable us, as leaders of this section, to see what is going on in other parts of the country and to try to channel our efforts along similar lines if the circumstances warrant it. Charles

*(Continued on page 55)*

## BE A BUDDY

With the number of new attorneys increasing and the number of jobs decreasing, more and more attorneys are going into practice on their own and miss the benefit of the counseling of more experienced practitioners. The Alabama State Bar Committee on Local Bar Activities and Services is sponsoring a "Buddy Program" to provide newer bar members a fellow-lawyer they may consult if they confront a problem, need to ask a question, or simply want directions to the courthouse.

If you are a lawyer who has recently begun a practice and would like to meet a lawyer in your area to call on occasionally for a hand, or if you are the more experienced practitioner with valuable information and advice you're willing to share, please complete and return the form below. Your participation in this program will certainly benefit the bar as a whole.



### Local Bar Activities and Services Buddy Program Application

Name \_\_\_\_\_

Firm Name (if applicable) \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_

New Lawyer

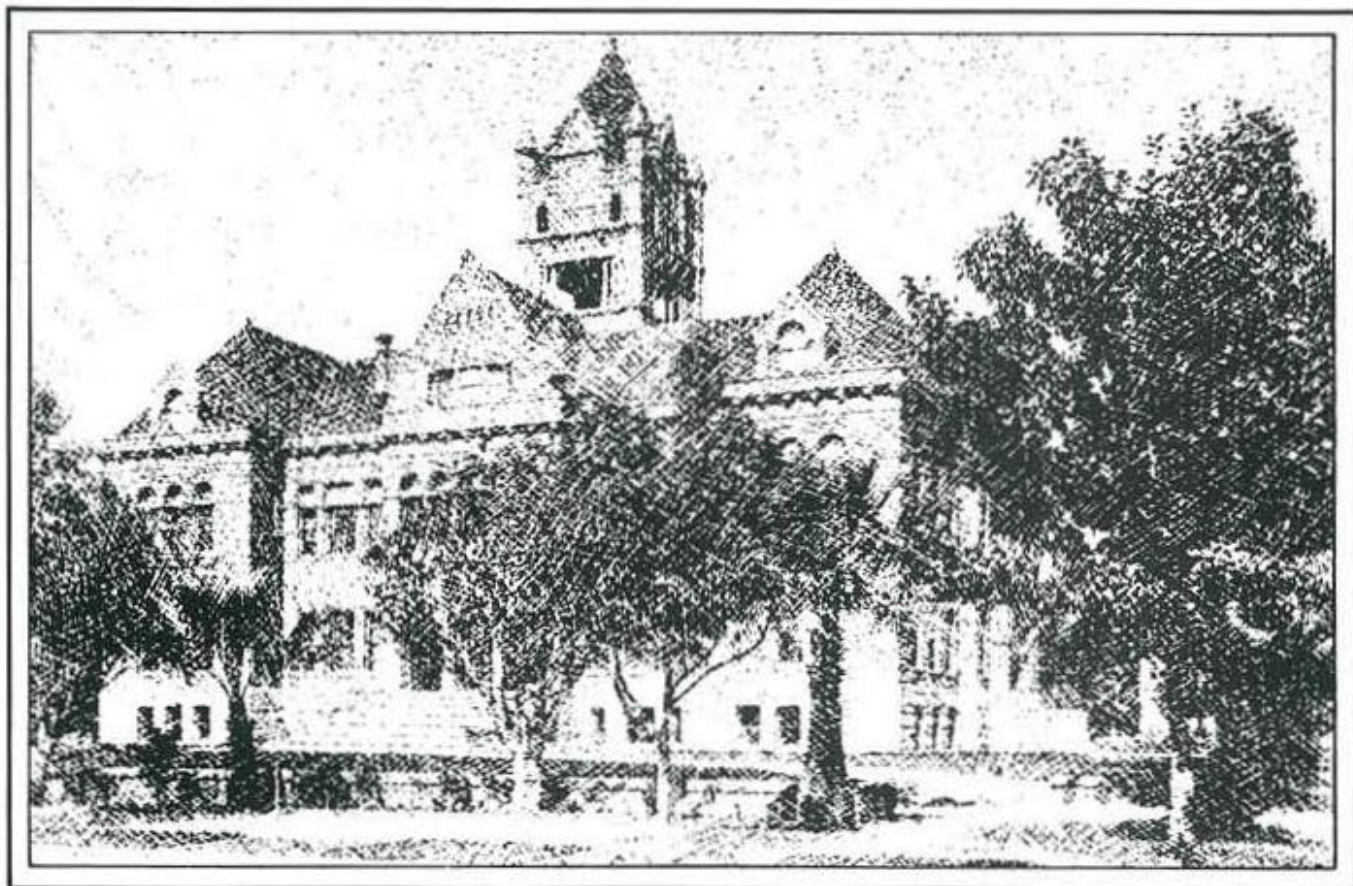
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Please return to: Alabama State Bar, P.O. Box 4156, Montgomery, Alabama 36101.



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# cle opportunities

## january

### 18 friday

#### LAW OFFICE MANAGEMENT

Riverview Plaza, Mobile  
Sponsored by: Mobile Bar Association  
Credits: 1.5 Cost: \$20  
For Information: (205) 433-9790

#### REAL ESTATE CLOSINGS

First Alabama Bank, Birmingham  
Sponsored by: Birmingham Bar Association  
Credits: 1.0 Cost: \$10  
For Information: (205) 251-8006

### 19-26

#### ALUMNI SKI SEMINAR

Breckenridge, Colorado  
Sponsored by: Cumberland Institute for CLE  
For Information: (205) 870-2865

### 21-23

#### WINTER CONFERENCE

Hyatt, Birmingham  
Sponsored by: Alabama District Attorneys  
Association  
For Information: (205) 261-4191



### 25

#### FAMILY COURT

First Alabama Bank, Birmingham  
Sponsored by: Birmingham Bar Association  
Credits: 3.2  
Cost: \$20/members; \$25/nonmembers  
For Information: (205) 251-8006

### 24-26

#### LABOR RELATIONS AND EMPLOYMENT LAW

Biltmore, Los Angeles  
Sponsored by: ALI-ABA  
Credits: 20.4 Cost: \$395  
For Information: (215) 243-1600

### 25 friday

#### FEDERAL PRACTICE AND PROCEDURE

Atlanta  
Sponsored by: ICLE of Georgia  
Credits: 7.2 Cost: \$55  
For Information: (404) 542-1121

#### SALES LAW

Birmingham-Jefferson Civic Center  
Sponsored by: Alabama Institute for CLE  
Cost: \$75  
For Information: (205) 348-6230

### 25-26

#### MIDWINTER CONFERENCE

Hyatt, Birmingham  
Sponsored by: Alabama Trial Lawyers  
Association  
Cost: \$100/members; \$150/nonmembers  
For Information: (205) 262-4974

### 31-february 1

#### THE JURY: TECHNIQUES FOR THE TRIAL LAWYER

Embassy Row Hotel, Washington  
Sponsored by: Practising Law Institute  
Credits: 13.2 Cost: \$375  
For Information: (212) 765-5700

## february

### 1 friday

#### SOCIAL SECURITY DISABILITY LAW

Atlanta  
Sponsored by: ICLE of Georgia  
For Information: (404) 542-1121

### 2-9

#### SKI SEMINAR

Heavenly Valley, Lake Tahoe  
Sponsored by: Alabama Institute for CLE  
For Information: (205) 348-6230

### 6-8

#### OIL AND GAS LAW AND TAXATION

The Westin, Dallas  
Sponsored by: Southwestern Legal  
Foundation  
For Information: (214) 690-2377

### 7-8

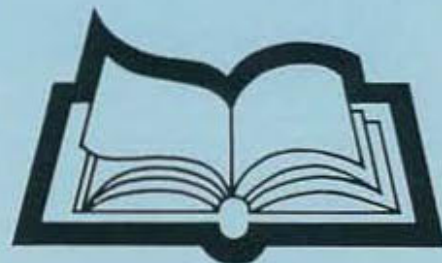
#### GOVERNMENT CONTRACTS

Hyatt, Crystal City, Virginia  
Sponsored by: American Bar Association  
For Information: (312) 988-5000

### 8 friday

#### COMPUTER LAW

Cumberland School of Law, Birmingham  
Sponsored by: Cumberland Institute for CLE  
Cost: \$75  
For Information: (205) 870-2865



### 14 thursday

#### HOW TO ADMINISTER ESTATES IN ALABAMA

Quality Inn, Mobile  
Sponsored by: Alabama Institute for CLE  
For Information: (205) 348-6230

### 14-16

#### ENVIRONMENTAL LAW

Hilton, Washington  
Sponsored by: ALI-ABA  
Credits: 19.5 Cost: \$360  
For Information: (215) 243-1600



## 15 friday

### BANKRUPTCY

Riverview Plaza, Mobile  
Sponsored by: Mobile Bar Association  
Credits: 3.0 Cost: \$20  
For Information: (205) 433-9790

### HOW TO ADMINISTER ESTATES IN ALABAMA

Civic Center, Montgomery  
Sponsored by: Alabama Institute for CLE  
For Information: (205) 348-6230

### HOW TO READ YOUR CLIENT'S FINANCIAL STATEMENTS

First Alabama Bank, Birmingham  
Sponsored by: Birmingham Bar Association  
Credits: 1.0 Cost: \$10  
For Information: (205) 251-8006

## 21 thursday

### HOW TO ADMINISTER ESTATES IN ALABAMA

VonBraun Civic Center, Huntsville  
Sponsored by: Alabama Institute for CLE  
For Information: (205) 348-6230

## 22 friday

### HOW TO ADMINISTER ESTATES IN ALABAMA

Birmingham-Jefferson Civic Center  
Sponsored by: Alabama Institute for CLE  
For Information: (205) 348-6230

### RECENT DEVELOPMENTS IN THE LAW FOR THE GENERAL PRACTITIONER

First Alabama Bank, Birmingham  
Sponsored by: Birmingham Bar Association  
Credits: 3.2  
Cost: \$20/members; \$25/nonmembers  
For Information: (205) 251-8006

## 25-26

### ADVANCED TRIAL TECHNIQUES AND TACTICS

Marriott, Washington  
Sponsored by: American Bar Association  
For Information: (312) 988-5000

## 28-march 1

### CURRENT DEVELOPMENTS IN BANKRUPTCY AND REORGANIZATION

Hotel Marie Antoinette, New Orleans  
Sponsored by: Practising Law Institute  
Cost: \$360  
For Information: (212) 765-5700



# march

## 1-2

### MIDYEAR MEETING

Civic Center, Montgomery  
Sponsored by: Alabama State Bar  
Credits: 2.0 Cost: Included in registration fee  
For Information: (205) 269-1515

## 1-3

### CRIMINAL DEFENSE AND PROSECUTION

Vista International, Washington  
Sponsored by: American Bar Association  
For Information: (312) 988-5000

## 8 friday

### SPORTS AND ENTERTAINMENT LAW

First Alabama Bank, Birmingham  
Sponsored by: Birmingham Bar Association  
Credits: 1.0 Cost: \$10  
For Information: (205) 251-8006

## 9-16

### SKI AND CLE SEMINAR

Kitzbuhel, Austria  
Sponsored by: Alabama Trial Lawyers Association  
For Information: (205) 262-4974

## 14-15

### NEGOTIATING

Hilton, New York City  
Sponsored by: Practising Law Institute  
Cost: \$275  
For Information: (212) 765-5700

### HEALTH LAW

New Orleans  
Sponsored by: American Bar Association  
For Information: (312) 988-5000

## 22 friday

### WORKMEN'S COMPENSATION AND RELATED LITIGATION

First Alabama Bank, Birmingham  
Sponsored by: Birmingham Bar Association  
Credits: 3.2  
Cost: \$20/members; \$25/nonmembers



## 29-30

### PERSONAL INJURY: PREPARATION AND TRIAL

Maison Dupuy, New Orleans  
Sponsored by: Cambridge Courses  
Credits: 12.0 Cost: \$355  
For Information: (415) 331-5374



# Sexual Abuse — A Conspiracy of Silence

by  
Judge Mark Kennedy

**A** 14-year-old female child was found wandering nude and dazed along a highway. He had tied her hands behind her, ripped off her clothing and sexually abused her. Later while still bound, her arms were severed below the elbows with a hatchet before she was discarded in a culvert.

The 12-year-old was but a child herself when she began suffering from morning sickness in her third month of pregnancy. She and her 14-year-old sister had had a lover for four years — their father.

In Jordan, Minnesota, 16 adults currently are under investigation for conducting a sex ring in which more than two dozen children were sexually molested. Eight of the suspects are women.

The smell of freshly mown hay or the scent of a certain cologne brings on gruesome flashbacks for Susanne: how her stepfather had forced her to have sex with him at their rural farm. Sometimes he would single her out from her seven siblings to ride into town with him. "He would stop by the side of the road and make me have oral sex with him until he climaxed," she said. Her mother was ill and her stepfather threatened she would die if Susanne told anyone. "I believed him. I thought my mom would die and I

would be left with this man." Only now, after years of therapy, does Susanne realize she was not responsible for her abuse.

In 1983, the National Survey of the Incidence and Severity of Child Abuse and Neglect found there were 44,700 reported cases of children who were victims of some form of sexual exploitation. The survey noted its findings were based on conservative research procedures and in all probability was only reflective of the "tip of the iceberg."

Various researchers estimate as many as 500,000 American children

will be molested this year. Few offenders will be reported, fewer will be prosecuted and fewer still of the victims will be reached. Millions of today's adults are the sexually abused victims of the past. The University of New Hampshire reported in a recent study 19 percent of all American women and nine percent of all American men were sexually victimized as children, and possibly as many as two to five million women have had incestuous relationships.

The sexual exploitation of children is not an invention of twentieth century man. Our history is replete with



*Judge Mark Kennedy serves as a circuit court judge for the 15th judicial circuit in Montgomery; he is a 1973 graduate of Auburn University and a 1977 graduate of Cumberland School of Law. He is a former district and family court judge.*



the practices of societies past in ways we now can identify as sexually abusive. The further a practice reaches back into primitive time for its origin, the more universal becomes its extent.

Early man introduced rituals of rites of passage to secure full life and to escape from evil. Through sexual acts and mutilations, pubescent children symbolically died, were reborn and elevated to new states of being. It was in search of this higher plane of immortality and triumph over the extinction of the body that infants were subjected to circumcision; subincisions; neck rings; lip plugs; torn flesh, joints and muscles.

Aristotle reminded us to never confuse love with sexual passion. Sexual activity among the ancients had, at best a tenuous connection with love and friendship.

Boy-love among the Greeks, according to Plato, aimed at the improvement of the beloved youth. It was a journey towards spiritual perfection and immortality. Through sexual acts with adolescent males, man projected the living image of his immortal soul into the spirit of the youth. Plutarch explained Roman boys wore a gold ball around their neck when they were very young so men could tell which ones were available when they encountered the adolescents in the nude.

The Dark and Middle Ages of Europe found widespread mass persecutions. Innumerable children were burned at the stake as heretics for any form of overt sexuality or sexual fantasy. It was a time when man felt compelled to struggle for dominance over his own animal instincts and nature.

Renaissance man considered prostitution involving children socially acceptable and highly pleasurable.

In "Venus and Adonis," Shakespeare wrote:

"Who plucks the bud before one leaf put forth?  
If springing things be any jot diminish'd,  
They wither in their prime, prove nothing worth . . .  
To grow unto himself was his desire."

This powerful protest of early initia-

tion into sexual experience argued for the prolonging of innocence as the key to mature strength.

The vilest feature of the whole Victorian scene was the "Victorian Underworld" where child prostitutes and widespread distribution of sexual material, including the new art form, photography, abounded. It was an age of the love of little girls, the Lolita syndrome. Lewis Carroll wrote, "I confess I do not admire naked boys. They always seem to me to need clothes — whereas one hardly sees why the lovely forms of girls should ever be covered up."

In 1912, Kraft Ebing identified the term "pedophilia erotica" as being "adult behavior that manifests erotic sexual desire for children."

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*"The Rene Guyon Society of California, which boasts of over 9,000 in membership, has as its motto: 'Sex before 8 or else it's too late.' "*

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The past two generations have seen an increase in child pornography, the use of children in a variety of sordid sexual activities and the stressing of incest and pedophilia in the mass marketing of sex.

The Rene Guyon Society of California, which boasts of over 9,000 in membership, has as its motto: "Sex before 8 or else it's too late." Its primary aim is to reduce or eliminate the age of consent for sexual activity and to encourage early sexual initiation of children so as to expand and mature the "whole being." A requirement for membership is a sworn affidavit the prospective member has deflowered a child under the age of eight (male or female). The International Pedophilic Information Exchange held its organi-

zational meeting in Wales in 1977. They have, as their primary goal, the establishment of the rights of adults to use "consenting" children for sexual adventure.

Our society has clung to the sexual appetite of early man for the young, but through centuries of evolutionary change in our moral concepts and ideals, what was once an exercise, however perverted, in man's struggle for perfection, has now become a routine perversion that points to one's weakness rather than strength. Sexual abuse now represents the bankruptcy of talent rather than the quintessence of it.

Sexual abuse is less likely to correlate to poverty than other forms of violent acts committed upon children. It is equally prevalent in middle and upper class homes and remains one of the most underreported forms of child maltreatment, the impact of which is not apparent for many years. Family members, who often are the only people aware of the incidents, frequently are hesitant to report for fear of social censure, public scrutiny, possible removal of the family breadwinner and the fact that at the time there may appear no tangible physical harm. Children themselves may not report incidents of sexual abuse because of ignorance, fear of reprisal, fear they will be blamed or guilt over any physical pleasure they may have experienced.

Cases are often discovered in accidental ways: A day-care worker finds a 4-year-old trying to have oral sex with a playmate. A school nurse traces a first grader's painful itch to gonorrhea. A neighbor sees a little girl playing suggestive games with a doll.

Today children are being identified who experience a response much like the post-traumatic stress disorder afflicting some war veterans: They have severe nightmares and become hysterical in situations reminding them of the assault. Often it is not the nature of the violation that controls the intensity of the child's delayed reaction, but rather the degree of coercion used by the perpetrator. The long-term prognosis for sexually induced post-traumatic stress is usually dim if one expects full and complete recovery.





Using anatomically correct dolls, Providence Upchurch, M.S., counsels young victims of sexual abuse at the Montgomery Area Family Violence Program's Sunshine Center. She is also a frequent speaker on abuse for civic organizations.

If identifying a victim seems difficult, prosecuting the offender often seems impossible. Children frequently are hesitant to testify against a parent or loved one. If they do, they usually are met with vehement denial — and the system all too often finds it difficult to take the word of a child over that of an adult.

In many cases of prosecution, the child can expect another assault in the courtroom. In a growing number of courts, however, children are being heard and believed. The right of children to testify before a court has long been recognized in our system, provided the court is satisfied the child as a witness knows the difference between right and wrong and is capable of self-expression. Many legal professionals are realizing there is no valid correlation between truthfulness and age and have become innovative in their approach to accommodating child witnesses as they face the accused.

One child was allowed to testify from a social worker's lap, while another terrified child preferred sitting under the prosecution table. The use of pretaped video testimony during which the child is questioned by the state and the defense is becoming increasingly popular. Many courts allow the use of anatomically correct dolls for demonstration by the child, while others allow the child to draw a picture story to explain what occurred. One child advocate remarked, "We have to quit pretending that kids have to testi-

fy like adults. If all they can do is show, that should be enough."

Both women and children long have been stigmatized when it comes to their credibility in sexual assault cases. Recognizably, children have at times invented stories of sexual misconduct for a variety of reasons. More often, however, children are retracting true facts as being false when placed under coercion by family members and perpetrators. Trained sexual abuse counselors argue fantasy can be separated from fact by listening to the allegations of the victim. "You don't expect a child under the age of five to understand the physical aspects of sexual intercourse," explained one counselor. "When a child tells you that her mother's boyfriend put his thing in her and pee-peed, you can bet money that it is no fairy tale."

There is a divergence in both philosophy and practice in the handling of the convicted abuser. The hard-line approach calls for stiff penalties and incarceration. At the other end of the spectrum is straight probation and a slap on the wrist. A convicted sex offender, referred to as a "diddler" in the prison community, is likely to be beaten, raped or killed by fellow inmates who relegate the offender to "fair game" status in the penitentiary community. Most systems do not offer counseling for sex offenders and view them as a pariah who requires special treatment and protection.

Probated defendants often are referred to counseling or treatment cen-

ters, but frequently are lost in the high case loads of the courts and probation staffs. "We are not reaching the root of the problem through court ordered counseling," remarked a probation officer. "As soon as they figure out what we want to hear, they sing like canaries until their time is up, then they fly right back to their nest."

One victimized child was heard to remark as she and her mother left the courtroom after the conviction of her father for sexual abuse, "What do we do now?" The answer to that poignant question is unclear.

"Prosecution or the threat of prosecution is imperative for any changes to occur," remarks Karen Sellers, a director of an abuse center. "It forces them to face the dysfunction of the family roles and to confront the problem." The goal in addressing the sexually abusive parent depends on the community's attitude. "If the main purpose is for punishment, the task becomes easy. However, if we are attempting, as a short-term goal, to preserve the family, and as a long-term goal to break the cycle, the process becomes extremely convoluted," Sellers said.

What is the answer to the problem we now have the courage to face? First, we must recognize a sexually permissive society which lacks a humanistic, caring orientation contributes to the defective value system presently being developed in some individuals. Second, children must learn they as individuals have certain rights, one of which is to be left alone. Third, parents must protect their young from vulnerability through open and honest communications, and by addressing sexual dysfunction, if present within the family. Fourth, communities must support and encourage sex education in an atmosphere of human caring and commitment including not only facts on reproductive biology, but information on human sexuality and psychological and intra-family issues. Fifth, we all must recognize pedophilia is a very serious threat to our children and to ourselves as well. Community-based networks must be established to fully utilize skills and resources to protect the child from victimization and to return those



who are victimized to a happy, healthy and productive childhood.

The price the individual and society pays relative to the long-range returns of sexual abuse is staggering. Boston University's Center for Law and Health Sciences reports sexual abuse is a predisposing condition to delinquency in some youth, an expression of rage at their maltreatment. In their survey of 150 adjudicated delinquents (99 boys and 51 girls), 66 percent had a history of severe physical and sexual abuse. The mean age of onset was seven years. Fifteen percent of the sexually abused youths, both male and female, were involved in prostitution.

Sexually abused children generally are denied a normal childhood. A significant result of sexual abuse is it arrests the emotional development of the young. Psychosexual maturation is greatly affected, which in turn sets into motion multitudes of factors which generally lead to maladaptive behavior. Such behavior may manifest itself through phobias, promiscuity, self-mutilation, drug dependency, depression, schizophrenia or even motor paralysis. Having experienced degradation in their youth, they may act out their learned behavior against their own children or against society in general.

Like the ripple effect of a pebble dropped in a pond, the sexual exploitation of a child spreads until it affects the whole community in some way. The child himself grows into adulthood and parenthood perpetuating the cycle, by being metamorphosed from abused to abuser. The child becomes tomorrow's delinquent or criminal. His potential and talent that could have been offered to the community are lost. The very vitality of his community is challenged when he is sexually maimed or destroyed.

Our human capital, as well as the simple dignity of man, is at stake. We must ask ourselves why we, as the lords of the animal kingdom, subject our young to sexual perversions while the lesser species take such meticulous care of their young. Children, in their innocence and unrestrained affections, deserve better. Our conspiracy of silence has become the ultimate crime of man — the ultimate betrayal. □

# Prevention: A New Legislative Approach

by  
Senator Gary Aldridge

Child abuse legislation has been commonplace in Alabama over the past two decades. The focus primarily has been on mandatory reporting legislation and defining appropriate criminal laws. Recently, however, the Alabama Legislature embarked on an innovative approach to the maltreatment of children — PREVENTION. Adoption of The Children's Trust Fund and the Child Abuse and Neglect Prevention Act (together designated "The Martin-Aldridge Act") is a significant statement of public policy for the protection of Alabama's children. Alabama has distinguished itself as a leader in the search for solutions to the most alarming societal problem in America.

In the 1983 Regular Session, two companion pieces of legislation were enacted to provide a tandem vehicle for the development of preventive programs. Act No. 83-735 establishes the funding mechanism for the creation of preventive programs by establishing The Children's Trust Fund. This fund is administered by the Child Abuse and Neglect Prevention Board, which is given broad implementation powers for establishing preventive programs by Act No. 83-736. The combined purposes the two acts are to provide for the planned establishment of local councils and prevention programs and to insure the necessary funding for these programs. This article will first



*Alabama Senator Gary L. Aldridge, a 1977 graduate of the University of Alabama School of Law, practices law in Decatur, Alabama. He presently serves as chairman of both the Senate Health Committee and the Legislative Task Force on Child Abuse and Neglect.*



discuss The Children's Trust Fund legislation and then purview the Child Abuse and Neglect Prevention Act.

### **The Children's Trust Fund**

The Children's Trust Fund was created at a time when Alabama was in a grave financial posture. Revenue raising measures were being passed to allow the state to meet its most essential services. Clearly the revenues were not available to undertake a new program, irrespective of the need and merit of that program. Hence, the trust fund was established in a creative and innovative manner; it is funded from a voluntary check-off on the state income tax return. Beginning with the 1983 tax year, the Alabama taxpayer may designate \$2 on an individual return and \$4 on a joint return to be credited to The Children's Trust Fund. No state revenue will be used in the program.

The trust fund legislation targets ultimate accumulation of \$10,000,000. Preventive programs will be funded from the earnings of the trust fund, with the principal remaining intact. However, until the \$10,000,000 target is achieved, no more than 50 percent of the amount of the fund can be used for administrative expenses and funding of preventive programs.

The language of the trust fund act is sufficiently broad to allow the Child Abuse and Neglect Prevention Board considerable leeway in developing programs in conjunction with the local councils. Essentially, the funds are to be used to provide education and information; to create public awareness regarding child abuse and neglect; to encourage professional persons and groups to recognize and deal with abuse and neglect; and to encourage the development of community preventive programs.

### **Child Abuse and Neglect Prevention Act**

Act No. 83-736 establishes the state Child Abuse and Neglect Prevention Board as an autonomous agency of state government. The act provides that the commissioner of the state Department of Pensions and Security,

the state mental health officer, the state health officer, the state superintendent of education and the director of public safety or their designees shall serve on the board. In addition, the governor is empowered to appoint one public member from each congressional district and two members from the state-at-large. From this group of public board members, the governor is entitled to appoint a chairperson.

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***"Alabama has made great strides by passage of legislation that encourages and funds preventive programs at the local level."***

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The board is required to develop a state plan for the distribution of the funds in The Children's Trust Fund. The act provides that the plan shall assure equal opportunity for the establishment of preventive programs in all geographic areas of the state. The board is further required to coordinate the establishment of local councils and prevention programs.

The act contemplates that local councils shall have the primary purpose for the development and facilitation of a collaborative community prevention program. A local council seeking funds from the state board must demonstrate an ability "to provide prevention program models and consultation organizations and communities regarding prevention program development and maintenance." In addition, the local council must provide matching funds or in-kind services of 50 percent of the amount of the trust fund money received. The local councils are provided the incentive and guidance to develop and implement preventive programs suitable for their geographic areas.

Examples of the preventive programs envisioned by the legislation have been developed and implemented by Parents and Children Together, Inc. (PACT) of Decatur, Alabama. PACT was established in 1978 and now util-

izes more than 200 volunteers in implementing a series of preventive and treatment programs. Its three-tier school program is recognized as a national model. Third grade students receive classes on the prevention of sexual abuse. Fifth grade students are instructed on problem solving and handling peer pressure. A seventh grade program focuses on adolescent pregnancy prevention along with classes designed to promote interfamily relationships.

In addition to the instructional programs at the elementary and middle school level, PACT provides parenting classes for parents who have been identified as high-risk parents. Prenatal classes instruct the mother-to-be on labor, delivery and child development. Every new mother in Morgan County receives a visit from a PACT volunteer and is given information on child development. Recently, PACT initiated a program for children who take care of themselves because of working parents, emphasizing safety and instruction on self care. Also, PACT serves as a clearinghouse on all types of information relating to abuse, neglect and sexual exploitation of children.

PACT serves as a model for the local councils to be established under the Martin-Aldridge Act. With the ever-increasing attention being given to child abuse and neglect, emphasis on preventive programs will increase. Alabama has made great strides by passage of legislation that encourages and funds preventive programs at the local level.

### **Conclusion**

As a matter of policy, Alabama now recognizes the need for a preventive approach to child abuse and neglect. The Children's Trust Fund Act and the Child Abuse and Neglect Prevention Act provide the funding and the structure to establish a network of local preventive programs, but much remains to be done. Public awareness of the check-off contribution is indispensable. Alabama has the opportunity to become a leader in effectively addressing a problem proving to be more widespread than previously imagined. □



# Child Abuse and the Juvenile Courts

by  
Judge Sandra H. Ross

The news that Alabamians are abusing and neglecting their children in record numbers has become hard to ignore. In Alabama, during fiscal year 1984, the Alabama Department of Pensions and Security (DPS) received 28,407 child abuse reports, a number approximately twenty percent higher than that reported in 1983.

Society currently is addressing the child abuse issue from the four perspectives of prevention, treatment of families, protection of children and prosecution of abusers. Of the four, the protection of children and the prosecution of their abusers most concern the attorneys and judges of this state.

While the inherent problems of the successful prosecution of child abusers are drawing considerable public attention, it is nevertheless a fact that a relatively small number of reported child abuse cases are suitable for prosecution in the adult criminal justice system. In the meantime, the juvenile courts of Alabama are addressing the problems of the children and family members in every abuse case deemed appropriate for any degree of court intervention. The caseloads of the juvenile courts have become heavier with the increase in reported abuse. Many attorneys, often court-appointed and without experience in dealing with the juvenile system and families in general, are entering the field. There is a

need for Alabama attorneys to become more familiar with the unique procedure and law of the juvenile court system.

Pursuant to §12-15-30(1) *Ala. Code* 1975, the juvenile courts of Alabama have exclusive original jurisdiction over proceedings involving dependent children, those who are abused, neglected or in other ways dependent upon the state for their care or supervision.

Once an abuse report is made to DPS, through mandatory reporting as required by §26-14-1 *Ala. Code* 1975, or by any other means, the agency is required to investigate to determine if court intervention is necessary. If it is determined the welfare of the child requires the court to be involved, then a complaint is filed with the court's juvenile intake officer who, in turn, may file a petition alleging the child in question is dependent and in need of the care or supervision of the court. This petition may be signed by anyone having knowledge of the facts, but is often signed by a representative of DPS, thereby making that agency a party to the case. After the petition is filed, the intake officer must issue a summons to the child to appear, if he or she is 12 or more years of age, and to the parents, guardian or custodian of the child. The summons must be served on a party at least 24 hours before a hearing, but the inability to serve does not deprive the court of the right to

proceed. Rule 13, *Alabama Rules of Juvenile Procedure*.

At the time the petition is filed, the juvenile judge may issue a protective pick-up order for the child without notice to the parties, if it is determined from the available information the child should be immediately removed from his environment. This pick-up order may be endorsed on the summons or may be entered by separate order before service of the summons. If a child is removed from his residence and placed in the custody of DPS prior to a hearing, then the court must conduct a shelter care hearing within 72 hours of the child's removal, weekends and holidays included, to determine if continued care is required. §12-15-60(a). Parents, guardians or custodians must be notified of the date, time and place of the hearing, as well as of their right to counsel. If parents are found to be indigent, the court then must appoint counsel to represent them at this and all stages of the proceedings. The court also must appoint an attorney to serve as guardian ad litem for the child. §12-15-63(b). All relevant evidence is admissible at a shelter care hearing whether or not competent at a hearing on the merits of the petition. §12-15-60(d).

The law strongly favors the release of children to their parents and directs courts to return them unless one of the following situations is proved by clear



and convincing evidence at the shelter care hearing:

1. The child has no suitable parent, guardian or other suitable person able and willing to provide supervision and care for the child, or
2. The release of the child would present a serious threat of substantial harm to such child. §12-15-59.

From the time of the first report to DPS of abuse or neglect until such time as they are relieved of supervision in a case, the agency is charged with investigation of the allegations before the court and with supervision of the parties to determine if court-ordered treatment is being followed. Attorneys representing parents and children should recognize the findings and recommendations of the DPS case-workers are critical in many cases as they provide for the court an impartial picture of the child's circumstances. DPS predisposition reports are admissible at shelter care hearings and, pursuant to §12-15-69(a), the court may direct such a study and report be made for use at a hearing on the merits of the petition.

Juvenile dependency hearings are conducted in two phases, the first being a hearing on the allegations of the petition and the second being dispositional in nature once the court has found a child to be dependent and in need of the care of the court. At the trial of the merits, the allegations must be proved by clear and convincing evidence, competent and material and relevant in nature. §12-15-65(e). This burden seems to preclude admission of predispositional studies at the hearing on the merits of hearsay grounds unless one of the following exceptions applies:

1. The reports were prepared at the direction of the trial court;
2. The author of the report is available at the hearing for purposes of cross-examination; or
3. There is testimony presented in court corroborating the information in the reports. *Hamilton v. State*, 410 So.2d 64 (Ala.Civ.App. 1982).

If a child is found to be dependent, a second hearing is held to determine disposition of the case. At the disposition hearing, all relevant and material evidence helpful in determining the

question presented, including oral and written reports, may be received into evidence even though not competent at a hearing on the petition. In *Kelly v. State Department of Pensions and Security*, 366 So.2d 736 (Ala.Civ.App. 1979), the court stated hearsay in DPS reports is admissible at a disposition hearing, noting in that case all reports were furnished to opposing counsel in advance of the hearing and the author of the report was present in court.

After hearing all pertinent evidence at disposition, the court may order one of the following alternatives for the child as set out in §12-15-71:

1. The child remain with parents, guardian or custodian subject to certain terms such as a requirement that the family enter counseling or attend parent effectiveness classes;
2. The child remain with parents, guardian or custodian under protective supervision of court probation staff or of DPS; or
3. Legal custody of the child be transferred to DPS or other local public child-placing agency or private organization licensed by DPS, or to a relative or other person recommended by DPS as being fit and proper.

All of the above listed alternatives require court review, which means a dependency case may involve attorneys and parties for months or even years. For instance, if the court transfers temporary custody of a child to DPS, then that child generally is placed in foster care until he can be reunited with his family or until parental rights are terminated and the child placed for

adoption. In Alabama, the average length of stay for a child in foster care is now 2.3 years, and administrative rules of DPS and recommended court policy require court review of children in placement at least every six months.

Appeals from juvenile court orders, whether entered by district or circuit court judges, are made to the court of civil appeals and written notice of appeal must be filed within fourteen days of the entry of the order, judgment or decree. Rule 28, *Alabama Rules of Juvenile Procedure*. Attorneys should note Rule 20 requires the court to keep a complete record of all testimony by stenographic reporting or by mechanical device, such as recorders, which may be used for purpose of appeal.

In conclusion, each child abuse case reported and brought to the juvenile court for intervention may require as many as three or more attorneys before final disposition. As the number of dependency cases grows, so does the need for attorneys who are familiar with the law and procedure applicable to juvenile courts and who have adequate skills in dealing with children, parents and mental health professionals in order to solve complex family problems. The greatest contribution the legal system can make in the area of child abuse is to provide competent legal representatives for the parties involved. The quality of representation in a dependency case may often be determinative of the quality of life of the child whose best interests the courts are dedicated to serve. □



*Jefferson County District Judge Sandra H. Ross is a 1978 admittee to the Alabama State Bar. She graduated, cum laude, from Cumberland School of Law. In addition to serving as a district judge, she also is on special assignment to the Equity Court, domestic relations.*



# The DA as a Mobilizer

by  
District Attorney  
Robert E. Cramer, Jr.

Our nation currently is experiencing an "epidemic" number of reports of child sexual abuse. Studies (which vary) indicate one in ten men and one in five women have been sexually abused as children. It is accepted widely the reported cases reflect only a fraction of the actual number of cases.

Few communities have child sexual abuse "intervention" programs. Cases of child sexual abuse are reported to child protective service agencies, law enforcement agencies, prosecutors, therapists, physicians, ministers and counselors. Physicians, nurses, teachers and other professionals coming into contact with children who may have been abused are confused about the process for reporting and the follow-up on reported cases of child sexual abuse. Consistent agency action and interagency referral have been hampered by the fact agencies and professionals often do not communicate, much less cooperate, in their efforts to provide service for victims of child sexual abuse. Many agencies see themselves in role conflicts with other agencies. For example, a Department of Pensions and Security protective service worker may be interested in reuniting a female incest victim with her family, while a prosecutor may want to file criminal charges against her father. As a result, without effec-

tive coordinated help, many children continue to be abused, having the quality of their entire lives affected, suffering lasting emotional injury and sometimes becoming abusers themselves.

The following scenario for child sexual abuse investigation is probably enacted on a daily basis in every state in the United States:

A child confides to some trusted person outside the family (perhaps a teacher) he or she is being sexually abused by a parent. The teacher reports the case to the County Department of Pensions and Security protective service worker or to law enforcement. The child is interviewed by each agency. An intake worker from the local child protective service agency visits the home and confronts the parent with the child's complaint of sexual abuse. A law enforcement representative and/or protective service worker will interview the offender and any other witnesses. The child protective service workers normally will refer the child to a physician for a medical exam and will likely recommend a therapist for the child and family. This, of course, requires the child and family to endure additional interviews.

Police and child protective service investigators find it difficult or virtually impossible to obtain comprehensive medical and psychological evaluations for victims, perpetrators and their

families. Treatment resources are limited. Often, the protective service worker will seek a court petition to change custody of the child-victim. This involves the child as a potential witness in this custody petition and will require an attorney to be appointed to represent the child (guardian ad litem). Again, the child and family have to interact with additional "strangers" to be interviewed concerning the reported child sexual abuse.

Needless to say, not many children and families can "survive" the process in the outlined scenario. Add to that the fact that members of the disciplines involved lack basic understanding about the phenomenon of child sexual abuse and refuse to accept responsibility to increase their knowledge or skills. Without a coordinated community agency approach to reported cases of child sexual abuse, many offenders will escape proper scrutiny because the victims are not able to survive the system. Consequently, the community must unite and react together in these cases.

In Madison County, Alabama, reports of child sexual abuse began to increase rapidly in 1981. When elected district attorney in 1981, I had established a system to review reported cases of child abuse for possible criminal prosecution. Between the years 1973 and 1975, I was an assistant dis-



strict attorney and was assigned to Juvenile Court. As a consequence, I was required to work with representatives from the Madison County Department of Pensions and Security protective service workers who were involved in removing children from parents because of child abuse and neglect. Because of this experience, when elected district attorney, I set up review meetings with DPS protective service workers. Every month, representatives from my office met with the protective service workers to review specific cases of child abuse. At these sessions, we were able to advise the protective service workers about courtroom testimony, the elements of criminal offenses, proper documentation and when to refer to law enforcement.

During 1981, we began reviewing child sexual abuse cases. Suddenly, we were faced with an overwhelming increase of such cases. After a year, we found 25-40% of the abuse cases reviewed involved child sexual abuse. Alarming, over the next few years, most of the abuse reviewed was child sexual abuse. Law enforcement was added to this team review in 1983. Also in 1983, the team review sessions were increased and now are conducted twice monthly. Presently, during our review sessions, the team decides whether a case is to be referred for criminal prosecution, for therapy or for further development and follow-up review. Specialized forms are used for this review allowing each agency to detail all follow-up procedures.

As a parallel to the prosecution/DPS/law enforcement team review, our community formed a Child Sexual Abuse Task Force in 1983. Because of the alarming number of child sexual abuse cases reviewed at the team review meetings, we felt a need to alert and inform other professionals and agency representatives about what was occurring in their community. Representatives from DPS and my office appeared before our county child abuse prevention coalition called SCAN (Stop Child Abuse and Neglect) which had existed in the community for almost ten years. We informed the SCAN board of directors of the alarming number of child sexual abuse cases in the community. We cited the need for

other professional involvement particularly from the treatment and medical communities. We also emphasized many others, such as teachers, nurses, daycare workers and private schools, will be exposed to more and more cases of child sexual abuse. This would require additional community education programs to teach them about the subject matter. Together, we formed the Child Sexual Abuse Task Force.

The task force included representatives from medical, treatment, nursing, education, prosecution, protective service and law enforcement facilities, and daycare and community agency representatives and volunteers. The task force met at least twice a month and initially was broken down into subcommittees that included: treatment, intervention, identification and prevention. Each subcommittee came up with different goals and recommendations. For instance, the Intervention Subcommittee developed as its goals a manual on child sexual abuse to be distributed to teachers, nurses and others, and a proposed symposium or workshop on child sexual abuse.

The primary importance of the task force was to bring agency representatives together to discuss a problem they had in common. Most agencies and representatives in the task force had "hands-on" involvement in reported cases of child sexual abuse. However, many did not know one another. The DPS protective service workers often were referring children and families to therapy without knowledge of

the philosophy of the treatment therapist. Many agencies were unfamiliar with the process of criminal prosecution and were reluctant to report cases for criminal prosecution because of the effect such would have on the family. The task force meetings and projects allowed professionals to discuss their common problems with one another. It brought the professional community closer together and closed many loopholes previously existing. However, there were many awkward moments as the task force developed. At certain times, the task force ended up taking positions conflicting with agency policies. Some participants felt "threatened" by policy and goal development of the task force, but the agencies most affected by the processes involved in reported cases of child sexual abuse continued to work together in the task force.

In August 1984, the Intervention Committee of the task force proposed a program for the community called the Children's Advocacy Center. During the August meeting of the task force, I narrated a "reenactment" of an actual case of child sexual abuse. This case involved a 12-year-old girl who had disclosed to her grandmother she had been sexually abused by her stepfather and father for as long as she could remember. The grandmother sat up all night with the child and heard the "dreaded" story. The following day the grandmother went to the police department and thereafter was "bounced" from agency to agency. The child was



*Robert E. Cramer, Jr., graduate from the University of Alabama Law School in 1972. He was elected Madison County district attorney in 1980 and helped organize the Children's Advocacy Center (formerly the Child Sexual Abuse Task Force) in 1983.*



interviewed by the police department, DPS protective service and emergency room hospital personnel. She was referred to therapy, and a guardian ad litem was appointed for her in the removal of custody from her mother. She was then referred to the district attorney's office for review for criminal prosecution.

This case illustrated the worst approach community agencies could take to child sexual abuse. The child told her story to the grandmother and to the DPS worker, but would not repeat her story to any other professionals. The stepfather confessed his guilt to others in the community, and the case was in a posture for criminal prosecution, but this could not be accomplished without the child's telling her story in court. This was a 15-month ordeal from start to finish, ending with successful prosecution of the stepfather. This case experience illustrated policies that could not continue if children are to be encouraged to come into the criminal justice system.

In early August 1984, two attorneys from my office and I went to Los Angeles, California, to interview two young boys who were sexual abuse victims. While in Los Angeles, we visited the Ventura County, California, district attorney's office to look at their Child Sexual Assault Unit. Also, we visited the Children's Institute in Los Angeles. The Children's Institute is a private foundation, 88 years old, which most recently has been involved with interviewing the children who were sexually abused at the Manhattan Beach Daycare Center. It was after this visit that we proposed to the community task force the formation of the Children's Advocacy Center.

The Children's Advocacy Center is a "program" with a focus on an advanced team approach to reported cases of child sexual abuse. The objective is to demonstrate a unique and successful community approach to interagency management of child sexual abuse reports. The overall goal of the project is to consolidate agency and professional involvement in addressing the problem of child sexual abuse. This will be accomplished by allowing relevant community agencies to work together

through the program based in the Children's Advocacy Center.

A prosecution/protective service/law enforcement team will review all reports of child sexual abuse. The team will be based in a homelike "house" called the Children's Advocacy Center. From this base, the team will coordinate the handling of cases. The center's program will be the umbrella program under which community agencies will implement a model team approach.

The prosecution/law enforcement/protective service team will jointly investigate reports of child sexual abuse and will make referrals for therapy and medical exams. It is proposed that therapy sessions and medical exams will be initiated or take place at the center. Thereafter, all relevant agen-

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*"Most often, the dilemma facing a district attorney's office is that the child-victims, some as young as three or four, are often the only witnesses to the crime."*

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cies or other professionals involved with the child-victim and family can participate with them at the center to help make decisions in the best interest of the child, family and society. A victim-witness clerk from the district attorney's office will be available at the center to introduce the child and family to the criminal justice system.

The program staff will develop interview teams and will conduct the interviews of the child-victim. Child-victims will no longer be interviewed at police departments, DPS offices or prosecution offices. All participating agencies will refer child-victims to the center. Team interviewers will question the children in the home-like surroundings, and, where appropriate, the interview will be videotaped. The confidentiality of the video will be preserved by center policy. Review for criminal prosecution will be done at

the center. This will be done by the prosecutor/law enforcement/protective service team. If the child needs to be reinterviewed, that will be performed by the initial interview team at the center. The center will keep statistics on the number of child sexual abuse victims served, agencies participating, services provided, victim and offender profile and the number of offenders prosecuted and case disposition.

When a case is not referred for criminal prosecution, the team will attempt to stabilize the child and family. They will make referrals appropriate to maintain the safety and well-being of the child-victim. The team may recommend criminal prosecution be suspended as long as the offender is kept out of the child-victim's home and presence. DPS protective service will monitor the child and family and preserve the child's safety and well-being. Periodic team reviews may be conducted, and additional agency personnel will be involved. Additional team review may involve the team with DPS protective service and possible removal of the child from the family and offender. Close coordination will occur between the team and the agency seeking a court petition and order to remove the child from the custody of the family. The team will monitor the court proceeding and will make recommendations in the best interest of the child and family.

Each team member will act as his agency liaison, and follow-up or additional personnel involvement through that agency will be coordinated through the team agency representative. In most cases, DPS will use existing personnel to supervise cases initially developed through its team member and other personnel at the center. This will allow additional personnel from each agency to participate in the program.

At the conclusion of 12 months, the staff involved in the program will recommend detailed interagency policy approaches in the handling of reported cases of child sexual abuse. The program will allow agencies to evaluate the benefit to the child-victim and family from a coordinated interagency approach.

Madison County professionals have



recognized the interviewing process and techniques are critical in cases of child sexual abuse. Another primary benefit of the program will be the further development of such techniques, processes and follow-up. Proper interviewing of a child-victim can be therapeutic. The center's staff and other agency participants will become specialized in this process. The participants in the program will develop a videotape interview guide which will stress a community approach to child sexual abuse. This interview guide will be available at the conclusion of the program.

Local and national publicity about child sexual abuse has prompted more parents to bring suspected cases before our community professionals. Most often, the dilemma facing a district attorney's office is that the child-victims, some as young as three or four, are often the only witnesses to the crime. Preparing a child to testify in court is one of the most difficult things for any prosecutor. The criminal justice system was designed for adults. It is a system that expects victims to undergo numerous interviews and court appearances, that expects testimony to be articulate and detailed and in which cross-examination often confuses the coolest adult.

The child in the courtroom poses new problems. Because the offenders often threaten harm to the child and family, sexually abused children may not report incidents for months or years later. Chances for corroborating evidence or effective prosecution are therefore affected. These are the toughest cases in the criminal justice system. Very rarely do they find successful solution; many cases reported to police and protective service never make it far through the criminal justice system.

The first cases we took into the criminal justice system taught us many adults would like to believe children make up these things. Adults do not want to confront the awful fact many parents will sexually abuse their children. Also, we, as a society, do not like to believe we would be willing to send an adult to prison on the testimony of a very young child. At heart, we really do not trust children.

However, experts in our community now believe children are more credible witnesses than adults, especially when it comes to sexual abuse. Young children do not lie about sexual abuse because it is not within their realm of experience. Children can be effective witnesses if they are adequately prepared. If law enforcement and community professionals show a little sensitivity, children can move through the criminal justice system with a minimum of stress.

We are developing model legislation calling for the abolition of competency hearings and allowing videotaping of a child's testimony, rules of evidence allowing for hearsay and expert witnesses and background checks for people who work near or with children.

How to begin a community approach to child sexual abuse? Law enforcement, prosecution, protective service and other professional people in the community who have direct contact with cases have to be willing to stick out their necks. They need to begin to review their cases together on a regular basis, and invite other disciplines to

join them. Agencies need to permit a small number of interested staff to concentrate their case experience. As cases are reviewed by these "hands-on" people, interagency cooperation *will* improve. It will not happen overnight, but it will happen. Critical review is essential to improving case management. Professionals also have the responsibility to design and participate in education programs aimed at increasing their knowledge about the problem of child sexual abuse and improving their intervention skills.

Our children are our hidden assets; it is time we stood up for them. □

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Child Sexual Abuse will be the topic of a symposium February 20-22, 1985, in Huntsville. Sponsored by the Child Advocacy Unit of the Madison County district attorney's office, the workshops are targeted for physicians, legislators, judges, educators, therapists and any others involved with and concerned about this ever-growing problem.

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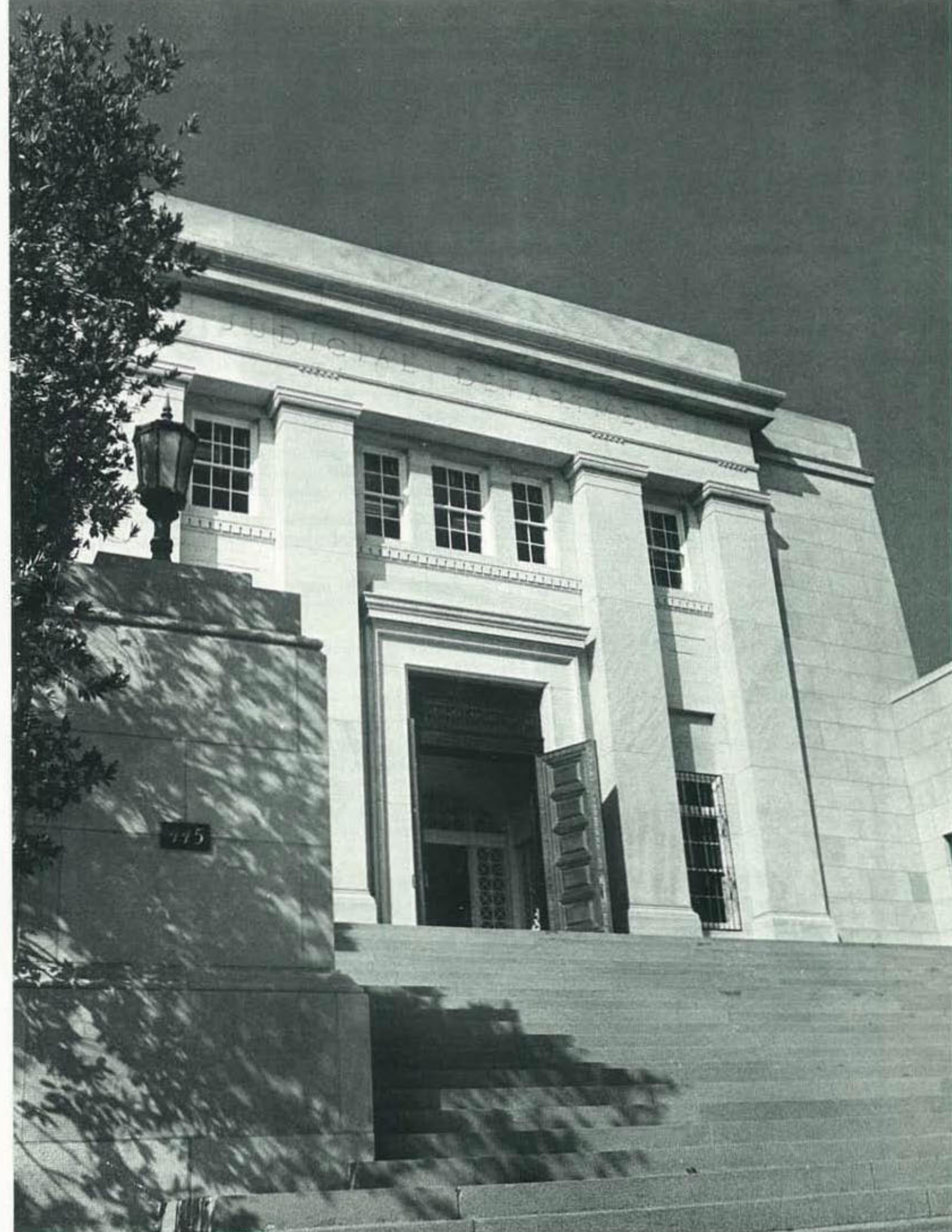
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# Recent Decisions

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## Recent Decisions of the Alabama Court of Criminal Appeals

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### Fair trial . . . effective assistance of counsel and denial of *Brady*

*Simpson v. State*, 8th Div. 23 (November 12, 1984). The defendant, Delon Simpson, was indicted, tried and convicted of selling 14.2 grams of marijuana in violation of the Alabama Uniform Controlled Substances Act. On appeal, Simpson alleged he was denied the right to effective assistance of counsel.

On October 31, 1983, Simpson appeared before the trial judge without an attorney. He repeatedly informed the court he could not afford to hire an attorney; the trial judge was equally adamant in his opinion Simpson was not indigent and ordered the defendant to stand trial that afternoon.

Timothy Riley, a young attorney, consented to the trial judge's request he assist Simpson in striking a jury for his trial. Riley had never met Simpson nor was he familiar with any of the facts of his case. After striking a jury late that afternoon, Simpson's trial was to commence at 9:00 a.m. the following day. The next morning, Riley advised the court he had agreed to represent the defendant and made a motion for continuance in order to prepare for trial. The trial judge denied the motion and trial proceeded.

The court of criminal appeals reversed, holding that the trial judge abused his discretion in not granting the motion for continuance.

Judge Harris, writing for the majority, held:

"It is fundamental that counsel must be given adequate time for preparation." *Thompson v. State*, 444 So.2d 899 (Ala. Cr. App. 1984).

In focusing the issue, Judge Harris noted the following critical facts:

"A defense attorney who had volunteered, at the court's request, to assist an unknown defendant strike a jury late one afternoon, when the trial was to begin the next morning, could do little more than request a continuance. This severe time limitation gave the defense attorney inadequate time to gather facts, interview witnesses, engage in pretrial discovery, negotiate for a possible plea with the state, or research the applicable law. There was precious little time to even review the court file and discuss the case with the defendant."

### Court of criminal appeals adopts *Leon*

*Walker v. State*, 4th Div. 341 (October 23, 1984). The defendant was convicted for the third degree burglary of a grocery near Circle, Alabama. On appeal, he argued the affidavit in support of the warrant authorizing the search of his house was insufficient and did not support a finding of probable cause. The search warrant was issued by the Circuit Court of Jackson County, Florida. Specifically, the defendant contended the affidavit was defective because the informant did not state how he knew the stolen property was located in defendant's residence. Accordingly, he argued the affidavit did not satisfy the "basis-of-knowledge" prong of the test established in *Agruilar* and *Spinelli*.

A unanimous court of appeals, relying upon the rationale of *Illinois v. Gates*, 103 S.Ct. 2317 (1973) and *United States v. Leon*, 104 S.Ct. 3405 (1984), affirmed the conviction. While the court noted the informant never stated how he knew the stolen property was in defendant's residence, the court held when the search warrant was executed the stolen property obtained was

still admitted properly into evidence under the "good faith exception" to the warrant requirement of the Fourth Amendment. Under those circumstances, the exclusionary rule should not be applied so as to bar the use in the prosecution's case-in-chief evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be invalid. See *United States v. Leon*, \_\_\_ U.S. \_\_\_, 104 S.Ct. 3405, 3419-20 (1984).

Judge Bowen cited the following critical language from *Leon*:

"In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient. . . . Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations."

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## Recent Decisions of the Supreme Court of Alabama—Civil

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### Medical liability . . . patient-doctor and patient-hospital relationship

*Thomasson v. Diethelm*, 18 ABR 4149 (September 28, 1984). This case presents the question of whether section 6-5-482, Ala. Code 1975, applies to an action brought against a physician by a person who was not the physician's patient. The plaintiff, a respiratory therapist, contracted hepatitis while treating a patient of the defendant/doctor's. The plaintiff claimed the doctor negligently failed to warn her the patient had hepatitis, and she sued under section 6-5-482 to take advantage of the two-year statute of limitations. The plaintiff contended that since section 6-5-482(a) provides "all



actions against physicians" must be commenced within two years, this language is broad enough to include actions by third persons, i.e., persons who are not patients.

The supreme court disagreed noting when the entire statute is considered, particularly the section defining "medical liability," it is clear the legislature was addressing the liability of medical professionals in the context of the patient-doctor and patient-hospital relationships. In this case, the plaintiff was not a patient of the defendant/doctor's, and suit had to be brought within the one year permitted by section 6-2-39, *Ala. Code* 1975.

### **Medical liability . . . orthotists come within section 6-5-480**

*Tuscaloosa Orthopedic Appliance Co., Inc. v. Wyatt*, 18 ABR 4248 (September 28, 1984). In a case of first impression, the supreme court held although orthotists are not specifically mentioned in the Alabama Medical Liability Act, section 6-5-480, *et seq.*, *Ala. Code* 1975, they are health-care providers who provide services as prescribed by physicians for their patients. Therefore, the usual rules relating to medical malpractice are applicable. For instance, expert medical testimony is usually required to establish what is and what is not proper medical treatment and procedure. Orthotics includes the fabrication and fitting of braces and casts suitable for a patient in keeping with the instructions of the physician.

### **Appellate procedure . . . assessment of attorney's fees**

*McAnnally v. Levco, Inc.*, 18 ABR 3937 (September 14, 1984). Appellant timely filed a notice of appeal, but did not file a brief. Appellee moved to dismiss the appeal and requested attorney's fees and costs. Although not specifically mentioned in Rule 38, *Ala.-R.App.P.*, the supreme court stated there is no reason why attorney's fees should not be awarded as "just damages" when the appellant files a frivolous appeal. The supreme court noted attorney's fees are probably the most

likely damages from a frivolous appeal other than loss of potential interest on the trial judgment.

### **Civil procedure . . . motion not favored**

*Warren v. Rasco*, 18 ABR 4237 (September 28, 1984). In this case, the supreme court succinctly stated the limited circumstances under which a judgment on the pleadings is correct. A motion for judgment on the pleadings is designed to provoke a search of the pleadings for the purpose of determining whether there is an issue of fact presented by the pleadings which requires the introduction of proof. A rule 12(c), ARCP motion, therefore, presents two questions: (1) whether there is any issue of material fact; and (2) if no issue of material fact is presented by the pleadings, which party is entitled to a judgment. 17 *CJS Pleading*, section 425(a).

A rule 12(c) motion operates within rather narrow limits and should not be unduly extended. It is said frequently the granting of a rule 12(c) motion is not looked on with favor by the courts.

### **Insurance . . . substantial performance necessary to change a beneficiary**

*Gibson v. Henderson*, 18 ABR 4083 (September 21, 1984). Finding no Alabama authorities exactly in point, the supreme court looked to other jurisdictions to determine whether an insured employee had effected a change of beneficiary by filling out and signing a change of beneficiary form before a witness, without ever mailing or otherwise delivering the form to the employer. The employee died 15 months after executing the form, but there was no explanation why he had not mailed or delivered the form to the employer. The executed form was found in his desk and subsequently submitted to the employer. The insurance policy provided the employee may change his beneficiary by filing written notice

with the employer, and the change would relate back whether or not the employee is living when the notice is received.

As a matter of law, the trial court found the employee had effected a change of beneficiary even though the employee never mailed or delivered the notice. The supreme court reversed, and followed the majority rule, stating the beneficiary effectively may be changed if the insured "substantially complies" with the policy provisions providing for change. The supreme court explained "substantial compliance" means the insured determined to change the beneficiary and then did all he reasonably could to make the change. Here, the beneficiary did not mail or otherwise deliver the form to the employer, and there was no evidence to explain why he failed to do so.

### **Juror qualification . . . new trial mandated where juror failed to respond to question based upon statutory disqualification**

*Chrysler Credit Corp. v. McKinney*, 18 ABR 4030 (September 21, 1984). On voir dire examination concerning juror qualifications, the trial judge asked the prospective jurors if any of them were unable to read or write. There was no affirmative response to this question. Following the trial, counsel found one of the jurors could neither read nor write and had difficulty hearing. Counsel moved for a new trial based upon section 12-16-60(a) (2) *Ala. Code* 1975, which mandates a juror must be able to read, speak, understand and follow instructions given by a judge. The trial court denied the motion.

The supreme court reversed, holding a new trial is mandated where a juror serves who has failed to respond to a specific question based upon a *statutory* disqualification. The supreme court distinguished those cases which hold the failure to respond to questions designed for preemptory challenges do not require a new trial unless prejudice is shown. The latter cases do not disqualify a juror and render him or her subject to challenge for a cause.



## Torts . . .

### Alabama Power may have a duty to install automatic circuit breakers

*Bush v. Alabama Power Co.*, 18 ABR 3919 (September 14, 1984). In a case of first impression in Alabama, the supreme court was asked to consider whether a power company has a duty to use a fuse or some type of automatic circuit breaker where it is foreseeable persons may come in contact with the wire. The plaintiffs were injured when a scaffolding came in contact with a 7,200-volt line which crossed a tennis court. The plaintiffs contended the power company had a duty to use a fuse in the switch to de-energize the line when the scaffolding made contact. The supreme court agreed, stating other jurisdictions have recognized a power company's duty to employ a fuse or some other safety device when it is foreseeable persons may come into contact with an uninsulated line. There was a testimony a fuse would have "blown" and the line would have been de-energized, substantially reducing the severity of the injuries.

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## Recent Decisions of the Supreme Court of Alabama—Criminal

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## Death case . . .

### improper argument on sentence

*Ex parte Rutledge*, 18 ABR 3789 (September 7, 1984). Mitchell Rutledge was convicted and sentenced to death for a robbery where the victim was killed intentionally. At trial, the defendant made a motion for mistrial, during the sentencing phase, due to the closing argument by the state. In the argument, the prosecutor suggested a sentence of life imprisonment without parole might not prevent the appellant, at some time, from being released from prison. Earlier, the prosecution had argued the defendant had committed the charged offense while he was on parole. Consequently, the district attorney argued the appellant had been given an opportunity to change his life and could not be rehabilitated.

The trial court denied the motion for mistrial and ruled because the defense counsel had argued "under a life-without-parole sentence, the defendant would be locked up forever, (the state) had the right to argue that he may not be locked up forever." Undaunted, the prosecution continued its closing argument to the jury by stating in pertinent part:

"Life without parole. Mr. Balske came up and told you that there is no chance that he would ever get out again. I submit to you, ladies and gentlemen, that you can apply your own common sense to that statement. I submit to you that, as long as there are parole boards, as long as there are federal courts in the State of Alabama, and as long as the legislature of the State of Alabama still exists, there is a chance that this defendant will get out, so do not be misled for a minute . . ."

The court of criminal appeals found the prosecuting attorney's argument was proper as a "reply in kind to the previous comments of defense counsel." The court of criminal appeals concluded the defendant "cannot complain of the remarks when they were initiated, provoked or occasioned by the action of his counsel." The Supreme Court of Alabama disagreed and reversed and remanded the case for a new sentencing hearing.

The supreme court, speaking through Justice Embry, held that the "reply in kind" doctrine is based on fundamental fairness. Where counsel for one party permits counsel for the opposing party to make impermissible remarks to the jury without interposing an objection, the law implicitly reserves to the former the right to reply in kind, albeit equally impermissible to the argument of the latter.

The supreme court expressly held that:

"It is a misapplication of this rule, however, to uphold an illegal argument under the guise of "reply in kind" where the initial argument, to which the purported reply is addressed, is itself a legally permissible comment to the jury."

The court found that the state's argument exceeded the permissible boundaries in that it was directly contrary to longstanding law.

"It has long been the law of this state that comments upon the probability or possibility of what might happen under a particular sentence, falling outside the evidence and the law of the case, constitute improper argument."

## Defective indictment . . . forgery

*Ex parte: Horton*, 18 ABR 3784 (September 7, 1984). Lavon Horton was charged and convicted of possessing a forged check. The indictment charged the offense (§13-A-9-6) substantially in the terms of the statute.

The supreme court found the indictment as framed was not sufficient to protect Horton from possible double jeopardy and from being charged again for possessing the same unspecified check.

The indictment was defective because it did not specify anything about the forged check which Horton was charged with possessing; the indictment did not set out the amount, the payee, the drawer of the check nor the time or place when Horton possessed it. It is especially critical to note the court in *Horton* held that objections to an indictment which is not void may be waived usually by the failure to interpose a timely demurrer or, more properly, a motion to dismiss.

## Sexual abuse conviction reversed . . . prior conviction question improper

*Ex parte: Miller*, 18 ABR 3685 (August 31, 1984). Michael Miller was indicted and convicted for violation of §13-6-66, *Ala. Code* 1975, sexual abuse in the first degree. Miller was sentenced to seven years' imprisonment.

The Supreme Court of Alabama granted certiorari to consider whether the trial court erred in allowing the state to question a defense witness concerning the accused's prior conviction before the defendant took the stand. In a *per curiam* opinion the court held it was reversible error to allow the state to comment on the defendant's prior conviction before he testified. The conviction was brought out in the state's cross-examination of the de-



fendant's mother. The trial court had overruled the defense counsel's objection to the state's question along with his motion for mistrial because the defendant had pled not guilty by reason of insanity, and the defendant's mother testified she believed "he had a mental problem."

The trial court's theory in overruling the defense counsel's objection was based upon *Nichols v. State*, 276 Ala. 209, 211, 160 So.2d 619, 621 (1964). In *Nichols*, the supreme court held:

"Where insanity is relied upon as a defense every act of the accused's life which throws some light on such issue is relevant thereto."

In this case, the supreme court relied upon the decision of *Pilkington v. State*, 46 Ala.App. 716, 248 So.2d 755 (Ala. Crim.App. 1971) in reversing the trial court. Specifically, the state failed to offer any evidence the defendant's state of mind was the same at the time of the prior conviction as it was at the time of the commission of the act in question. Without such evidence, the prior conviction is not admissible.

### Venue . . . proof by circumstantial evidence

*Ex parte: State of Alabama (Re: Jimmy Lewis v. State of Alabama)* 18 ABR 3973 (September 21, 1984). The defendant was found guilty of first degree rape and was sentenced to life imprisonment. The court of criminal appeals reversed based upon the state's failure to prove venue. The supreme court granted certiorari to consider whether there was sufficient circumstantial evidence from which a jury could infer proper venue.

The supreme court, through Justice Maddox, remanded the case to the court of criminal appeals in order to allow that court to determine if there was sufficient circumstantial evidence from which a jury could infer the parties either did not leave Houston County or the crime was committed so closely to the county line jurisdiction could be in either county under §15-2-7 of *Ala. Code* 1975.

Temporary Rule 16.2, Ala.R.Crim.P., provides in pertinent part as follows:

"(a) *Objections and Defenses Which Must be Raised by Pretrial Motion.* Objections based on defenses in the commencement of the proceeding or in the charge, other than lack of subject matter jurisdiction or failure to charge an offense, may be raised only by pre-trial motion made in accordance with Temporary Rule 16.3."

Rule 16.3 of the Ala.R.Crim.P. provides all pre-trial motions must be filed in the circuit court at or before arraignment unless the court extends the time for filing such motions for good cause.

The supreme court held Temporary Rule 16.4, Ala.R.Crim.P. permitted the trial court to defer ruling on the motion where the question of venue may be one of fact so entwined with the merits of the case a decision should not be

made prior to trial but postponed until the trial itself.

The supreme court found proof of venue is necessary to sustain a conviction but venue could be established by circumstantial evidence. However, that proposition is limited by the rule which states a conviction based on circumstantial evidence will be upheld only if the evidence is so strong and so cogent it establishes the defendant's guilt to a moral certainty. (Emphasis ours.)

Finally, in reversing, Justice Maddox critically notes:

"In a criminal case, proof of venue is sufficient if it can be reasonably inferred by the jury from the facts and circumstances adduced. Venue need not be established solely by direct evidence. Evidence from which it is inferable is sufficient." □

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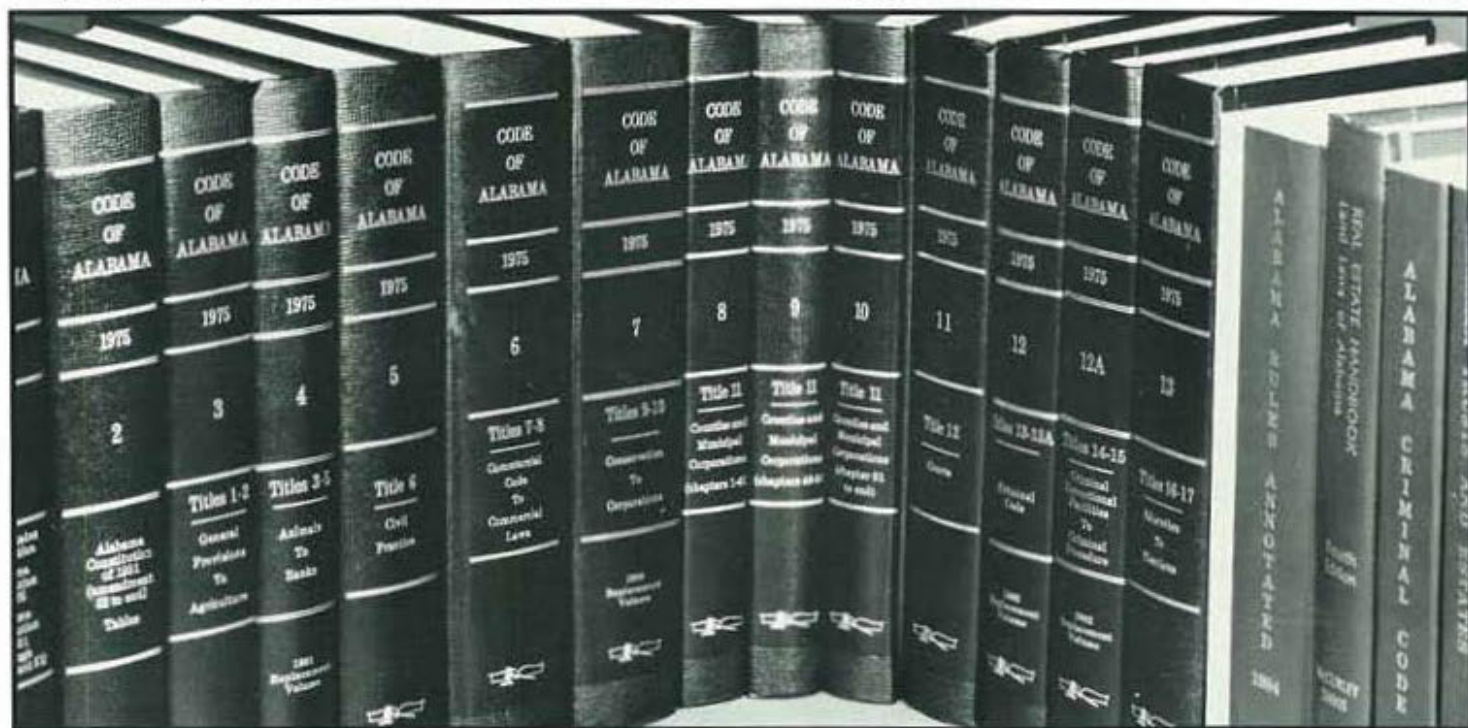
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1. Be a member in good standing of the highest court of a state for at least five years;
2. Have been engaged in the active practice of law for a period of at least five years;
3. Be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;
4. Be less than 70 years old; and
5. Not be related to a judge of the district court.

A Merit Selection Panel composed of attorneys and other members of the community will review all applicants and recommend to the judges of the district court in confidence the five persons whom it considers best qualified.



The court will make the appointment, following an FBI and IRS investigation of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups. The salary of the position is \$66,100 per annum.

Application forms and further information on the magistrate position may be obtained from:

James E. Vandegrift  
Clerk, United States District Court  
Northern District of Alabama  
104 Federal Courthouse  
1800 Fifth Avenue North  
Birmingham, Alabama 35203

Applications must be submitted only by potential nominees personally and must be received no later than February 15, 1985.

### Notice

Effective November 29, 1984, Disciplinary Rule 9-102 of the Code of Professional Responsibility of the Alabama State Bar has been amended, by order of the Supreme Court of Alabama, to read as follows:

#### DR 9-102 Preserving Identity of Funds and Property of a Client

- (A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank trust accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
- (1) Funds reasonably sufficient to pay bank charges may be deposited therein.
  - (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (B) A lawyer shall:
- (1) Promptly notify a client of the receipts of his funds, securities or other properties.
  - (2) Identify and label securities and properties of a client promptly upon receipt, and place them in a safe deposit box or other place of safe-keeping as soon as practicable.
  - (3) Maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.
  - (4) Not misappropriate the funds of his client, either by failing promptly to pay over money collected by him for his client or by appropriating to his own use funds entrusted to his keeping.
  - (5) Not make disbursement of a client's funds from bank trust accounts containing the funds of more than one client unless the client's funds are collected funds. Provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at his own risk, disburse uncollected client's funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of non-collection, replace such funds to the bank trust account.
- (C) Funds received directly or indirectly under an approved credit card plan shall be subject to all of the requirements of this disciplinary rule.

### CLE (From page 23)

must, however, be earned by December 31 of the reporting year. (Former Regulation 5.2 is now Regulation 5.3.)

A list of approved sponsors for 1985 will be published in the March issue of this journal.

### MCLE now in fifteen states

Kentucky and Vermont have become the fourteenth and fifteenth states to adopt minimum continuing education requirements for the continued competence of their bars.

Kentucky's rules went into effect July 1, 1984, and call for a minimum of 15 hours of approved instruction per year. Unlike Alabama, Kentucky does not routinely grant an exemption to attorneys who have reached a certain age. Attorneys 70 years of age or older may receive an exemption if it is demonstrated meeting the requirement would work an undue hardship on them. Also in contrast to Alabama, Kentucky requires an attorney who enters private practice after claiming an exemption to certify attendance of 15 hours of approved continuing education for each year an exemption was claimed, up to a maximum of 75 hours.

Vermont's rules go into effect July 1, 1985, and require attorneys to earn 20 credits every two years. At least two of the 20 hours must be devoted to the study of legal ethics.

With adoption in these two states, the number of Southern states with a mandatory CLE requirement has increased to four: Alabama, Georgia, South Carolina and Kentucky. The Mississippi Bar has voted in favor of such a requirement and is awaiting the decision of the state's Supreme Court. Additionally, the concept is under consideration by the governing boards of the bars of Florida, Texas, Arkansas, Louisiana and West Virginia.

As has become their custom, administrators from the 15 mandatory CLE states will meet in February. Alabama attorneys may suggest items for discussion by writing to the MCLE Commission, P.O. Box 671, Montgomery, Alabama, 36101. □



# Opinions of the General Counsel

William H. Morrow, Jr.

## QUESTION:

**"When the attorney for the plaintiff and the attorney for the defendant each ought to be called as a witness on behalf of his client and none of the exceptions of DR 5-101(B) (1) through (4) apply, do the reasons for the rule which prevents an attorney from appearing in the dual roles of witness and advocate cease to apply or must both attorneys withdraw from the trial of the case?"**

## ANSWER:

Since neither the Ethical Considerations nor the Disciplinary Rules of the Code of Professional Responsibility make any exceptions to the prohibitions against an attorney acting in the dual roles of witness and advocate even though the attorney for the plaintiff and the attorney for the defendant engage in such dual roles, and since certain of the reasons for the rules apply even in this "double negative" situation it would be improper for attorneys representing adverse parties to act as both witnesses and advocates.

## DISCUSSION:

Although the answer to this question appears to be fairly obvious, the office of the General Counsel and the Disciplinary Commission has received one formal written request for opinion and one informal telephone inquiry concerning the same and the answer and the rationale supporting it should be of interest to attorneys generally.

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, (1) he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, (2) 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 (3) 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." (numbers and parentheses added)

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 lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative, or if 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 decision, 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 represen-



tation 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)."

The Ethical Considerations set forth certain of the reasons for the rules which prohibit attorneys from acting in the dual roles of witnesses and advocates. In Formal Opinion 339 (1975) the American Bar Association Committee on Ethics and Professional Responsibility observed:

"Ethical Considerations 5-9 and 5-10 make clear that the principal ethical objections to a lawyer's testifying for his client as to contested issues are that the client's case will, to that extent, be presented through testimony of an obviously interested witness who is subject to impeachment on that account; and that the advocate is, in effect, put in the unseemly position of arguing his own credibility or that of a lawyer in his firm. In some situations, the practice may also handicap opposing counsel in challenging the credibility of the lawyer-witness."

Perhaps one of the best statements concerning the reasons for the rule that generally precludes an attorney from acting as both witness and advocate is found in the case of *People v. Smith*, 14 Cal. App. 3rd. 56 (1981), wherein the court stated:

"Because of his professional and official role, his sworn testimony would lay silent claim to a heightened degree of credibility. He would thrust upon his opponent a sticky choice between vigorous cross-examination of his professional colleague and abdication of his own professional responsibility. After cross-examination the witness would doff his hat as witness, pick up his hat as advocate and stand before the jury in summation. The synthetic change of hats would hardly interrupt the flow of impression and influences emanating from him as a unitary human being. In his role as advocate he would assure the jurors of his own veracity as witness. In justice to his client, he could do no less. His opponent would then be driven to attack his credibility as a witness. In justice to his client, the opponent too could do no less."

Numerous reasons have been advanced over and above those set forth in the Code of Professional Responsibility supporting the prohibition against an attorney testifying and acting as an advocate. While the attorney who testifies in behalf of his client will not, in fact, alter his testimony to suit his client's interests, it is feared that the public would be led to believe that he will do so. Professor Wigmore thought this protection of the profession's image "the most potent and most common reason judicially advanced" in support of the rule. Wigmore, *Evidence*, 596-597 (3rd Edition 1949).

Ethical Consideration 7-24 in part provides:

"The expression by a lawyer of his personal opinion as to the justness of a cause, as to the

credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client."

Canon 15 of the old Canons of Professional Ethics of the American Bar Association in part provided:

"It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause."

Commenting upon Canon 15 of the old Canons of Professional Ethics of the American Bar Association one writer made the following observation:

"It is this aspect of the distinction between an advocate and a witness that seems to me to be central to the rule forbidding a lawyer to play both roles. A witness vouches for the truth of his statements. It would make no sense to say of a witness, as did Canon 15 of a lawyer, that it is 'improper' for him 'to assert his personal belief....' The witness is expected to assert as fact only that which he personally knows and believes to be so, and the persuasive force of his testimony stems from his personal qualities of credibility and integrity. Argument, however, is objective. The strength of the lawyer's argument derives from the force of its reason and not from the personal qualities of the lawyer who makes the argument. Whether the lawyer personally believes in his client's cause is irrelevant to the evaluation of his arguments." (*American Bar Foundation Research Journal* 1977: 455)

Some courts have felt that the application of Disciplinary Rule 5-102 is mandatory and the parties cannot waive the effect of the same. *MacArthur v. Bank of New York*, 524 F. Supp. 1205 (1981).

The Ethics Committee of the Maryland State Bar in an opinion issued in 1977 held that where it was obvious that the attorney for the plaintiff and the attorney for the defendant both would be required to testify in behalf of their clients concerning an alleged oral agreement between the parties, both attorneys must withdraw from the representation in the matter because none of the exceptions of DR 5-102 applied.

Although some of the reasons for the existence of DR 5-102 may not exist in the question posed, others continue to be evident. The trial would reduce itself to a swearing contest between two attorneys each vouching for his own credibility and attacking the credibility of his opponent.

This spectacle would bring into play at least one reason advanced in support of the rule since the image of the bar would not be enhanced thereby in the eyes of the jury, other trier of fact or the public. □



# Disciplinary Report

## Suspension

• Mobile lawyer **John A. Courtney** was suspended from the practice of law for a period of sixty days, effective August 22, 1984, based upon the Disciplinary Board's finding that he had violated DR 1-102 (A) (2) and DR 1-102 (A) (4) of the Code of Professional Responsibility of the Alabama State Bar by having requested a Mobile police officer to ask his wife, who was employed in a Mobile physician's office, to surreptitiously secure from the physician's office a copy of a certain document relating to the treatment of one of the physician's patients.

• Birmingham lawyer **Bert Lindbergh** was suspended from the practice of law in the state of Alabama for a period of 30 days, effective November 1, 1984, based upon an order of the Disciplinary Board.

• **Jamie Henagan McDowell**, a Montgomery lawyer, was suspended from the practice of law in the state of Alabama, effective October 30, 1984, based upon a decision by the Disciplinary Board.

• Dothan lawyer **Daniel E. Robison** was suspended from the practice of law in the state of Alabama, effective October 30, 1984, based upon an order of the Disciplinary Board.

## Surrender of License

• Attorney **William S. Mooneyham**, until recently of Montgomery, and now of Wetumpka, has surrendered his license to practice law in Alabama, and the Supreme Court of Alabama, pursuant to the surrender of license, has cancelled and annulled Mr. Mooneyham's license and privilege to practice law in the courts of Alabama, effective October 29, 1984.

## Reinstatement

• **Deborah Farrington Coe Sawyer** of Montgomery was reinstated to the practice of law in the state of Alabama, effective September 30, 1984, by an act of the Disciplinary Board.

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# In Memoriam



## A.J. Thomas

Andrew Johnston Thomas of Birmingham died on July 11, 1984. He was eighty-six.

Mr. Thomas was born in Birmingham, Alabama, September 1, 1887. He attended Marion Military Institute and received an A.B. degree from the University of Richmond, Virginia, in 1918; an LL.B. from the University of Alabama in 1920; and an LL.B. from Columbia University in 1922. He was a past president of the Birmingham Bar Association, a member of the Alabama Bar Association and a Fellow in the American College of Trial Lawyers. From 1923 to 1943 he was a partner in the firm of

Stokely, Schrivner, Dominick & Smith; in 1943 that firm merged with Benners, Burr, McKamy and Forman. At the time of his death, Mr. Thomas was a retired senior partner in the firm of Thomas, Taliaferro, Forman, Burr & Murray.

Mr. Thomas was a member of the First Baptist Church of Birmingham, the Birmingham Country Club, a past president of the Redstone Club, a past president of the Birmingham Exchange Club, former chairman of the board of trustees of the YMCA and past president of the Birmingham Metropolitan Board of Directors. He was active in connection with many charitable and educational causes and organizations through the years, rendering many services to his community and state.

The bar, his law firm, his clients and all of his friends are richer for having known Mr. Thomas through the years. His passing leaves an empty place in the hearts and minds of those who lost a true friend. He was of the "old school" and a perfect gentleman at all times. He had a keen sense of humor and a very hearty laugh.

Mr. Thomas is survived by a brother, Marion B. Thomas of San Antonio, Texas; a niece, Mrs. Lucy Wilkerson Thuss, Cumming, Georgia; a nephew, John Bauerlein, Wilmington, North Carolina; and several cousins.



## T.A. Johnston, III

Thomas Alexander Johnston, III, died on November 10, 1984, at the age of 68. He was educated in the public schools of Mobile and received his LL.B. degree in 1938 from the University of Alabama where he was a member of Pi Kappa Phi and Phi Delta Phi fraternities.

In 1938 he commenced the practice of law in Mobile and continued as an active and successful lawyer until his death. As an American citizen, he had the unusual distinction of being the 13th baronet of Caskieben Aberdeenshire, Scotland. This historic title was inherited from his Scottish forbears, tracing back to 1626. He was listed in Who's Who in America and was past president of the Mobile Bar Association. He served as Grievance Committee chairman more years than any other member of the Mobile Bar Association because he believed the public was entitled to the highest quality of service from the legal profession and because he loved lawyers.

Tom Johnston was an avid sportsman particularly enjoying hunting and fishing. He served as president and longtime member of the Mobile County Wildlife and Conservation Association. He served as senior warden and many years as vestryman of Trinity Episcopal Church. He was a member of the Wilmer Hall Board and the St. Andrew's Society of the Midsouth and was a Mason and a member of many clubs and mystic societies. He is survived by his wife, the former Helen Gaillard Du Bois, and three children, Helen Du Bois Sargent of West Lake, California; Leslie Sheldon Krempa of Spanish Fort; and Thomas A. Johnston, IV, of Mobile.

**Hancock, John Sherrill** — Birmingham  
Admitted: 1956 Died: August 31, 1984

**Huey, Clarence Eugene** — Hoover  
Admitted: 1951 Died: August 28, 1984

**Johnston, Thomas Alexander, III** — Mobile  
Admitted: 1938 Died: November 10, 1984

**St. John, Finis Ewing, III** — Cullman  
Admitted: 1956 Died: October 25, 1984

**Walden, Lucius Heflin** — Montgomery  
Admitted: 1926 Died: November 6, 1984





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## Notices

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**YLS**

(From page 26)

Mixon, Edmon McKinley and I attended the Affiliate Outreach Meeting in Vancouver, British Columbia, during the latter part of October and gained valuable insight into various projects being utilized throughout the United States. The next meeting of this type will be held in Detroit in February 1985.

As you can see, the Young Lawyers' Section of the Alabama State Bar is moving at a rapid pace for this year. Again, our efforts are designed to assist your profession, you young lawyers and the public. If any of you young lawyers would like to participate, please feel free to contact me. □

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The opinion of the General Counsel published in the July 1984 issue of *The Alabama Lawyer* has been suspended for a period to and including December 31, 1984.

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New admittees to the bar who are interested in purchasing the group picture or family pictures taken on the steps of the supreme court building following the October admissions ceremony may do so by contacting Scott Photographic Services, P.O. Box 1361, Montgomery, AL 36102. Phone 262-8761.

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Have you moved recently? If the answer to that question is yes, double-check that you have submitted a change of address to the Alabama State Bar. If your address is not changed, you will not receive your *Alabama Lawyer* or other important mailings from the bar association. Send your change of address to The Alabama State Bar, P.O. Box 671, Montgomery, AL 36101.

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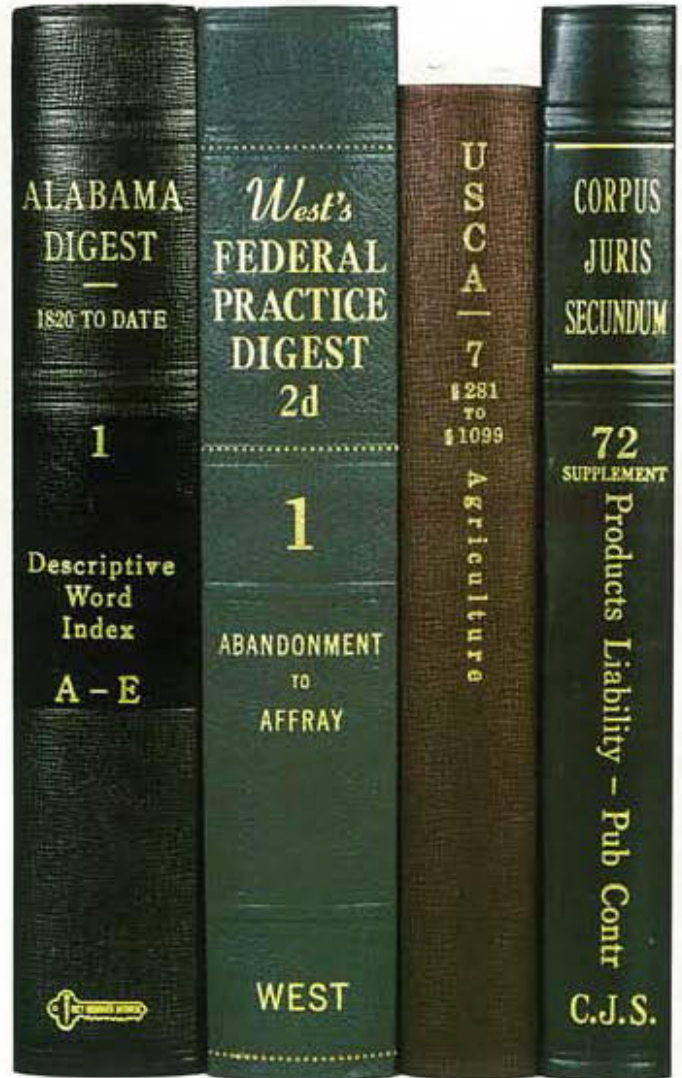
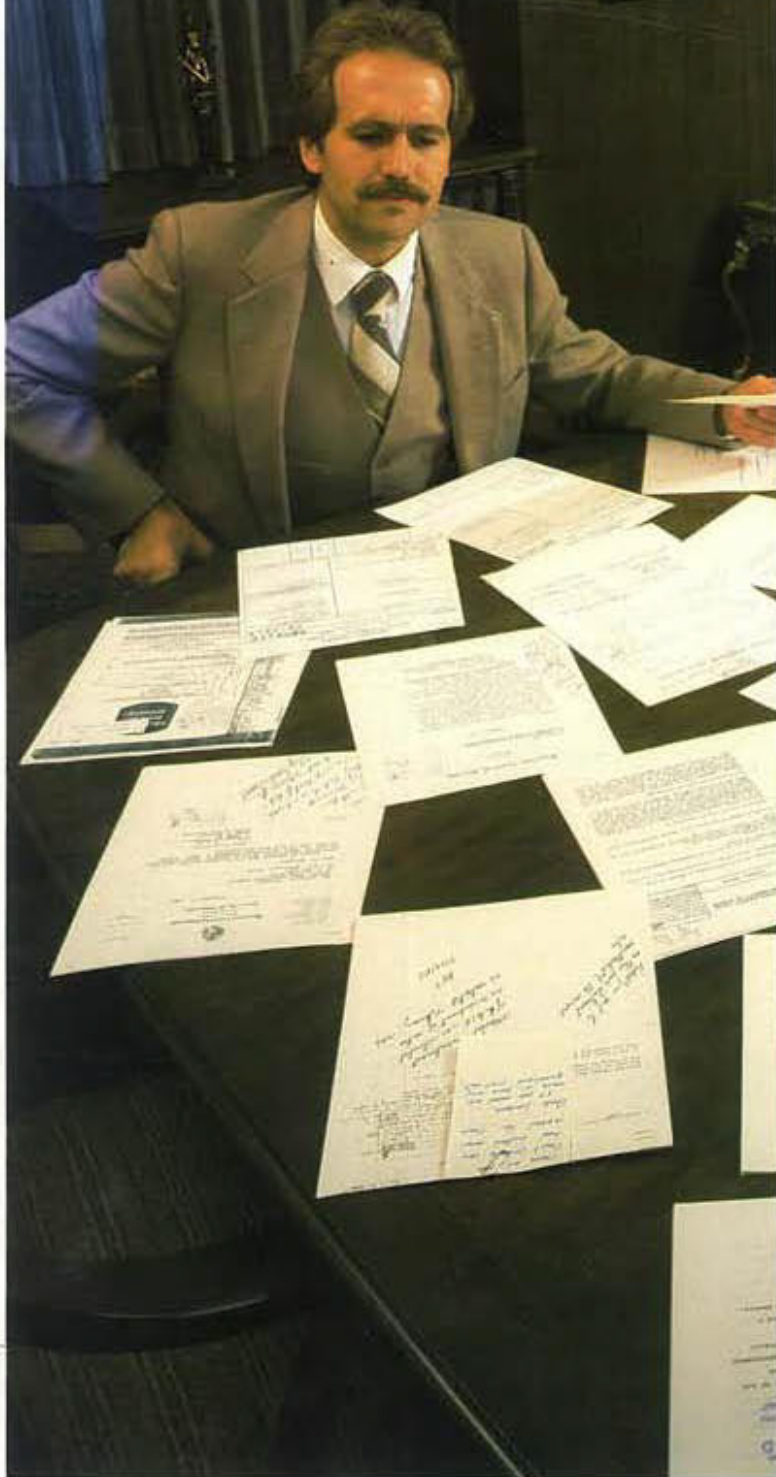
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