

# The Alabama Lawyer

Vol. 47, No. 1

January 1986





***“At Union Bank,  
we work hard to  
earn your trust.”***

—Henry A. Leslie  
President and Chief Executive Officer

Union Bank works closely with many Alabama attorneys in the administration of trusts and estates.

Our investment capabilities have increased dramatically in the past year by the addition of a state-of-the-art computerized system. As Alabama's largest independent bank, we control all our investment processing within the Trust Department to assure constant attention and complete confidentiality for your clients.

We invite your questions about Union Bank's trust services. Our experienced trust officers will be glad to discuss any business, financial or administrative aspect of the services we provide.

**Union**  
**BANK & TRUST** MEMBER FDIC

60 Commerce Street  
Montgomery, Alabama 36104  
(205) 265-8201

# Tilley's ALABAMA EQUITY Second Edition

by Nathaniel Hansford

*The author received his B.S. and LL.B. from the University of Georgia, his LL.M. from the University of Michigan. He is a member of the American, Georgia, Alabama, and Tuscaloosa Bar Associations. Mr. Hansford is the author of numerous law review articles and he serves as a lecturer for CLE. He has also served as a faculty member for the Alabama Judicial College. He is currently Professor of Law for the University of Alabama.*

*Nathaniel Hansford's revision of Tilley's classic treatise on Alabama equity: Keeps intact the original author's superb comprehensive treatment; Brings this area up to date; Rewrites the book's treatment to correspond with the Alabama Rules of Civil Procedure; and Each equitable remedy is a separate chapter. © 1985*

*For the practitioner who needs to know about equity practice in Alabama.*

Regularly \$45.95  
**Special Introductory Offer**  
\$39.95

**Announcing . . .**

## CANCER

**Causes and Methods of Treatment  
for Trial Lawyers**

*Etiology; Diagnosis; Nutrition; Therapeutic Modalities*  
© 1985

by John R. McLaren, B.S., M.D.

This comprehensive NEW treatise was written by expert John R. McLaren, B.S., M.D.; Director of Radiation Therapy, Robert Winship Memorial Clinic for Neoplastic Disease, Emory Clinic; and Professor of Radiology, Emory University School of Medicine, Atlanta, Georgia. With contributions from numerous specialists, *CANCER* is a significant source for non-oncologists, both legal and medical.

The book covers causative factors, nutrition, pathology, imaging of cancer, surgical treatment, radiation therapy, chemotherapy, hyperthermia, immunotherapy, and pediatric oncology. It contains over 100 illustrations, graphs and tables. Glossaries appear in selected chapters and at the end of the book. Frequent cross-references are made to relevant illustrations and sections. All of these features are designed to clarify the discussion and facilitate comprehension of the subject which is very important for this quickly developing, opposite field.

With *CANCER* as a tool, you will be representing your client from the most knowledgeable, up-to-date position possible — an advantage you can't afford to pass up!

Regularly \$99.95  
**Special Introductory Offer**  
\$89.95



**For fast, efficient service call our toll-free WATS:**



**1-800-241-3561**





# CODE OF ALABAMA

## The Essential Reference for Alabama Lawyers

The Code of Alabama, published in cooperation with the Alabama Legislative Council, is fully annotated and indexed by The Michie Company's professional staff of lawyer-editors. It includes collateral references to American Law Reports, American Jurisprudence, and Corpus Juris Secundum, as well as complete cross-references. The Code of Alabama is supplemented annually.

## Advance Annotation Service Available Separately

The Alabama Advance Annotation Service, keyed to the Code of Alabama, provides up-to-date annotations to Alabama cases and federal cases arising in Alabama. Three cumulative pamphlets are published during the interim between publication of Code supplements. Together with the annual supplement, the Advance Annotation Service makes the Code of Alabama the most up-to-date statutory and case law reference in the state.



For customer service contact:

JAMES R. SHROYER  
P.O. Box 346  
Wilsonville, AL 35186  
(205) 326-9899

Or call toll-free 1-800-446-3410



# The Alabama Lawyer

VOL. 47 NO. 1

JANUARY 1986

Published bimonthly by The Alabama State Bar  
P.O. Box 4156 Montgomery, AL 36101  
Phone (205) 269-1515

Robert A. Huffaker—Editor  
Carol Ann Smith—Associate Editor  
Margaret Dubberley—Managing Editor

**BOARD OF EDITORS** Patrick H. Graves, Jr., Huntsville • Champ Lyons, Jr., Mobile • Julia Smeds Stewart, Birmingham • Frank B. Potts, Florence • J. Mark White, Pittsburgh • C. Stephen Trimmier, Birmingham • Susan Shirock DePaola, Montgomery • Michael Fraser Ford, Tusculumbia • Philip E. Adams, Jr., Opelika • George M. Taylor, III Birmingham • Robert P. Denniston, Mobile • J. Michael Williams, Sr., Auburn • Arnold W. Umbach, Sr., Opelika • Carroll H. Sullivan, Mobile • Steven L. Wise, Tuscaloosa • Gregory H. Hawley, Birmingham • James N. Brown, III, Birmingham • Joe R. Whately, Jr., Birmingham • James N. Brown, III, Birmingham • Joe R. Whately, Jr., Birmingham • Greg Ward, Montgomery • Lynn Robertson Jackson, Clayton • Robert R. Kracke, Birmingham • Keith B. Norman, Montgomery • Grover S. McLeod, Birmingham • Robert G. Esdale, Es-officio, Montgomery

**OFFICERS** James L. North, Birmingham • President William D. Scruggs, Jr., Fort Payne • President-elect Harold Albritton, Andalusia • Vice president Reginald T. Hamner, Montgomery • Secretary

**BOARD OF COMMISSIONERS** 1st Circuit, Edward P. Turner, Jr., Chatoom • 2nd Circuit, Jerry L. Thornton, Hayneville • 3rd Circuit, Lynn Robertson Jackson, Clayton • 4th Circuit, Archie T. Reeves, Jr., Selma • 5th Circuit, Fred D. Gray, Tuskegee • 6th Circuit, Walter P. Crowner, Tuscaloosa • 7th Circuit, H. Wayne Love, Anniston • 8th Circuit, A. J. Coleman, Decatur • 9th Circuit, William D. Scruggs, Jr., Ft. Payne • 10th Circuit, Frances R. Hare, Jr., Birmingham • 11th Circuit, Robert M. Hill, Jr., Florence • 12th Circuit, Joe C. Cassady, Enterprise • 13th Circuit, Ben H. Harris, Jr., Mobile • 14th Circuit, Robert T. Wilson, Sr., Jasper • 15th Circuit, John B. Scott, Jr., Montgomery • 16th Circuit, Ludger D. Martin, Gadsden • 17th Circuit, Richard S. Marley, Demopolis • 18th Circuit, Oliver P. Head, Columbiana • 19th Circuit, John Hollis Jackson, Jr., Clanton • 20th Circuit, Wade Baxley, Dothan • 21st Circuit, Broox G. Garrett, Brewton • 22nd Circuit, Harold Albritton, Andalusia • 23rd Circuit, Gary C. Huckaby, Huntsville • 24th Circuit, L. E. Gosa, Vernon • 25th Circuit, Nelson Vinson, Hamilton • 26th Circuit, Bowen H. Brassell, Phenix City • 27th Circuit, Charles R. Hare, Jr., Albertville • 28th Circuit, J. Don Foster, Foley • 29th Circuit, B. Greg Wood, Talladega • 30th Circuit, B. J. McPherson, Oneonta • 31st Circuit, Gorman R. Jones, Sheffield • 32nd Circuit, John David Knight, Cullman • 33rd Circuit, Edward W. Boswell, Geneva • 34th Circuit, Roger H. Bedford, Sr., Russellville • 35th Circuit, Windell C. Owens, Monroeville • 36th Circuit, D. L. Martin, Moulton • 37th Circuit, Phillip E. Adams, Jr., Opelika • 38th Circuit, John F. Proctor, Scottsboro • 39th Circuit, Jimmy E. Alexander, Athens

**GENERAL INFORMATION** The Alabama Lawyer, the official publication of the Alabama State Bar, is published six times a year in the months of January, March, May, July, September and November. Views and conclusions expressed in articles herein are those of the authors, not necessarily those of the board of editors, officers or Board of Commissioners of the Alabama State Bar.

Subscriptions: Alabama State Bar members receive The Alabama Lawyer as part of their annual dues payment; \$15 of this goes toward subscriptions for The Alabama Lawyer.

Advertising rates will be furnished upon request. Advertising copy is carefully reviewed, but publication herein does not necessarily imply endorsement of any product or service offered.

© Copyright 1984. The Alabama State Bar. All rights reserved. ISSN 0002-4287.

The Alabama Lawyer is published bimonthly for \$15 per year in the United States and \$20 outside the United States by the Alabama State Bar, 415 Dexter Avenue, Montgomery, AL 36104. Single issues are \$3, plus postage. Second-class postage paid at Montgomery, AL. Postmaster: Send address changes to The Alabama Lawyer, P.O. Box 4156, Montgomery, AL 36101.

## On the cover—

Montgomery attorney Tom McGregor's photograph of the frozen fountain at Rosemont Gardens reminds us winter will be around for a bit longer.



## Alabama Self-help

Repossession ..... 8

Every lender of money is concerned about collecting on a loan. Learn more about self-help repossession and its advantages when regaining collateral.

## INSIDE THIS ISSUE

President's Page .....	4	cle opportunities .....	32
Executive Director's Report .....	5	Lawyers in the Family .....	34
Riding the Circuits .....	7	Profiles .....	44
Committees .....	17	Disciplinary Report .....	51
Bar Briefs .....	18	In Memoriam .....	52
Legislative Wrap-up .....	19	Et Cetera .....	53
Young Lawyers' Section .....	21	Recent Decisions .....	54
About Members, Among Firms .....	22	MCLE News .....	58
Opinions of the General Counsel ..	24	Cumulative Index .....	59
Attorneys Admitted to Bar, Fall 1985 ..	25	Classified Notices .....	64

# In Brief

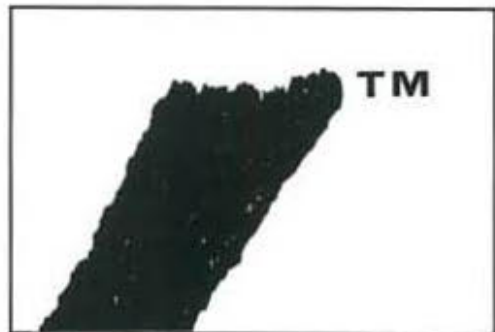
3-205-6-1-0.

## HELP WANTED

ERS. Must be willing to work on unpopular, difficult cases with no pay. Contact: Recruitment Alabama State Bar; P.O. Box 671

## An Urgent Plea for Help from the Alabama State Bar ..... 14

Volunteer counsel is desperately needed to aid Alabama's death row inmates. Find out how and why you should help.



## Trademark Law ..... 46

This third and final installment in a series on intellectual property law concentrates on trademark law.



# President's Page

It always has been my perception that most lawyers would, at some point in their careers, like to be judges. So it was with interest that I read a recent editorial in *The National Lawyer* noting Mayor Ed Koch's advertisements in the New York City papers soliciting candidates for judicial office in that city. The thrust of the editorial was that lawyers should be seeking to serve the public, and particularly this kind of public service, in spite of financial sacrifice. Certainly there may be financial sacrifice in some instances, but I still would think that lawyers would seriously desire these positions (although perhaps not in New York City).

Actually, in Alabama, with the recent pay raises granted by the legislature, judgeships can be financially attractive, particularly in view of what the real estate bar would term the "triple net" nature of the job, i.e., no library expenses, no secretarial salaries, excellent retirement benefits, etc. I would hope that Alabama, unlike New York, never suffers from a lack of qualified candidates for judicial office.

On the subject of qualified judicial candidates, I was astonished recently to learn that one can be Chief Justice of the Alabama Supreme Court at age 18, having been admitted to practice law for only one day. This has been brought to the attention of your Committee on Judicial Evaluation, Election and Selection to explore the question of minimal standards for judges, both at the appellate and trial level. Ralph Knowles of Tuscaloosa is chairman of that committee and Donald Sweeney of Birmingham is chairman of the Subcommittee on Selection and Election. At a meeting of the committee I attended, everyone present felt that certain minimum qualifications should be set. The concern was expressed, however, that setting the criteria too high might result in instances where no lawyer in a rural district or circuit was both qualified and willing to take the post. The committee and I appreciate hearing your thoughts on this.



NORTH

The University of Alabama and its law school are sponsoring a symposium March 17-18 in honor of the 100th anniversary of the birth of Hugo L. Black. The university is treating this as a particularly noteworthy event. Associate Justice William Brennan will be the keynote speaker. Former Justice Arthur Goldberg will speak and teach a course at the law school during the spring semester. Many other judges and eminent constitutional scholars around the country will celebrate with the University of Alabama the birth of this great Alabamian and American. Your bar is assisting with this celebration.

Your Supreme Court Liaison Committee, consisting of Gorman Jones, Bill Scruggs, Harold Albritton, Bernard Brannan and the undersigned, met November

15 with Chief Justice Torbert, Justices Adams and Houston, Supreme Court Clerk Bob Esdale and Allen Tapley of the Administrative Office of Courts. We had a full and frank discussion of problems they perceive with the bar and vice versa. Let me hear from you if some problem in either the appellate courts or your trial courts needs addressing by this group. Your problems cannot be resolved if they are not identified.

James D. Pruett of Gadsden, one of the bar's nominees, was reappointed by the governor to the Alabama Securities Commission. Jim recently was elected chairman of that body. This is a most important position, because unlike the federal Securities and Exchange Commission which mandates only full and fair disclosure, the Alabama Securities Commission actually approves the merits of an offering.

The Board of Bar Commissioners at its November 1 meeting elected Lynn Robertson Jackson of Clayton to fill the vacancy left by Justice Houston's elevation to the Alabama Supreme Court. Lynn is the first woman elected to the board. Her father, A.B. Robertson, served faithfully

*Continued on page 6*



---

# Executive Director's Report

---

## American Law Network—CLE TV In Alabama

For over two and one-half years, I have been a participant in an exciting activity—namely the establishment of the American Law Network. The network is now a reality, and in late November the fourth national program was transmitted to most of the network's 42 receiving sites throughout the United States.

The American Law Network is a project of the American Law Institute and the American Bar Association's Committee on Continuing Education of the Bar. I began service on the ABA committee in 1982 and was recently appointed to a consecutive three-year term. I have been privileged to serve on the ALN Committee since its inception when we sought to establish the Law Dedicated Network. In its simplest form, the network allows us to originate top-rated CLE programs utilizing the foremost experts in their fields and transmit the live programs to any of the receiving sites. There is usually an on-site expert for questions and answers as well as a telephone hookup to make inquiry to the program participants. COMSAT General is the provider of the hardware at the receiving sites.

I was particularly pleased that Alabama received one of the charter sites. The Alabama Bar Institute for Continu-

ing Legal Education in the Law Center at the University of Alabama was selected. Facilities are available for at least 100 registrants to attend any of the programs. The bar is indebted to Dean Charles Gamble and ABICLE Director Steve Emens for their foresight in joining the network.

Nationwide, 700 registrants at 34 sites participated in the first broadcast, "Civil RICO Litigation after *Sedima*," on October 10, 1985. Over 525 participants attended the "Bad Faith Litigation" program on October 24, while the "Pensions" program on November 6 reached over 800 persons. The figures for the November 21 program on "Negotiation" were not available at this writing.

Each receiving site has the option of accepting or rejecting programming; however, viewer interest will, I am sure, encourage the widest available programming opportunities. To date, the charge for these four-hour programs has averaged \$120. This includes all course materials.

Like all new endeavors, the earlier broadcasts experienced some limited technical problems, but these were quickly solved. The quality of the video signal has been good.

It is hoped the network will expand to 100 sites by the end of 1986. I am chairing a sub-committee that will investigate the Phase II effort which will lead to the ability to receive these programs in one's own law firm. Presently, the site selection committee is considering only the state or local bars, primary CLE providers and law schools as sites. If Phase II is feasible, we envision satellite dishes on



HAMNER

major law office buildings for in-firm reception.

Different areas of interest are targeted for promotion, and mailing is done from the sponsor. Their lists were not always all-inclusive so I am including a list of anticipated programming through June 1986.

You may contact ALN by dialing 1-800-CLE-NEWS. I anticipate having a limited number of registration forms for these programs, and you can always contact ABICLE at Box CL, University, Alabama 35486.

I encourage you to take advantage of this technology to continue your legal education. Our committee's goal is to provide the highest quality continuing education at the most economical cost. Both ALI-ABA and the ABA are non-profit entities. ■

—Reginald T. Hamner



See  
Telecast  
Schedule,  
Page 41





## President's Page

Continued from page 4

as a commissioner for many years, and we look forward to the same fine service from Lynn.

The president of the Young Lawyers' Division of the ABA commented in a recent article that she sees a growing trend in the office practice to approach law strictly as a business—not as the practice of a profession. I fear in some instances she may be right; however, there is a vast difference between bringing business methods such as automated word processing and billing procedures to your practice and being concerned solely with the bottom line. Lawyers traditionally have given freely of their time to worthwhile causes. The Young Lawyers' President says she sees this tradition eroding among many of her contemporaries. I hope she is wrong.

You are bound to be tired of hearing me prattle about our malpractice insurance problem. However, it is real. Reggie Hamner and I have heard from many of you about excessive premium increases. I cite to you one dramatic example—an Alabama lawyer, a sole practitioner, had his premium go from \$450 to \$17,500 per year. It is true that this lawyer had a claim pending against him at the time, but when the claim was tried, the jury came back with a verdict in his favor within 30 minutes. Any lawyer can have a claim filed against him, and the insurance company has the right to take this into account when adjusting premiums. Likewise, unfortunately, there are cases of malpractice, but the premium increases we are experiencing are not justified. From everything I have seen this year, I am convinced that we eventually are going to be forced to form our own captive insurance company.

Speaking of malpractice insurance, sitting on my desk right now is a slick, multi-page kit prepared by the Medical Association of the State of Alabama which presages a bitter and emotional struggle about medical malpractice apt to erupt during the next legislative session. Anyone who attended the legislative hearings held around the state last fall knows

full well the volatile nature of this topic. Both camps have strongly held beliefs regarding the rightness of their cause. However, I believe that a "circle the wagons" approach cannot be the best thing for our profession. In the first place, it probably will not be successful in the long run. It has not been in other states. In addition, a head-on collision between the legal and medical professions may well result in a "pox on both your houses" response from the media and the public. In this regard, I have arranged for leaders of the medical profession and the plaintiffs' and defense bar to meet in an attempt to establish a constructive dialogue. No doubt we will not be able to satisfy everyone, and perhaps in the end we will fail to satisfy anyone. However, it is my belief that we truly fail if we do not at least try to deal with this difficult matter. ■

—James L. North

### **MEDICAL EXPERTS**

Medical and Hospital  
Malpractice  
Personal Injury  
Product Liability

1650 Board Certified *highly qualified* medical experts in all specialties, nationwide and Alabama, to review medical records and testify.

We review, approve and *guarantee* all reports.

- Flexible fee options from \$150
- Financial assistance: Alabama Bar and ABA approved
- Experience: 10 years and 9,000 cases for 4,000 satisfied attorneys. Local references.
- **FREE** books by us, one with foreword by Melvin Belli.
- **FREE** telephone consultations with our Medical Directors.

### **The Medical Quality Foundation**

The American Board of  
Medical-Legal Consultants  
(703) 437-3333

**TOLL FREE**  
**1-800-336-0332**

# THINK STRUCTURE

When you have a personal injury case, THINK STRUCTURE. That's right. Think structured settlement as an alternative to a lump sum settlement and maximize the cash available for the claimant at the lowest possible cost to the defendant. Call now for ideas on what creative use of U.S. Treasury securities and annuities can do for your settlement needs.

Lamar Newton

## **Southern Structured Settlements, Inc.**

1200 Bank for Savings Building  
Birmingham, Alabama 35203  
205-328-2666



# Riding the Circuits

## Chambers County Bar Association

The following officers were elected in April of this year:

President: R.C. Wallace, Jr.  
 Vice president: Claud E. McCoy, Jr.  
 Secretary/treasurer: Judge Joel Holley

## Dale County Bar Association

The Dale County Bar Association recently held its annual elections and installed its newly-elected officers. They are as follows:

President: Bill Kominos, Ozark  
 Vice president: Bob Lanier, Ozark  
 Secretary: Alicia Jo Reese, Daleville  
 Treasurer: William Filmore, Ozark



DALE COUNTY: Kominos, Reese, Lanier and Filmore



LATTOF



McDONALD

## Mobile Bar Association

At the October monthly luncheon of the Mobile Bar Association, the following individuals were voted as 1986 officers of the association:

President: Mitchell G. Lattof  
 President-elect: Marshall J. DeMouy  
 Vice president: Samuel L. Stockman  
 Secretary: Mark R. Ulmer  
 Treasurer: Beth McFadden Rouse

In addition, two new judges were sworn in. Lionel L. Layden became Mobile County District Judge October 29, 1985, and Arthur B. Briskman a U.S. Bankruptcy Judge November 21, 1985. Jefferson B. Sessions, III, was nominated to be U.S. District Judge for the southern district of Alabama.

At their October meeting, the Young Lawyers' Section of the MBA elected the following officers for the 1985-86 term:

President: James H. McDonald, Jr.  
 Vice president: Duane A. Wilson  
 Secretary/treasurer: Donald C. Partridge  
 Social chairman: Sidney W. Jackson



# Alabama Self-Help

by Greg Ward

## I. Introduction

Every lender<sup>1</sup> of money is concerned about how he will be able to collect on outstanding loans should the borrower default. Generally, the lender attempts to soften the effect of possible defaults by

requiring the borrower to put up collateral to be subject to his security interest and upon which he can realize the amount due him should default occur. Once he is secured and there is no agreement to the contrary, the lender as a secured party has the right to take possession of the collateral on default<sup>2</sup>. Ala. Code § 7-9-503(1975)<sup>3</sup>. This step often is provided for in the security agreement, but since this step is provided for in the code<sup>4</sup> it does not have to be included in the agreements between the parties.

This process is known as self-help repossession.

The biggest advantage of self-help repossession to the lender is that it enables him to regain his collateral without resorting to the judicial process—an advantage saving him time and money, and often allowing him to get his collateral back earlier and in better condition.

He then can dispose of it in several ways, but he must be sure that he jumps through the proper hoops. If he does not he can be liable for damages to the debtor under 9-507(1).

Self-help repossession has been challenged on constitutional grounds.





# Repossession



However, such challenges have not been successful. See Comment, *Current Problems Facing Alabama Creditors Who Attempt To Recover Personal Property From a Defaulting Debtor*, 10 Cum. L. Rev. 765, 768 n.9(1980). See also *Speigle v Chrysler Credit Corp.*, 56 Ala. 469, 323 So.2d 360, 363 (Ala. Civ. App. 1975).

So it is of paramount importance to understand what the Alabama courts have said about the default provisions of the code. In this article we will look at what "default" is, how the creditor can properly repossess after default, how he can realize on his collateral and some of the pitfalls along the way.

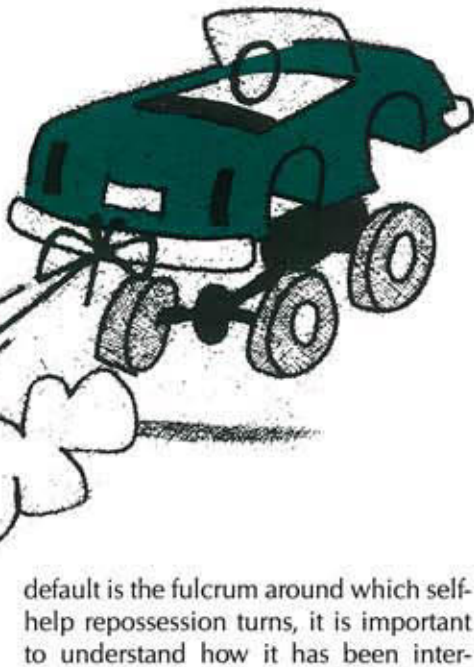
This will not be a comprehensive article. Space limitations and

breadth of subject matter make that an impossible task, but it will be a helpful guide to those who wish to involve themselves in an area which has been called an acid test for lawyers<sup>5</sup>.

## II. Default

The secured party's right to repossession of the collateral occurs only after default. 9-503. Nowhere, however, in the code is "default" defined. The closest the code comes is in 9-501(3) where it states "the parties may by agreement determine the standard by which the fulfillment of these rights and duties is to be measured" subject to the standard of manifest unreasonableness. The code also provides that security agreements are effective according to their terms. 9-201

Thus, the definition of default was left to be supplied by the agreements between the parties and case law. Since



default is the fulcrum around which self-help repossession turns, it is important to understand how it has been interpreted in the Alabama courts.

The most obvious and most common event of default is the debtor's failure to make payments when they are due. D. Baker, *A Lawyer's Basic Guide to Secured Transactions*, § 7.2 at 299 (1983). For example, when under an installment contract for the sale of a vehicle the debtor made payments late from the outset, was charged for the numerous late payments, missed a payment and made an October payment in November with a check that was subsequently returned by the bank for insufficient funds, this was construed to be default. *Chrysler Credit Corp. v. Tremer*, 48 Ala. 675, 267 So.2d 467 (Ala. Civ. App. 1972)

A debtor was in default when he made payments on his automobile for a year, became delinquent, got past due notices in the mail and did not ask for or receive extensions. *Reno v. General Motors Acceptance Corp.*, 378 So.2d 1103 (Ala. 1979)

During the course of a transaction there can be many defaults, such as where there were several late payments and bounced checks by the debtor. *Crabtree v. Ford Motor Credit Co.*, 413 So.2d 1161 (Ala. Civ. App. 1982). The extent of the default is not material as to the right of possession by the creditor since after default the creditor has a right to immediate possession of the chattel. *Tremer*, 267 So.2d at 470

Failure to pay is only one of the grounds which has been held to be default. For example, when an executed security agreement required the debtor to obtain and continue insurance, and provided that failure to do so would be an event of default, it was considered default when the conditions were not kept. *Welborn v. Jimmy Johnson Ford, Inc.*, 419 So.2d 245 (Ala. Civ. App. 1982)

It also has been held to be default when the debtor's check was returned for lack of sufficient funds and the cost of the debtor's insurance was added to his payments by the creditor after the debtor had allowed it to lapse and the debtor failed to pay for either. *Pierce v. Ford Motor Credit Co.*, 373 So.2d 1113 (Ala. Civ. App. 1979)

## III. Breach of the Peace

The foremost utility of self-help repossession is it allows the creditor to regain possession of the collateral without resort to judicial process, but this



is entirely dependent upon the creditor's ability to act "without breach of the peace." 9-503. If the creditor cannot repossess peaceably he then must resort to the judicial process. *Singer Sewing Machine Co. v. Hayes*, 22 Ala. App. 250, 114 So. 420 (Ala. Ct. App. 1927)

Just how far, though, a repossession attempt can go before it becomes a breach of the peace is not as clear as it might at first appear to be.

There is no requirement that the creditor first demand possession from the debtor before he repossesses. If he does make a demand, however, mere refusal by the debtor to turn over the collateral does not automatically require a resort to legal channels. *Ford Motor Credit Co. v. Ditton*, 52 Ala. App. 555, 295 So.2d 408 (Ala. Civ. App. 1974)

Self-help repossession can be effected in a number of ways. Section 9-503 allows the creditor to simply take possession of the collateral; or if it is provided for in the security agreement, the creditor can require the debtor to assemble the collateral and make it available to him at a previously agreed on place; or, if it is too large or expensive to move, the secured party can render it unuseable and dispose of it on the debtor's premises. However, it must be accomplished without breach of the peace.

It is clear the use of actual force is a breach of the peace. The Alabama Supreme Court has upheld a verdict in favor of the plaintiff when a reposessor, in pursuit of a car he was attempting to repossess, forced the car off the road with his truck. *Big Three Motors, Inc., v. Rutherford*, 432 So.2d 483 (Ala. 1983)

Alabama courts also frown upon the use of constructive force. Constructive force is "threats or intimidation, to compel the submission of plaintiff against his will to the appropriation of what he asserts to be his property." *Ditton*, 295 So.2d at 411. The threats or intimidation must be such that "if carried out would amount to a breach of the peace or if resisted would tend to promote a breach of the peace." *Id.* at 411. Such a breach of the peace conceivably could be applied by telephone or letter not in the debtor's presence and even before the taking of the property. *Id.* at 411

The court upheld the debtor's conversion suit against the reposessor in *Ford Motor Co. v. Jackson*, 347 So.2d 992 (Ala. Civ. App. 1977). It was obvious the court looked with disfavor upon the fact that the "repo man" was wearing a badge and a gun when he went to repossess an automobile from a 56-year old laborer who was unable to read or write more than his name.

However, a mere assertion by the "repo man" that he would steal the vehicle if the debtor did not turn it over to him was not such a threat or intimidation to compel the plaintiff to submit. *Ditton*, 295 So.2d at 411

When he is using neither actual nor constructive force the creditor can go a long way in repossessing. In at least two cases Alabama courts have allowed the creditor to use a duplicate key. In *Reno v. General Motors Acceptance Corp.*, 378 So.2d 1103 (Ala. 1979) the court upheld a summary judgment in the creditor's favor where a GMAC agent located the defaulting debtor's car parked at night and used the duplicate key to take it back. In *Crabtree v. Ford Motor Credit Co.*, 413 So.2d 1161 (Ala. Civ. App. 1982) the court upheld the granting of a judgment NOV for Ford where Ford had not repossessed on the first attempt due to Mrs. Crabtree's threat to fight, but later successfully repossessed the car while she was at work by the use of a duplicate key obtained for that purpose.

While Alabama courts vigorously assert that repossession must not be accomplished by means of stealth, artifice or fraud, they seem to look the other way at times. The court upheld a repossession accomplished by blocking the debtor's car with another vehicle so he could not drive it away after he had gone to the creditor to negotiate a settlement of the debt and a solution to his default. *Speigle v. Chrysler Credit Corp.*, 56 Ala. 469, 323 So.2d 360 (Ala. Civ. App. 1975). This was held to be no breach of the peace since there was "no evidence of any threats or rude language. . . during the repossession" and there was "no evidence that any actual physical force or constructive force" was used. *Id.* at 363

The court found differently when a few facts were added. In *Ford Motor Credit Co. v. Byrd*, 351 So.2d 557 (Ala. 1977)

a man the court perjoratively characterized as a "confessed 'repo man'" got in touch with the debtor at the debtor's home. The "repo man" requested that the debtor go to the creditor and discuss whether he really was in arrears on the debt. Debtor parked the automobile in front of the creditor's place of business and went inside to enter into a good faith discussion about whether he really was in arrears and to check the creditor's records against his own. While the debtor was inside the auto was removed and locked in a storage area behind the creditor's building. The court held that: "To interpret §9-503 to allow repossession in these circumstances would encourage practices abhorrent to society: fraud, trickery, chicanery, and subterfuge." *Id.* at 559. The court concluded that condoning the creditor's conduct would "defeat the desirable and fundamental policy of discouraging extrajudicial acts by citizens when those acts are fraught with the likelihood of resulting violence." *Id.* at 559.

However, in *Thompson v. Ford Motor Credit Co.*, 550 F.2d 256 (5th Cir. 1977) the court held that a repossession accomplished by an alleged lie by Ford's agent to a service station operator who had possession of the car for repairs that the buyer had consented to the repossession was not a breach of the peace giving rise to a wrongful repossession.

#### IV. Waiver and Estoppel

A major issue for the creditor is how he can lose his right to repossess. A debtor who is behind on his payments may contact the creditor and tell him he cannot make his payments on time. Due to the expense the creditor must go through in reselling repossessed collateral, the low likelihood of satisfying the debt and the necessity of later suing for the deficiency, creditors tend to be lenient in working with debtors and accepting late or partial payments. D. Baker, *A Lawyer's Basic Guide to Secured Transactions*, §7.2 at 301 (1983). If this is done too often, or improperly, the creditor can waive the default and thereby be estopped from asserting it.

For example, when the debtor sold his vehicle to a third party, contrary to a contract provision calling this an incident of



default, and Ford Motor Credit Company, the creditor, knowingly accepted payments from the third party for two years, extended payments at the third party's request and repossessed one month before the last payment was due, Ford had waived the default and was estopped from asserting it. *Warren v. Ford Motor Credit Co.*, 693 F.2d 1373 (11th Cir. 1982)

In *Ott v. Fox*, 362 So.2d 836 (Ala. 1978) the denial of a motion for a directed verdict was upheld and the jury allowed to hear evidence regarding whether they believed the creditor had accepted 14 out of 20 payments late, and whether the creditor told the debtor he would hold his payment until December 15 before presenting it to the bank for payment.

In determining estoppel courts consider all surrounding circumstances. In *Speigle v. Chrysler Credit Corp.*, 323 So.2d 360 (Ala. Civ. App. 1975) the court held that where the creditor accepts "several" late payments but has a non-waiver provision in the installment sales contract, the default at issue was almost a month old, the debtor was out of work and money with another payment due in three or four days, the creditor was not estopped to consider the debtor in default. Since the debtor was in default on one payment and without reliable prospects for making future payments, the debtor's declaration of default was neither inequitable or unjust. *Id.* at 365

In determining the issue of waiver in *Bank of Huntsville v. Witcher*, 336 So.2d 1384 (Ala. Civ. App. 1976) the court had to search through conflicting testimony. Witcher purchased a truck and quickly fell into arrears on his payments. He got at least two payment extensions. He later called the bank, he said, to get another extension or a rearrangement of his payment schedule. The person that Witcher talked to at the bank would not commit himself but offered to write a letter telling him the bank's decision about Witcher's future payment pattern. In reliance on this March phone call, Witcher did not make payments in March or April. The bank repossessed the truck but claimed to have sent Witcher a letter informing him they would do so if he did not make a payment within 10 days.

The court held for Witcher, deciding that the jury could find that he believed

he had gotten an extension based on his conversation with the bank and the fact that he had gotten extensions this way before. The bank had been unable to refute this alleged conversation took place. The court pointed out that under the facts the bank was estopped from repossessing the pickup without prior notice. Here, Witcher was held to have had no prior notice since the employee who was responsible for sending him the letter admitted it might not have been sent and Witcher denied receiving it.

Creditors often attempt to protect themselves by putting non-waiver provisions in their installment contracts. Such provisions typically attempt to retain the right to enforce penalties for subsequent defaults even if they are waived at earlier defaults.

A provision that "no waiver by the Lender of any default shall be effective unless in writing nor operate as a waiver of any other default or of the same default on a future occasion" was upheld based on the rationale that a security agreement is effective according to its terms. *McAllister v. Langford Investigators, Inc.*, 380 So.2d 299 (Ala. Civ. App. 1980)

It was thus held not to be a waiver that the bank had accepted some partial payments and one late payment, or that on the same day of the repossession a bank employee had told the debtor it would be fine to make the rest of an already late payment on Friday. It was held that "the late payment of debtor cannot raise an estoppel against the contractual interest of the creditor under the express terms of a security agreement such as we have in this instance." *Id.* at 300

Judge Holmes pointed out he had relied on *Hale v. Ford Motor Credit Co.*, 374 So.2d 849 (Ala. 1979) in deciding the case. Otherwise, in reliance on previous case law he said that he would have had to have ruled the other way. In *Hale* the court, on a case certified from the previous Fifth Circuit Court of Appeals, upheld a provision in the security agreement which said a waiver of one default was not a waiver of subsequent defaults and did not allow modification unless it was in writing.

Thus, the law under *Hale* and *McAllister* seems to be that security agree-

AODM ASA•2 NC  
RBBB WDNW PE  
Epis. UCG LOA

**What good is a hospital record if you can't read it?**

JD•MD has prepared a list of over 500 commonly-used medical abbreviations, in a handsome folder for your reference library.

For a free copy, write:\*

**Advertising Manager  
JD•MD, Inc.**

**153 Main Street  
Madison, N.J. 07940**

\* No telephone orders

**JD•MD**<sup>TM</sup><sub>INC</sub>

*The finest in medical experts*

ments generally will be upheld if they contain non-waiver provisions and clauses requiring all modifications of the security agreement to be in writing.

Indeed, the Ford Motor Credit Company recently was allowed to repossess a car pursuant to a provision in the security agreement without notice to the debtor after the debtor had made all 30 payments, was assessed late charges against all 30 late payments, got a waiver of late charges against all but six of the late payments, got three extensions on payments, had 13 of his checks returned by his bank for insufficient funds and owed nothing on the principal debt but still owed on late charges assessed. *Thompson v. Ford Motor Credit Co.*, 445 So.2d 287 (Ala. 1984). The summary judgment of the court below was affirmed since the debtor "knew or should have known sometime in the middle of July 1982, that Ford Motor Credit Company was going to repossess the



automobile unless he paid the balance due." *Id.* at 287

## V. Disposition After Repossession

Of course, a valid peaceful repossession is only the first step in a creditor's effort to recover on the outstanding balance of a loan. He still must realize on his collateral—turn it into cash—or he is no better off than before.

The overriding principle to bear in mind is the sale must be "commercially reasonable" in all of its aspects. 9-504. Using code terminology this means that the secured party must proceed "in good faith." 1-203. *First National Bank of Dothan v. Rikki Tikki Tavvi*, 445 So.2d 889 (Ala. 1984). "Good faith" is defined as "honesty in fact." 1-201(19). And the issue of commercial reasonableness of disposition of collateral is generally a jury question. *Henderson v. Hanson*, 414 So.2d 971 (Ala. Civ. App. 1982)

### A. Strict Foreclosure

Under 9-505 a secured party who is in possession of collateral after default may elect to keep it in satisfaction of the debt. This is sometimes referred to as "strict foreclosure." Retaining the collateral is generally only feasible when the value of the goods retained is equal to the amount still owed on them and the cost of other disposition. It then often becomes simpler and cheaper than other disposition with the additional feature

that it avoids the risk that the secured party might dispose of the goods in a manner other than one that is commercially reasonable. *Baker, supra* at 306

The secured party is required to send the debtor notice of his proposal to retain the goods, unless the debtor has waived this notice in writing after the default. If the goods are consumer goods, no other notice need be sent. In all other cases any other secured party must also be sent notice, and this must be done before notice is sent to the debtor or before the debtor renounces his rights. If any party who has a right to receive such notice, i.e. the debtor and anyone holding a security interest in the goods, objects to the retention, the secured party in possession must dispose of the goods under 9-504. Any objection must come within 21 days after notice was sent by the secured party in possession. Failure to follow the procedure for retention as set out in 9-504 incurs the liabilities of 9-507.

Strict foreclosure is forbidden in two instances: when the debtor has paid 60 percent of the cash price of a purchase money security interest in consumer goods; or when the debtor has paid 60 percent of the loan in the case of another security interest in consumer goods. In this situation the secured party in possession must dispose of the collateral under 9-504 within 90 days after he takes possession or again he will be liable under 9-507 for conversion. See Official Comment 2 to §9-505.

## B. Resale, Lease or Other Disposition

Resale of collateral after repossession often is the course taken by the creditor. The salient feature of the resale provision, 9-504, is the broad leeway given the secured party who may dispose of the collateral by public or private sale, with one or more contracts, as a unit or in parcels and at any time or place as long as all aspects are commercially reasonable. 9-504 (3). The policy of the code in granting this flexibility is to produce the maximum amount from the sale of the collateral. R. Anderson, *Anderson On The Uniform Commercial Code* §9-504:10 (2d ed. 1971)

The collateral may be disposed of in the condition the creditor found it or after he makes commercially reasonable preparations or processing. 9-504(1). The proceeds of the disposition are applied to reasonable repossession, restoration and disposition expenses and to legal fees the secured party reasonably incurred; to satisfy the secured debt; to satisfy claims of junior lienholders if they demand it in writing before the disposition of the proceeds is completed. 9-504 (a), (b), (c). The amount the creditor receives for the collateral is important to the debtor since the debtor is liable for any deficiency that may occur and is entitled to any surplus. 9-504(2)

The creditor must give the debtor reasonable notice of the sale except in three instances: when the collateral is perishable, where it threatens to decline speedily in value or when it is the type of goods ordinarily sold on a recognized market. 9-504(3)

The creditor can waive his right to notice, but this can be done only after default under 9-505(2) and must be made knowingly and in writing. *Simmons Machinery Co., Inc. v. M & M Brokerage, Inc.*, 409 So.2d 743 (Ala. 1981)

It has been held that the purpose of the reasonable notice requirement is to allow the debtor to protect his interest by either paying the debt himself or by finding others to bid on the property at sale in hopes of getting a better price. *Credit Alliance Corp. v. Cornelius & Rush Coal Co., Inc.*, 508 F.Supp. 63 (D.C.Ala. 1980)



*Greg Ward received his bachelor's degree from Auburn University and his law degree from the University of Alabama School of Law. He is in private practice in Lanett, Alabama, and serves on the editorial board of The Alabama Lawyer.*



Notice must be sent to the debtor prior to the sale. Notice given on the day of the sale is deficient notice and renders the sale not commercially reasonable. *Wells v. Central Bank of Alabama, N.A.*, 347 So.2d 114 (Ala. Civ. App. 1977). It must be given in enough time to give the debtor a chance to redeem the collateral. If there is a guarantor he is entitled to notice of the sale of the collateral. *First Alabama Bank of Montgomery, N.A. v. Parsons*, 390 So.2d 640. (Ala. Civ. App. 1980)

Price is an aspect of the disposition of the collateral and is a relevant factor in determining commercial reasonableness. For example, where the seller's assignee obtained only one bid and sold the vehicle for \$600 on that bid, 15 percent below wholesale value, the sale was not commercially reasonable. *In Re Hamby*, 19 B.R.776 (1982). However, that a public sale does not bring as much as the debtor thinks it will does not necessarily keep it from being commercially reasonable. *Credit Alliance Corp.*, 508 F.Supp. at 68

Where the disposition of collateral was done pursuant to a court order, though, the sale was conclusively deemed to be commercially reasonable. *American National Bank and Trust Co. of Mobile v. Robertson*, 384 So.2d 1122 (Ala. Civ. App. 1980)

What happens if the sale is not carried out in a commercially reasonable manner? Does that bar the creditor's right to recover an outstanding deficiency on a note? Calling it an issue of first impression in this state, the Alabama Supreme Court answered that question negatively in *Valley Mining Corp. v. Metro Bank*, 383 So.2d 158 (Ala. 1980), but see, J. White & R. Summers, *Handbook on the Law of the Uniform Commercial Code* §§26-11 through 26-15 (2d ed. 1980).

## VI. Conclusion

In the hands of a knowledgeable creditor, or his attorney, self-help repossession can be an effective tool. It can save the creditor, the judicial system and even the debtor a great deal of time and

money, but it is a path fraught with pitfalls which should be traveled cautiously. For those willing to spend the time and effort required, though, the benefits are well worth the energy. ■

(The author thanks Judge Robert P. Bradley of the Alabama Court of Civil Appeals and his staff attorney, Stacey Houston, for their assistance in preparing this manuscript.)

### FOOTNOTES

1 Throughout the article the terms "secured party," "creditor" and "lender" as well as the terms "borrower" and "debtor" will be used interchangeably.

2 Of course the creditor can still avail himself of the judicial process and sue in detinue. See generally, COMMENT, CURRENT PROBLEMS FACING ALABAMA CREDITORS WHO ATTEMPT TO RECOVER PERSONAL PROPERTY FROM A DEFAULTING DEBTOR, 10 Cum. L. Rev. 765, 772-790 (1980).

Also, if the debtor begins a bankruptcy action the bankruptcy code, as federal law, supersedes state default and detinue provisions. But both bankruptcy and detinue are beyond the scope of this article.

3 Hereinafter, all cites to the Alabama Code will omit the title number and the "Ala. Code" citation form. All cites are to title seven unless otherwise indicated. Thus, "Ala. Code §7-9-503 (1975)" will be "9-503."

4 "The code" refers to Ala. Code (1975).

5 J. White & R. Summers, *Handbook on the Law of the Uniform Commercial Code* §26-1 at 1084 (2d ed. 1980).

# WORD OF MOUTH ISN'T ENOUGH

In this day and age, it's more effective to use public relations tools such as brochures and informational pieces.

Your law firm may need collateral material for recruiting, client development, etc. If so, Stafford and Associates knows how to meet your special marketing needs while upholding the dignity and integrity of the legal profession. Let us use our experience in the public relations and advertising industry to assist you today.

Call us and don't simply rely on small talk to get the word out.

**Stafford**  
& ASSOCIATES, INC.

Advertising & Public Relations

605 Bel Air Blvd. Suite 12 • Mobile, Alabama • 36606 • 205-476-2002





7-919-203-0210

**HELP WANTED**

**LAWYERS.** Must be willing to work long hours on unpopular, difficult cases at little or no pay. Contact: Recruitment Project; Alabama State Bar; P.O. Box 671; Montgomery, AL 36101.

Wanted Experience

TR req F HA B.

# An Urgent Plea for

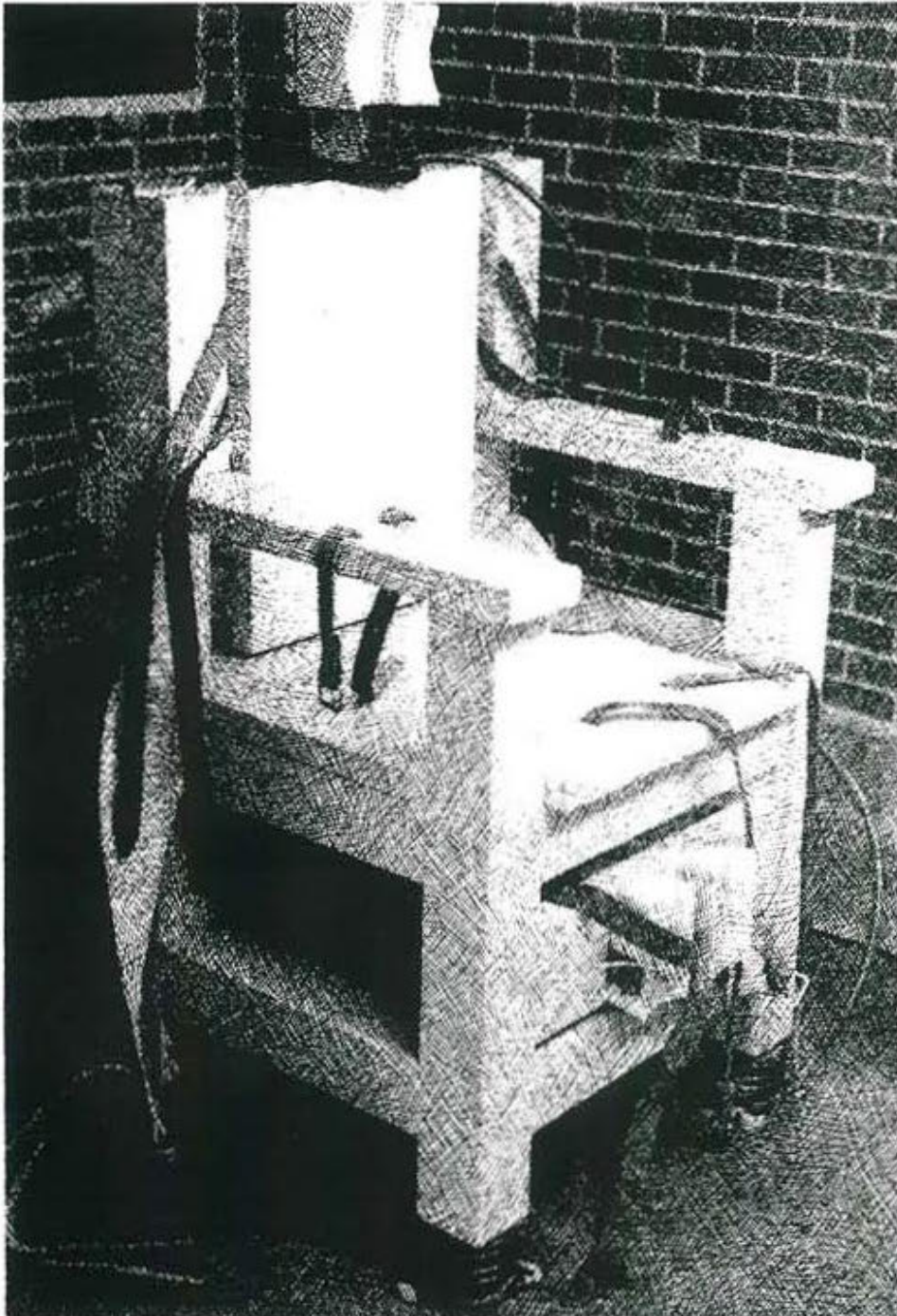


Photo courtesy State of Alabama Dept. of Corrections

A crisis is upon us in Alabama. If something is not done soon to remedy it, the crisis will be transformed into a full-fledged disaster.

What is this crisis? Plainly and simply, not enough volunteer lawyers are stepping forward to represent Alabama's indigent defendants who have been sentenced to death. As a result, it is possible someone from death row will soon be sent to the execution chamber without the benefit of counsel to pursue meritorious state or federal post-conviction claims.

Sound far-fetched? Consider these facts. In his remarks to the American Judicature Society in June 1984, Chief Judge John Godbold of the 11th Circuit Court of Appeals reported that his court had reviewed rulings of federal district courts in capital *habeas corpus* petitions in 56 cases. Of those 56, the court reversed 28, or 50 percent of the cases. The normal reversal rate for the court is 15 to 20 percent. Without volunteer counsel to represent them, many of these death-row petitioners with meritorious claims would have been executed, even though their convictions and/or sentences were entered in violation of the Constitution!

There are now 89 prisoners on Alabama's death row. Due to their indigency, virtually all were provided with appointed counsel at trial and on direct appeal. However, once their cases were affirmed by the Alabama Supreme Court, many of these death-row inmates found themselves without a lawyer to pursue claimed errors through post-conviction courts.

Through the present, these inmates basically have had two places to turn for help: (1) to their appointed lawyers, who



# Help from the Alabama State Bar

by Dennis N. Balske

were no longer duty bound to represent them; or (2) when appointed counsel are unwilling to continue representation on a volunteer basis, to the Southern Poverty Law Center. The center has one lawyer who specializes in capital litigation and a part-time staffer who monitors cases and attempts to locate volunteers.

The center's capital litigation specialist confers with volunteers seeking advice and provides them with a manual, complete with forms, explaining all the intricate steps of the post-conviction process. The manual tells, among other things, how to: (1) file a petition for writ of *certiorari* with the United States Supreme Court; (2) file a petition for writ of *error coram nobis* with the trial court, if trial counsel was ineffective or if new evidence was discovered; (3) handle the appeal of the *coram nobis* petition, if such a petition was filed and was unsuccessful; (4) file a petition for writ of *habeas corpus* in federal district court challenging federal constitutional errors; (5) handle the appeal from a denial of *habeas corpus* relief; (6) petition the United States Supreme Court one last time for a writ of *certiorari*; and (7) file various motions and stay applications in some or all of the above courts.

This system has worked, as a stop-gap measure, because many of Alabama's cases have taken a long time to reach the post-conviction stage. This temporary delay was caused by the necessity to retry most death row prisoners after the United States Supreme Court struck down Alabama's capital statute in 1980 in the case of *Beck v. Alabama*, 447 U.S. 625 (1980). This hiatus on post-conviction cases, however, is coming to an end. As a result, it is now impossible to guarantee that enough volunteers will

come forward to handle the increasing number of cases that soon will be reaching the end of the direct appeal process.

In the past, dedicated members of the criminal defense bar, which is comprised mainly of sole practitioners and small firms, were able to carry the post-conviction ball, albeit at great sacrifice. They were called upon time and again to forego paying cases, in order to service capital cases on a *pro bono* basis. They took the heat that comes with representation in these most unpopular cases.

The sacrifices of these small-firm practitioners have taken their toll. The cases now simply outnumber the lawyers who have the expertise, energy and time to devote to them. Thus, when approached to undertake additional cases, these overworked lawyers usually respond as follows: "I am already handling one (or more) of these cases, and there is no way that I can take on another"; or "I have not recovered from the last one"; or "I will never do one of these cases again." The frequency of these re-

sponses indicates that the problem has reached the crisis stage. Every additional case leaves one less lawyer available for the next one.

Another factor, not yet discussed, comes into play during the recruitment process and enhances the difficulty of landing a volunteer. That is, the clock never stops ticking. Each time a prospective volunteer says "no" there is less time remaining before the execution process runs its course. This means there will be less time for the volunteer to complete the myriad of tasks necessary to halt the execution clock and obtain full review. Thus, each successive prospect faces an even more difficult task than the last one, simply because there is less time left. This makes recruitment more difficult with each successive telephone call. After all, who really wants one of these cases, especially when, due to time constraints, he or she will have to drop everything else to meet a pressure-packed deadline?

The Alabama State Bar is concerned about this problem and, through the board of commissioners, has approved



*Dennis N. Balske, a graduate of Ohio State University College of Law, is the chairman of the Alabama State Bar Indigent Defense Committee. He is the founder and past president of the Alabama Criminal Defense Lawyers Association, a member of the board of directors of the National Association of Criminal Defense Lawyers and legal director of the Southern Poverty Law Center in Montgomery.*



the implementation of a special project. Under the leadership of past President Walter Byars, and with the assistance of Chief Judge John Godbold, a program has been started and is patterned after one recently enacted in Florida. This program depends on Alabama lawyers for its success. A brief description of the Florida program and the results it obtained will explain how attorneys can help.

The Florida Bar established a special recruiting committee, chaired by a past president. The committee was composed of partners from the state's most prominent civil firms. These committee members, in turn, devised a program to recruit lawyers from their own and other prominent civil firms. These recruits then were provided special training by experienced capital litigators through the facilities of Florida State and Stetson law schools. The program was funded by a \$90,000 grant from the state bar's IOLTA fund. The ultimate goal of the program was to provide competent representation in cases where no other lawyers were available, until such time as the Florida Legislature would provide long term funding for a special public defender office.

The program was a phenomenal success. The civil bar rose to the task and provided excellent representation. A special annual award was created for select volunteers, to reward them for their efforts and to give them appropriate recognition for their sacrifices. As a result, after approximately two years of operation,

the legislature came through with \$2 million to fund a special public defender office.

The Alabama program is just getting off the ground. The state bar, through a grant application by the Indigent Defense Committee, obtained a \$4,000 grant from the ABA as seed money for the project. This money, combined with a \$4,000 contribution from the Poverty Law Center, was used to sponsor a special capital litigation seminar which was held in Mobile this past December. This seminar not only included specialized training, free of charge to those who had previously volunteered to handle a capital case, but also provided a forum for distribution of additional post-conviction manuals, as well as presentation of the state bar's first annual "Clarence Darrow Award," which was presented to Rick Harris and Walter Blocker.

Whether the program can attain the same success as Florida's depends on Alabama lawyers, particularly if they are members of a prominent civil firm. Unless they step forward, there will be no one to undertake the task of representing this state's most unpopular persons, whose lives are at stake.

The entire process may sound foreign. If a lawyer volunteers to handle a case, however, he or she will be provided with materials and have access to a panel of experienced attorneys to guide him or her through the process. Moreover, the experience will be a rewarding one.

The experience of Cathy Wright, Deborah Long and Tony Miller of the Birmingham firm of Maynard, Cooper, Frierson and Gale, PC underscores the challenging and rewarding nature of this work. They undertook representation of Willie Clisby, in August 1984, when his death sentence was affirmed by the Alabama Supreme Court. They prepared a petition for writ of *certiorari*, which was filed in the United States Supreme Court in November 1984. The petition was denied February 25, 1985.

At that point, they began the post-conviction process. On May 10, 1985, they filed a petition for writ of *error coram nobis* in the Circuit Court for the 10th Judicial Circuit. They also sought a stay of execution and funds for an independent psychiatric examination of their client. The court denied the petition, the stay application and the motion May 19, 1985. Within five days, on May 24, 1985, they filed a petition for writ of *habeas corpus* in the United States District Court. The district court, only days before the scheduled execution, stayed the execution. The court also stayed the *habeas corpus* proceedings, pending exhaustion of state remedies. In short, the court gave them an opportunity to appeal from the denial of *coram nobis* through the Alabama appellate courts. On October 8, 1985, the case was argued before the Alabama Court of Criminal Appeals.

Based upon their collective experience, Cathy, Deborah and Tony advise that, "for the attorney, the rewards of representing a person sentenced to die are not necessarily immediate or tangible." Rather, in their opinion, "the rewards flow from a satisfaction and hope of ensuring that the judicial system is functioning properly and that all persons, regardless of their economic circumstances, who are charged with a capital crime are afforded counsel to pursue all available remedies."

The bottom line, as Uncle Sam would say, is that we need you. Please join in the state bar's effort to diffuse this crisis. Take a few minutes to let us know in what capacity you will help, by checking the appropriate box in the form. Do it today. ■

- I am willing to serve on a special committee to recruit lawyers from civil firms.
- I am willing to undertake representation of a capital client.
- I am willing to contribute funding for a special project, but not to represent a capital client.
- I am willing to contact my state senator and representative to urge them to provide funding for a special public defender, capital litigation office.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

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

**MAIL TO: Recruitment Project/Alabama State Bar  
P.O. Box 671  
Montgomery, AL 36101**



## Committee Year Halfway Over

---

Six months remain in the 1985-86 bar year. Over the next couple of months, committees will be reporting their progress, setting goals for next year and bringing to fruition as many projects as possible. Committees that may have outlived their usefulness will be assessed by incoming leaders, and plans for 1986-87 will be made.

---

### Bar management and services

Committee meetings, entertaining luncheon speakers, a medical malpractice forum and a Shakespeare Festival theater cocktail party — elements of what promises to be an interesting and fun Midyear Meeting, Wednesday and Thursday, March 19 and 20 in Montgomery. The Governors House will serve as headquarters so those planning to attend ought to make a reservation for Wednesday night. The **Committee on the Midyear Meeting** has arranged for buses to shuttle between the theater and the motel, so getting around should not be a problem. Those attending the medical malpractice forum on Thursday morning will earn at least three CLE credits.

All committees are encouraged to meet on Wednesday, March 19, as part of the midyear meeting. Chairmen will be polled this month, and downtown conference rooms will be assigned next month. Chairmen are invited to make reports to the board at its April 11 meeting at Gulf State Park.

The **Committee on Programs, Priorities and Long-range Planning** has recommended, and the board has approved, the purchase of a computer for bar headquarters. Computerization of membership records, MCLE, admissions, bookkeeping, subscriptions and discipline records is planned. Improved service to members is the goal, and ready availability of useful information will be a result. Chairman Harold Speake, vice chairmen Thad Long and Jon Moores and members of the committee spent over one year developing this recommendation and are owed the bar's gratitude for their work.

*The Alabama Bar Directory* will be published as a seventh edition of *The Alabama Lawyer*, beginning in August 1986. A cooperative agreement has been made between the **Desk Book Committee**, Dorothy Norwood, chairman, and the Board of Editors of *The Alabama Lawyer*, Robert Huffaker, chairman. The board of bar commissioners has approved this plan based on the potential benefits of staff support and shared resources.

### Public service

The **Legislative Liaison Committee**, chaired by immediate past President Walter R. Byars, is establishing a "key person" system, in hopes of facilitating passage of bar-sponsored legislation. Items to be introduced during the 1986 regular session of the Alabama legislature include bills to provide for nonpartisan election of judges and a nominating commission to fill judicial vacancies at the state's appellate level. Also likely to be introduced are a uniform arbitration act and several changes in the governance of the state bar, including a provision for choosing the president-elect by mail ballot.

### Focus on the profession

The **Committee on Lawyer Alcohol and Drug Abuse** is working with similar groups in other professions to find out what they are doing and consider establishing a treatment facility for professionals in the recovery stage of substance abuse. Also, the committee is meeting with professional responsibility classes at law schools around the state to discuss with students the problem and possible solutions. The committee hopes to bring about changes in the disciplinary rules, to provide confidentiality for substance-dependent attorneys seeking treatment and volunteer lawyers working with them on the problem. ■ MLP



# Bar Briefs



ROCHESTER

## Rochester and Pilgrim appointed district judges

Two new district judges were appointed recently by Governor George C. Wallace to fill positions in Clay and Cleburne counties.

John Edward Rochester of Ashland previously served as municipal court judge for Wedowee and Ashland. He is a graduate of Auburn University and the Cumberland School of Law.

Rochester will fill the newly-created judgeship in Clay County.

Larry E. Pilgrim was chosen to fill the position in Cleburne County.

Pilgrim also graduated from Auburn University and Cumberland.

Pilgrim was engaged in the general practice of law, prior to his appointment.

*Photos of Rochester and Pilgrim courtesy of the Administrative Office of Courts*



PILGRIM

## Torbert and Cooper in the news again

In the November issue of *The Alabama Lawyer* it was reported that Alabama Supreme Court Chief Justice C. C. Torbert was elected first vice president of the National Conference of Chief Justices. In addition, mention was made of Birmingham attorney N. Lee Cooper's selection as chairman of

the American Bar Association Litigation Section. Both men have been honored again.

Torbert recently was re-elected to the board of directors of the American Judicature Society, a national organization for improvement of the courts. The society addresses concerns related to the selection and retention of judges, court management and the public's understanding of the judicial system.

Torbert is a graduate of Auburn University and the University of Alabama School of Law.

Cooper, too, has been re-elected to the board of directors of the AJS.

Cooper is a graduate of the University of Alabama School of Law and a partner in the law firm of Maynard, Cooper, Frierson & Gale, P.C. ■



TORBERT



COOPER





# Legislative Wrap-up

by Robert L. McCurley, Jr.

The 1986 Regular Session of the Alabama Legislature convenes Tuesday, January 14. This pre-election session will most likely continue until April 28, 1986.

Alabama Law Institute committees have completed work on two revisions to be presented to the legislature. The "Redemption of Real Estate" act was drafted by a committee chaired by Hugh Lloyd of Demopolis while Professor Harry Cohen served as reporter. A roster of committee members is as follows:

Joe Adams—Ozark  
Jim Campbell—Anniston  
Wayne Copeland—Gadsden  
Fred T. Enslin, Jr.—Montgomery  
Bill Hairston, Jr.—Birmingham  
Bob Harris—Decatur  
Hugh Lloyd—Demopolis  
George Maynard—Birmingham  
Drayton Pruitt, Jr.—Livingston  
Robert J. Russell—Montgomery  
Louis Salmon—Huntsville  
Yetta Samford—Opelika  
Morris Savage—Jasper  
Caroline E. Wells—Mobile  
James M. Tingle—Birmingham

The second revision, the "Uniform Transfers to Minors," is recommended by a committee chaired by Lyman Holland, with Professor Tom Jones as the reporter. Attorneys serving on this committee are:

Lyman F. Holland—Mobile  
Ralph Quarles—Tuscaloosa  
Kyle Johnson—Montgomery  
C. Fred Daniels—Birmingham  
Kent Henslee—Gadsden  
Kirby Sevier—Birmingham  
Winston V. Legge, Jr.—Athens  
Don F. Siegal—Birmingham  
Irving Silver—Mobile  
William J. Gamble—Selma  
Joe Bailey—Opelika

## Redemption of Real Property

The review that follows is taken in part from the preface of the Alabama Law Institute's proposed Redemption of Real Estate Act drafted by Professor Harry Cohen.

The present Alabama statute on the right to redeem from execution, judgment or foreclosure sales has most of the general attributes of statutes on redemption from such sales in the country. *Alabama Code* § 6-5-230 is concerned with who may redeem and the time necessary to redeem. Sections 6-5-231 and 232 specify the priority of redemption and provide variable time for some classes of redemptioners. Sections 6-5-239 through 243 concern another class of redemptioners, judgment creditors, who are treated separately from others, such as junior mortgagees. The sums which must be paid to redeem are the subjects of § 6-5-235.

Although the new act is structured in a similar fashion to the present *Alabama Code* § 6-5-230 et. seq. and continues a large amount of it, a number of changes have been made. The new act includes all of the same redemptioners, i.e. debtors, junior mortgagees, judgment creditors, transferees and vendees thereof, spouses of debtors and their transferees, children, heirs or devisees of the debtors. However, the suggested act specifically covers mortgagors who were only indirectly covered by the present statute. Judgment creditors, who originally were accorded a separate set of sections



*Robert L. McCurley, Jr. is the director of the Alabama Law Institute at the University of Alabama. He received his undergraduate and law degrees from the University.*



## Legislative Wrap-up *continued*

(Alabama Code § 6-5-239 through § 243) now are included as redemptioners in the new § 6-5-230. The present sections on judgment creditors rarely are used, and judgment creditors are treated differently from others similarly situated, such as junior mortgagees.

A significant change was the omission of the race of redemptioners to redeem found in the present § 6-5-231 and 232. The committee believes the present statute fosters many inequitable situations and is unfair to redemptioners such as judgment creditors and junior mortgagees. Under the suggested statute, all persons named as redemptioners have an opportunity to redeem, but the debtor and/or mortgagor, their spouses, children, heirs or devisees have the ultimate right to redeem.

Significantly, under the new statute, redemption by any debtor, mortgagor or

judgment creditor, their transferees, children, spouses, heirs or devisees revives all recorded judgments, mortgages and recorded liens in existence at the time of the execution or foreclosure sale.

Additionally, if a judgment creditor or junior mortgagee redeems, any unpaid balance due on any prior recorded lien of any nature that held priority over such redeeming judgment or mortgage creditor on the date of the execution, judgment or foreclosure sale is revived.

Perhaps the most unique addition is the new section 6-5-239. Numerous large construction projects often are less than half-completed when financial problems arise. For years lenders have spoken of the need for a quick and efficient legal device to effectively foreclose their security interests so they will have a meaningful opportunity to complete large construction projects which have gone bad financially.

The right of redemption under the Alabama statute was created originally to protect the debtor when the secured property was foreclosed under a power of sale in a mortgage or under a statutory power of sale. The committee decided there was no need for a statutory right of redemption in a situation where a debt of more than \$250,000 was secured and the creditor foreclosed the security interest in the courts. However, the provision for judicial action does not apply to a mortgage of a single family dwelling revised the entire act, changing its title to the "Uniform Transfers to Minors Act." or to a mortgage of land used primarily for agricultural purposes. The comparative rights of debtors and creditors in this context were weighed, and the necessity to alleviate the creditor's dilemma was believed to be stronger than the right of the debtor to redeem after a judicial foreclosure sale.

### Uniform Transfers to Minors

Alabama adopted its present Uniform Gifts to Minors Act in 1957. This statute followed closely the "Uniform Gifts to Minors Statute" drafted by the commissioners on uniform state laws. At that time

only gifts of securities and money could be made to minors. In 1965 Alabama amended this law to add a gift of life insurance to a minor, and in 1967 the act was amended to provide for gifts of annuity contracts. The latest extension of "gifts to minors" occurred in 1975 when the legislature amended the statute to provide for testamentary gifts.

The commissioners on uniform state laws, for the first time since the original draft of the "Uniform Gifts to Minors," in addition to gifts that previously could have been made, the new act permits gifts of any interest in property, both real and personal. Family heirlooms such as rings or furniture could be made the subject of a gift.

The custodian may be named in a will, a trust, a deed, an instrument exercising a power of appointment or a writing designating a beneficiary of contractual rights.

Custodial property is not created until the nominating instrument becomes irrevocable or the transfer is complete.

A personal representative who is an executor, administrator, trustee or conservator may make a transfer to a custodian for a minor, provided the transfer is in the best interest of the minor, is not inconsistent with the provisions of the governing instrument and does not exceed \$10,000 in value.

The proposed statute provides statutory forms for making the transfers.

The standard for expenditures of custodial property has been changed from "for the support, maintenance, education and benefit of the minor" to the "use and benefit of the minor." This change is made to avoid the implication that custodial property can be used only for the required support of the minor. The Internal Revenue Service has taken the position that income from custodial property, to the extent it is used for the support of a minor, is includable as gross income to the person legally obligated to support the minor. This change avoids the application of the grantor trust provisions of the Internal Revenue Code.

This new act does not affect the status of existing gifts to minors. They remain valid if they were valid at the time of their creation. ■

### St. Louis Law Printing Co., Inc.

*Serving The Legal Profession  
Since 1906*

EXPERT QUALITY

PROMPT SERVICE

COMPLETE TYPESET *OR*  
FINE QUALITY OFFSET  
REPRODUCTION BOOKS

Supreme Court, federal and  
state briefs; Offering Cir-  
culars; Private Placement  
Memorandums; Prospectuses;  
Contracts; Leases; etc.

411 North 10th Street  
St. Louis, Missouri 63101  
(314) 231-4477

*Ask about our reference book  
"Latin Words and Phrases"*



# Young Lawyers' Section

**T**wice a year, young men and women across the state go to their mailboxes and receive letters from the Alabama State Bar advising them that they are licensed to practice law within the state of Alabama. This notification is the result of many years of toil and dedication, coupled with the support and encouragement of family and friends. The majority of these individuals now licensed to practice law have had no more involvement with the state bar than making application as law students and later applying for and taking the bar examination.

Upon admission to the bar, a young lawyer has two options with respect to his or her professional association. He may limit his participation in bar activities to the minimum required to maintain the right to practice law, or he may become involved and help chart the course the bar takes in the future. The Young Lawyers' Section offers an ideal opportunity for newly admitted members of the bar to become an integral part of an excellent professional association.

The projects and programs available within the section offer an excellent training ground for future leaders of the bar as a whole. As evidence of this, the YLS is proud to note that our present state bar president, Jim North, is a past president of the YLS and has been extremely supportive of the section, encouraging young lawyers to take a more active and responsible role in the activities of the bar.

In light of the importance we in the

section place on the involvement of the new admittees to the bar in their association, we are making a special effort to educate law students throughout the state on the services provided by and the activities of an association of which they will very soon be a part.

Bill Traeger of Demopolis is the present chairman of the Law Student Liaison Committee of the YLS. He and his committee have contacted the in-state law schools and are attempting to offer a service to prepare students for the transition from student to member of the Alabama State Bar.

Not only do we feel that it is imperative we develop a strong association, but we also are making great strides at developing a better image of the bar and a better rapport between our association and other professions. In March 1986, the YLS again will host the Conference on the Professions. The conference will be held in Gulf Shores and attended by a number of people representing a wide variety of professions. This conference has been a tremendous success in the past, and we have every reason to expect this year will be the most successful. Randy Reaves and his committee have been working diligently to prepare for the conference. We can expect representatives from nursing, pharmacy, law, medicine, psychology, engineering and a host of other professions. The participants will benefit from a seminar designed to update them on new legal requirements in specific areas of practice, including recent de-



**J. Bernard Brannan, Jr.**  
YLS President

isions affecting their individual boards and associations. This conference serves to promote an excellent relationship between lawyers of the state and various other professionals. We in the YLS would appreciate your encouraging clients who are professional people to attend our annual Seminar and Conference on the Professions as I am certain you and your clients will find it to be an enlightening program.

When the subject of young lawyers and seminars comes to mind, it is impossible to overlook the annual Sandestin seminar sponsored by the YLS. The seminar will be held Friday and Saturday, May 16 and 17, in Sandestin. Caine O'Rear and Charlie Mixon of Mobile have been hard at work preparing for this event. In the past, this seminar has been one of the most highly attended CLE programs presented to Alabama lawyers, so now is the time to make your plans to be with us in Sandestin this May.

Finally, the YLS is organized to serve every member of the bar, and if you have a particular need we can serve, please contact me or any other officer or executive committee member of the YLS. ■



# About Members, Among Firms

## ABOUT MEMBERS

**Greg Ward** announces the opening of his law office in Suite 117, Johnson Building, Lanett, Alabama 36863. Phone 642-6008.

**Daniel A. Pike** is pleased to announce the formation of **Daniel A. Pike, PC**, for the general practice of law, with offices at 160 South Warren Street, Mobile, Alabama 36602. Phone 432-2620/2623 or 633-0454.

**Allan M. Trippe** is pleased to announce the relocation of his office to The Rhodes Professional Building, 2956 Rhodes Circle, Birmingham, Alabama 35205. Phone 933-8383.

**William S. Fishburne, III**, a member of the Birmingham law firm of **Sadler, Sullivan, Sharp & Stutts, PC**, has been selected by the **Lien and Bond Claim Network 50** as its lead counsel for Alabama. The Lien and Bond Claim Network 50 is a national network of attorneys from each state designed to serve construction companies and suppliers who do business in several states.

Fishburne is a graduate of Samford University and Cumberland School of Law and received his Master of Laws in Taxation from New York University.

**Robert C. Ayers, Sr.**, announces the relocation of his office to 159 Richbourg Avenue, Shalimar, Florida 32579. Phone (904) 651-4424.

**Norman Roby** announces the relocation of his office to the Walgreen Professional Building, Suite 203, 207 Johnston Street, SE, P.O. Box 2925, Decatur, Alabama 35602. Phone 353-5212.

**Barbara C. Miller** announces the opening of her law office at 703 Terry Hutchens Building in Huntsville, Alabama 35801. Her mailing address is P.O. Box 4, Huntsville, Alabama 35804.

## AMONG FIRMS

**Barry A. Friedman, PC**, 3004 La Clede Building, 150 Government Street, Mobile, Alabama 36602, takes pleasure in announcing **Jay Michael Ross** has become associated with the firm.

The law firm of **Murchison & Sutley** takes pleasure in announcing **J. Tim Coyle** has become associated with the firm in the general practice of law. Their office is located at 224 West Laurel Avenue, Foley, Alabama 36535 and their phone number is 943-1579.

**McElvy & Ford** announces **F. Michael Ford** is no longer engaged in the practice of law, and the firm will now be known as **McElvy & Ford**, consisting of **Douglas McElvy** and **Steven W. Ford**. Also, the firm is pleased to announce the association of **Robert A. Morgan**. Offices are located at 621 Greensboro Avenue, Tuscaloosa, Alabama 35401 and 117 Court Square West, Centreville, Alabama 35042.

**Joe A. Macon, Jr.**, takes pleasure in announcing **Blake Alan Green** has become associated with his firm in the general practice of law. Offices are located at 170 Hill Street, Wetumpka, Alabama 36092. Phone 567-4358.

**Alabama Gas Corporation** is pleased to announce **Amy Watson Stewart** has joined its Legal Department. Offices are located at 2101 Sixth Avenue North, Birmingham, Alabama 35203.

**J. Thomas King, J. Thomas King, Jr.**, and **Alan Lamar King** of the law firm **King and King** announce their relocation to The King Professional Building, 713 South 27th Street, P.O. Box 10224, Birmingham, Alabama 35202-0224. Phone 324-2701.

**Robert Burdine, Jr.**, and **J. Wilson Mitchell** announce the formation of

a firm for the general practice of law under the name of **Burdine & Mitchell**, with offices located at 102 South Court Street, Suite 412 First Federal Building, Florence, Alabama 35630. Phone 767-5930.

**Gregory D. Hyde**, formerly a member of **Sirote, Permutt, Friend, Friedman, Held & Apolinsky, PA** of Birmingham, is pleased to announce he has become a member of the law firm of **Fraleigh, Heekin and Davis, PA**, and the name of the firm has been changed to **Fraleigh, Heekin, Hyde and Davis, PA**. Offices are located in Suite 1100, Atlantic Bank Building, 20 North Orange Avenue, Orlando, Florida 32801. Phone (305) 843-0191.

**Haskell, Slaughter, Young & Lewis, PA**, takes pleasure in announcing **Ottie C. Akers** has become associated with the firm in the practice of law, with offices at 800 First National—Southern Natural Building, Birmingham, Alabama 35203. Phone 251-1000.

**Engel & Smith**, partners in the general practice of law, announce the change of the firm name to **Engel, Walsh & Zoghby**, the relocation of their offices to Suite 1106 Riverview Plaza Office Tower, P.O. Box 1045, Mobile, Alabama 36633 and **Leo A. Smith, Jr.**, has retired and is now of counsel to the firm.

The firm of **Johnstone, Adams, Howard, Bailey & Gordon** is pleased to announce **R. Gregory Watts, John A. Carey, C. Grantham Baldwin** and **Michael C. White** have become associated with the firm. Offices are located at 104 St. Francis Street, Royal-St. Francis Building, Mobile, Alabama 36602. Phone 432-7682.

**Stanard & Mills** is pleased to announce **Polly Kellar** has become associated with the firm. Offices are located on the seventh floor of the



SouthTrust Bank Building, Mobile, Alabama 36602. Phone 432-0701.

The law firm of **Roberts, Davidson & Wiggins** takes pleasure in announcing **Herschel T. Hamner, Jr.**, and **Mary Beth Wear Cavert** have become associated with the firm in the practice of law. Offices are located at 2625 8th Street, Tuscaloosa, Alabama 35401. Phone 759-5771

**Albrittons & Givhan**, 109 Opp Avenue, Andalusia, Alabama 36420 takes pleasure in announcing **William Harold Albritton, IV**, has become an associate, **James R. Clifton** has become a member and the firm name has been changed to **Albrittons, Givhan & Clifton**.

The law firm of **Azar, Campbell & Azar** is pleased to announce **Richard C. Dean, Jr.**, has become an associate with the firm, with offices located at 260 Washington Avenue, Montgomery, Alabama 36104. Phone 265-8551.

The law firm of **Hardwick, Hause, Segrest & Northcutt** is pleased to announce **Charles D. Decker** is now an associate. Offices are located at 210 North Lena Street, Dothan, Alabama 36303. Phone 794-4144.

The law firm of **Corley, Moncus, Bynum & DeBuys** takes pleasure in announcing **William L. Green** and **JoAnne Henderson Dorr** have become associated with the firm. Offices are located at 2100 Sixteenth Avenue South, Ash Place, Birmingham, Alabama 35205.

The law firm of **Emond & Vines** takes pleasure in announcing the **Honorable T. Eric Embry**, retired justice of the Alabama Supreme Court, is now of counsel to the firm. Offices are located at 1800 City Federal Building, Birmingham, Alabama 35205. Phone 254-3224.

**Norman K. Brown, Attorney, PA**, is pleased to announce the association of **Garry W. Abbott**, with offices at 1818 Third Avenue North, P.O. Box

785, Bessemer, Alabama 35021. Phone 428-7321.

The law firm of **Pappanastos & Samford, PC**, is pleased to announce **Laura A. Calloway** and **Susan Shirock DePaola** became members of the firm August 1, 1985. Offices are located in Suite 311, One Court Square, Montgomery, Alabama 36102. Phone 262-1600.

The members of the firm of **deGraffenried & Hawkins** are pleased to announce **Ritchie L. Tipton** has become associated with the firm. The offices are located at 2620 6th Street, Tuscaloosa, Alabama 35401. Phone 759-1226.

**Hardin and Hollis** is pleased to announce **Karen M. Ross** has become associated with the firm at 1825 Morris Avenue, P.O. Box 11328, Birmingham, Alabama 35202-1328. Phone 328-2675.

The law firm of **Markow, Walker & Reeves** takes pleasure in announcing **Michael T. Estep** (admitted Alabama and Mississippi) has become associated with the firm. Offices are located at 1765-A Lelia Drive, Suite 104, Jackson, Mississippi 39216. Phone (601) 981-4311.

The firm of **Wilson, Pumroy & Adams** and **Charles H. Rice** are pleased to announce their formation of a partnership for the general practice of law under the name of **Wilson, Pumroy, Rice & Adams**, 1431 Leighton Avenue, P.O. Box 2333, Anniston, Alabama 36202. Phone 236-4222.

The law firm of **Henslee and Bradley** takes pleasure in announcing **John T. Robertson, IV**, has become a partner in the firm. The new firm name will be **Henslee, Bradley and Robertson**, with offices located at 754 Chestnut Street, P.O. Box 246, Gadsden, Alabama 35902-0246. Phone 543-9790.

The firm of **Smith & Taylor** takes pleasure in announcing **Richard W.**

**Lewis** and **Tom Sherk** have become associated with the firm. Offices are located at Suite 1212 Brown-Marx Towers, Birmingham, Alabama 35203. Phone 251-2555.

The law firms of **Cleary, Lee, Morris, Evans & Rowe** and **Charles R. Smith, Jr., PC**, take pleasure in announcing the merger of their firms under the name of **Cleary, Lee, Morris, Smith, Evans & Rowe**, and **John R. Barran** has become a partner of the firm. Offices are located at 300 Clinton Avenue West, P.O. Box 68, Huntsville, Alabama 35804. Phone 533-9025.

**Larry R. Newman** is pleased to announce the relocation of his office to 604 38th Street South, Birmingham, Alabama 35222. Phone 591-6766.

**Charles Eugene Caldwell** announces the relocation of his general practice of law to Suite 419 Frank Nelson Building, Birmingham, Alabama 35203. Phone 323-2444.

The law firm of **Brown, Hudgens, Richardson, PC**, 1495 University Boulevard, Mobile, Alabama 36609, takes pleasure in announcing **William H. Sisson** and **Richard H. Taylor** have become associated with the firm. Phone 344-7744.

The law firm of **Franson, Dearing and Aldridge, PA**, announces **Drew W. Prusiecki** has become associated with the firm. Offices are located at 1506 Prudential Drive, P.O. Box 10840, Jacksonville, Florida 32247. Phone (904) 399-0555.

The law firm of **Lanier, Shaver & Herring, PC**, is pleased to announce **William W. Sanderson, Jr.**, and **H. Harold Stephens** have become members of the firm, and **Rennie Stettler, Elizabeth C. Williams** and **John P. Burbach** have become associated with the firm. Offices are located at 404 Madison Street South, Huntsville, Alabama 35801. Phone 533-5920.



# Opinions of the General Counsel

by William H. Morrow, Jr.

## QUESTION:

**"Under what circumstances can an attorney file suit against a former client or take a position adverse to a former client?"**

## ANSWER:

If there is a "substantial relationship" between the issues in the prior representation of the former client and the issues in the contemplated suit against or position adverse to the former client such that the attorney could have learned of a "confidence" or "secret" of the former client that he can use adversely to the former client and favorably to the new client, the attorney cannot ethically proceed against the former client. To preclude action against a former client it is not necessary that the attorney did, in fact, receive such a "confidence" or "secret."

## DISCUSSION:

The Office of the General Counsel and the Disciplinary Commission have written a large number of formal opinions concerning the propriety of an attorney's taking a position adverse to a former client. Numerous informal inquiries have been directed to the general counsel. Although the issue was touched upon briefly in an opinion published in the November 1984 *Alabama Lawyer*, the precise question was not the subject of the opinion, and we deem it helpful to set forth the guidelines herein.

Disciplinary Rule 4-101(A) and (B)(1) provides:

(A) "'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except as permitted by DR 4-101(C) a lawyer shall not knowingly:

(1) Reveal a confidence or secret of his client."

Disciplinary Rule 5-101(C) provides:

"A lawyer shall not represent a party to a cause or his successor after having previously represented an adverse party or interest in connection therewith."

Disciplinary Rule 5-105(A) provides:

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

Disciplinary Rule 5-105(B) provides:

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

The *Code of Professional Responsibility* of the American Bar Association does not have a rule identical or substantially the same as Rule 5-101(C), *Code of Professional Responsibility* of the Alabama State Bar. This disciplinary rule of the *Code of Professional Responsibility* of the Alabama State Bar addresses itself specifically to the "former client" problem. The key words in this disciplinary rule are the words "adverse" and "in connection therewith." Although former Disciplinary Rule 105, *Code of Professional Responsibility* of the American Bar Association, which is identical to the corresponding rule of the *Code of Professional Responsibility* of the Alabama State Bar, does not refer specifically to current or former clients, judicial opinions have expressly or impliedly found that the drafters of the code intended to include the former client problem in the disciplinary rule. *E.F. Hutton v. Brown*, 305 F. Supp. 93 (S.D. Tex. 1969); *Estate Theatres, Inc. v. Columbia Pictures Industries, Inc.*, 345 F. Supp. 93 (S.D.N.Y. 1972); *Robert H. Aronson, Conflict of Interest*, 52 *Washington Law Review* 807

The Disciplinary Commission has consistently held that in order to preclude an attorney from suing a former client it is not necessary that the attorney actually obtain a "confidence" or "secret" which he can use favorably to a new client and adversely to a former client. It is sufficient that there is a "substantial relationship" between the two representations such that the attorney could have acquired such a "confidence" or "secret." In the case of *Ex Parte Taylor Coal Company, Inc.*, 401 So. 2d 1 (1981) the Supreme Court of Alabama has adopted the substantial relationship test in contrast to the test which would require a showing of the receipt of an actual "confidence" or "secret." See *Ex Parte State Farm Mutual Automobile Insurance Co.*, 469 So. 2d 574 (Ala. 1985).

We are of the opinion that the words "substantial relationship" as used by the courts in interpreting DR 5-101(A) and the words "in connection therewith" as used in DR 5-101(C) should be given substantially the same interpretation, and we further are of the opinion that there must be a "substantial relationship" or "connection" as it relates to the issues

*Continued on page 27*



# Attorneys Admitted to Bar, Fall 1985

Joanne Mink Adams	Birmingham, Alabama	Jimmy Michael Cooper	Birmingham, Alabama
Jonathan Lane Adams	Talladega, Alabama	James Milton Copeland	Gadsden, Alabama
Stephanie Kay Alexander	Mobile, Alabama	Katherine Lynn Corley	Birmingham, Alabama
William Harold Albritton, IV	Andalusia, Alabama	James Timothy Coyle	Magnolia Springs, Alabama
Charysse Lynn Alexander	Montgomery, Alabama	Mark Braxton Craig	Decatur, Alabama
Deborah Lynn Alley	Mobile, Alabama	James Thomas Crawford	Birmingham, Alabama
Charles Lester Anderson	Montgomery, Alabama	Ronald Rudolph Crook	Birmingham, Alabama
Michael Alan Anderson	Birmingham, Alabama	Vicki Raines Crowell	Phenix City, Alabama
Patricia Arthur Anderson	Birmingham, Alabama	James Grady Curenton, Jr.	Spanish Fort, Alabama
James Finley Andrews	Miami, Florida	William Whitten Curlee	Birmingham, Alabama
Amy Lucile Baird	Birmingham, Alabama	Andrew Dalins	Huntsville, Alabama
Beverly Poole Baker	Birmingham, Alabama	Gladys Marie Daniels	Mobile, Alabama
Susan Elizabeth Baker	Birmingham, Alabama	Sandra Beth Davis	Talladega, Alabama
Charles Grantham Baldwin	Mobile, Alabama	Richard Cary Dean, Jr.	Montgomery, Alabama
Katherine Nowell Barr	Birmingham, Alabama	Charles David Decker	Dothan, Alabama
Donna Elise Barrow	Mobile, Alabama	William Kevin Delgrosso	Birmingham, Alabama
Willard Russell Beals, Jr.	Birmingham, Alabama	Richard Blake Dent	Birmingham, Alabama
Kimberly Carr Beard	Birmingham, Alabama	Patricia Gail Dickinson	Birmingham, Alabama
Duke Oliver Bethea	Birmingham, Alabama	Terri Ann Dobell	Birmingham, Alabama
Gregory Marion Biggs	Madison, Alabama	JoAnne Henderson Dorr	Birmingham, Alabama
Steven Edward Blair	Montgomery, Alabama	Luther Maxwell Dorr, Jr.	Birmingham, Alabama
Richard Massey Blythe	Leighton, Alabama	Christine McKoy Drake	Vinemont, Alabama
Daniel Elbert Boone	Florence, Alabama	Bryan Gerard Duhe'	Mobile, Alabama
Blythe Ann Bosstick	Birmingham, Alabama	Russell Turner Duraski	Phenix City, Alabama
Edward Gibson Isaacs Bowron	Birmingham, Alabama	Katherine Leigh Eagerton	Birmingham, Alabama
Rex Neil Boyd	Birmingham, Alabama	Billy Lee Elliott	Birmingham, Alabama
David Dyer Boyer	Montgomery, Alabama	Teri Lynn Elliott	Birmingham, Alabama
Michael Joseph Brandt	Birmingham, Alabama	Robert Eugene Ely	Montgomery, Alabama
Paul Adams Brantley	Montgomery, Alabama	Lisa Paul Fann	Birmingham, Alabama
Herbert Willis Brewer, Jr.	Pleasant Grove, Alabama	Robert Paul Fann	Birmingham, Alabama
Isaac Ripon Britton, Jr.	Birmingham, Alabama	Richard Edward Fikes	Jasper, Alabama
Jeffrey Adam Brooks	Birmingham, Alabama	Sara Jane Finley	Birmingham, Alabama
Robert Lee Broussard	Huntsville, Alabama	Deborah Perry Fisher	Birmingham, Alabama
William Jordan Brower	Birmingham, Alabama	Marilyn Burton Fisher	Tuscaloosa, Alabama
Hayes DeCaley Brown, II	Birmingham, Alabama	Mark David Fisher	Mobile, Alabama
John Clement Brutkiewicz	Mobile, Alabama	Jamie Suzanne Flanagan	Pascagoula, Mississippi
John Nathanael Bryan	Birmingham, Alabama	Brenda Deneise Flowers	Montgomery, Alabama
Carla Shelton Burton	Tuscaloosa, Alabama	Richard Arthur Freese	Birmingham, Alabama
John Calvin Cason	Montgomery, Alabama	Thomas Alan Friday	Florence, Alabama
John Bartley Cavender	Birmingham, Alabama	Clara Lucille Fryer	Atlanta, Georgia
Mary Beth Wear Cavert	Tuscaloosa, Alabama	Mark Everett Fuller	Enterprise, Alabama
Robert Mark Chattin	Decatur, Alabama	Howard Furman	Birmingham, Alabama
Karen Lynne Chunn	Birmingham, Alabama	Mark Louis Gaines	Gardendale, Alabama
Mary Lynn Clark	Washington, DC	Lillian Viola Garcia	Homewood, Alabama
Kenneth Lee Cleveland	Birmingham, Alabama	Roy Stuart Goldfinger	Montgomery, Alabama
Franklin Luke Coley, Jr.	Mobile, Alabama	Tammy Sue Graves	Birmingham, Alabama
Betsy Palmer Collins	Birmingham, Alabama	John Merrill Gray, II	Birmingham, Alabama
Clifford Larry Collins	Crane Hill, Alabama	Harold Edward Grierson	Bremen, Alabama
Lisa Jan Collins	Birmingham, Alabama	David Jonathan Guin	Montgomery, Alabama
Henry Neal Cook	Haleyville, Alabama	Sandra Carlin Guin	Tuscaloosa, Alabama
Peggy Lee Hale Cook	Birmingham, Alabama	Mary Fisher Gunter	Montgomery, Alabama



Billy Glen Hall	Montgomery, Alabama	Francis Allen Long, Sr.	Florence, Alabama
Jack Jordan Hall, Jr.	Birmingham, Alabama	Braxton Blake Lowe	Birmingham, Alabama
James Albert Hall, Jr.	Tuscaloosa, Alabama	Gerri Lucinda Lyles	Montgomery, Alabama
William Lee Hanbury	Florence, Alabama	Teddy Lee Mann	Birmingham, Alabama
Linda Marie Hand	Birmingham, Alabama	Charles John Mataya	Montgomery, Alabama
Jonathan Scott Harbuck	Birmingham, Alabama	Thomas Kelly May	Birmingham, Alabama
William Brian Hardegree	Anniston, Alabama	David Lee McAlister	Birmingham, Alabama
William Dennis Harmon	Birmingham, Alabama	Matthew Clay McDonald	Mobile, Alabama
Charles William Hart, III	Ozark, Alabama	Patricia Anne McGee	Birmingham, Alabama
Kevin John Hawkins	Birmingham, Alabama	Edward Ray McKee, Jr.	Huntsville, Alabama
Victor Lee Hayslip	Birmingham, Alabama	Sister Lynn Marie McKenzie	Birmingham, Alabama
Michael Ellis Henderson	Montgomery, Alabama	Michael Lyndon Mckerley	Birmingham, Alabama
Deborah Ann Whitmore Hicks	Eufaula, Alabama	Michael Dale McKibben	Birmingham, Alabama
Sharon Diane Hindman	Hodges, Alabama	Lucie Underwood McLemore	Montgomery, Alabama
Lynn Hinkle Hoff	Birmingham, Alabama	Anne Elizabeth McVay	Montgomery, Alabama
Jean McCulley Holcomb	Tuscaloosa, Alabama	Lynn Sensabaugh Merrill	Montgomery, Alabama
David Franklin Holmes	Margate, Florida	Fred Charles Meyer, Jr.	Scotch Plains, New Jersey
Alex LaFayette Holtsford, Jr.	Clanton, Alabama	Paul Frederick Meyers, II	Pelham, Alabama
Bobby Joe Hornsby	Trussville, Alabama	Jacqueline Denise Miller	Tuscumbia, Alabama
William Wiley Horton	Birmingham, Alabama	Gail Livingston Mills	Birmingham, Alabama
Michael Gilbert Huey	Mobile, Alabama	Louis Daniel Mims	Mobile, Alabama
Lisa Jean Huggins	Birmingham, Alabama	Nancy Howell Mitchell	Birmingham, Alabama
Janice Arlene Humber	Birmingham, Alabama	Corey Brent Moore	Birmingham, Alabama
Joseph Gullatte Hunter, III	Gadsden, Alabama	Kathy Jean Moore	Birmingham, Alabama
Mary Pilcher Hunter	Birmingham, Alabama	John Calhoun Morrow	Shoal Creek, Alabama
Jeffery Neil Hyche	Northport, Alabama	Perry Gerwin Myer, Jr.	Jackson's Gap, Alabama
David Glenn Hymers	Birmingham, Alabama	David Sullivan Neel, Jr.	Birmingham, Alabama
Horace Cecil Ireland, III	Birmingham, Alabama	Roger Andrew Nelson	Marietta, Georgia
Alice Elizabeth Jackson	Montgomery, Alabama	Lesley Brackin Newcombe	Huntsville, Alabama
Janie Baker Johnston	Crossville, Alabama	Gregory Alan Nicholas	Montgomery, Alabama
George Edward Kassouf	Birmingham, Alabama	Bradley Alan Norton	Birmingham, Alabama
James Alfred Kee, Jr.	Birmingham, Alabama	Kenneth Sloan Nunnelley	Montgomery, Alabama
Deborah Hope Kehoe	Mobile, Alabama	Carl Smith O'Neal, Jr.	Birmingham, Alabama
Polly Joye Kellar	Mobile, Alabama	Nancy Cooley Osborne	Birmingham, Alabama
Charles Michael Kelly	Geneva, Alabama	Brian Kenneth Parker	Vestavia Hills, Alabama
Thomas Albert Kendrick	Birmingham, Alabama	Michael Max Partain	Leeds, Alabama
Randal Wayne Key	Decatur, Alabama	Lenora Walker Pate	Birmingham, Alabama
David Alan Kimberley	Gadsden, Alabama	Robert Matthew Pears	Homewood, Alabama
Roy Floyd King, Jr.	Birmingham, Alabama	Regina Marie Pena	Huntsville, Alabama
Jerry Eugene Kirby	Birmingham, Alabama	Michael Richard Pennington	Birmingham, Alabama
Thomas Oliver Kitchens	Roanoke, Alabama	Edmund Payne Perry	Birmingham, Alabama
Atley Langley Kitchings	Birmingham, Alabama	Collins Pettaway, Jr.	Birmingham, Alabama
Thomas Cowin Knowles	Montgomery, Alabama	Bennett Lee Pugh	Huntsville, Alabama
Suellen Powers Lambert	Wetumpka, Alabama	Maxwell Homer Pulliam, Jr.	Pelham, Alabama
Margaret Louise Lathum	Birmingham, Alabama	Barry Alan Ragsdale	Birmingham, Alabama
Robert Cleveland Ledbetter	Birmingham, Alabama	David William Rands	Collinsville, Illinois
Susan Joan Leeds	Birmingham, Alabama	Wesley Clyde Redmond	Birmingham, Alabama
Paula Dudley Levitt	Birmingham, Alabama	Davis Graham Reese	Birmingham, Alabama
Richard Wayne Lewis	Birmingham, Alabama	Harry Mason Renfro, Jr.	Toney, Alabama
Philip Noah Lisenby	Huntsville, Alabama	Mary Alice Rhodes	Birmingham, Alabama
William Arles Lisenby, Jr.	Montgomery, Alabama	Edward Earl Rhyne, Jr.	Birmingham, Alabama
Dorothy Wells Littleton	Montgomery, Alabama	John Burruss Riis	Mobile, Alabama
David Cary Livingston	Gadsden, Alabama	Robert Muriel Ritchey	Birmingham, Alabama
Susan Elizabeth Lloyd	Birmingham, Alabama	Martin Earl Roberts, Jr.	Eufaula, Alabama
Ellen Agee Lockwood	Montgomery, Alabama	Shaler Sinclair Roberts, III	Florence, Alabama



Lisa Schmidt Robinson	Birmingham, Alabama	Patrick Martin Sullivan	Mobile, Alabama
Barbara Shroyer Roman	Fairhope, Alabama	Richard Harrell Taylor	Mobile, Alabama
Jay Michael Ross	Daphne, Alabama	Mark Joseph Tenhundfeld	Mobile, Alabama
Karen Marsh Ross	Pelham, Alabama	Donald Alan Thomas	Birmingham, Alabama
Michael Dale Russell	Opp, Alabama	Stella Evans Tipton	Birmingham, Alabama
Steven William Saccoccia	Atlanta, Georgia	Sylvia Estelle Tucker	Prospect, Tennessee
Julie Anne Sammons	Birmingham, Alabama	Brently Alan Tyra	Birmingham, Alabama
James Robert Scalco	Birmingham, Alabama	Joseph Steven Upchurch	Talladega, Alabama
Leah Frances Scalise	Birmingham, Alabama	Robert Allen Vaughn, II	Decatur, Georgia
Mark Andrew Scogin	Tuscaloosa, Alabama	David Windell Vickers	Dothan, Alabama
Walter Francis Scott, III	Birmingham, Alabama	Timothy Ray Wadsworth	Helena, Alabama
Eugene Alan Seidel	Mobile, Alabama	Jacob Allen Walker, III	Opelika, Alabama
Patrick David Seiter	Birmingham, Alabama	Billy Ray Weathington, Jr.	Birmingham, Alabama
Jacquelyn Eudelle Shaia	Birmingham, Alabama	Michael Coleman White	Mobile, Alabama
Richard Forrest Sharrard	St. Louis, Missouri	Deborah Faye Wilkins	Addison, Alabama
Terry Alan Sides	Jasper, Alabama	Larry Morgan Williams	Irondale, Alabama
Cynthia Brannon Sirmon	Birmingham, Alabama	Mark Thomas Williams	Birmingham, Alabama
Anita Tucker Smith	Mobile, Alabama	Sue Elizabeth Williamson	Birmingham, Alabama
Banks Thomas Smith	Dothan, Alabama	David MacArthur Wilson	Birmingham, Alabama
Gary Charles Smith	Birmingham, Alabama	David George Wirtes, Jr.	Goodwater, Alabama
Jenny Lynn Smith	Vestavia, Alabama	James Pettigrew Woodson, III	Tuscaloosa, Alabama
John Kenneth Smith	Montgomery, Alabama	Donald Marion Wright	Birmingham, Alabama
Richard Earl Smith	Birmingham, Alabama	James Lloyd Wright	Greensboro, Alabama
Susanna Black Smith	Tuscaloosa, Alabama	Judi Zarzaur Wurm	Birmingham, Alabama
Paul Langon Sotherland	Birmingham, Alabama	Richard Lynn Wyatt	Birmingham, Alabama
Eugene Paul Spencer, II	Birmingham, Alabama		
Charles Averett Stakely, IV	Birmingham, Alabama		
Robert Hershel Starr	Trussville, Alabama		
Susan Lynne Stephens	Birmingham, Alabama		
Ann Shashy Stewart	Montgomery, Alabama		
Charles Andrew Stewart, III	Montgomery, Alabama		
Sandra Jean Stewart	Montgomery, Alabama		
William Sims Stone	Blakely, Georgia		
Phillip Gillis Stutts	Birmingham, Alabama		
Joseph Raymond Sullivan	Mobile, Alabama		

#### Fall 1985 Bar Exam Statistics of Interest

Number Sitting for Exam	379
Number Certified to Supreme Court	267
Certification Rate	70%
Certification Percentages:	
University of Alabama	84
Cumberland	83
Alabama Nonaccredited Law Schools	37

All advertisements  
and copy  
for the  
March 1986  
issue of  
*The Alabama Lawyer*  
are due  
no later than  
January 27, 1986.

## Opinions of the General Counsel Continued from page 24

in a previous representation of a former client and a contemplated representation against such former client rather than the mere subject matter of the two representations.

The opinion of the Supreme Court of Alabama in *Ex Parte State Farm Mutual Automobile Insurance Co.*, *supra*, summarizes the "substantial relationship" test as follows:

"In *Ex parte Taylor Coal Co.*, *supra*, this Court adopted the 'substantial relationship' test for determining whether an attorney's prior representation of a client

is grounds for his disqualification from representing a party against the former client. If the former client wishes to have the attorney disqualified, he need show only that the matters or the causes of action involved in the pending action are substantially related to the matters or causes of action of the prior representation. This test is distinguished in *Ex parte Taylor Coal Co.* from the confidential relationship test whereby an objecting party would have to show the actual confidences conveyed to the attorney." (469 So. 2d at 575)



FALL 1985 ADMITTEES—GROUP 1





FALL 1985 ADMITTEES—GROUP 2





FALL 1985 ADMITTEES—GROUP 3





FALL 1985 ADMITTEES—GROUP 4



Continued on page 34



# cle opportunities

---



## 16 thursday

### TAX CONSIDERATIONS FOR THE GENERAL PRACTITIONER

Montgomery  
Sponsored by: Professional Education Systems, Inc.  
Credits: 6.6 Cost: \$95  
For Information: 1-800-826-7155

## 17 friday

### TAX CONSIDERATIONS FOR THE GENERAL PRACTITIONER

Birmingham  
Sponsored by: Professional Education Systems, Inc.  
Credits: 6.6 Cost: \$95  
For Information: 1-800-826-7155

## 19-23

### MIDWINTER CONVENTION

Lake Buena Vista, Florida  
Sponsored by: Association of Trial Lawyers of America  
Cost: \$175/members;  
\$210/nonmembers  
For Information: 1-800-424-2725

## 23-24

### MIDWINTER CONFERENCE

Hilton, Birmingham  
Sponsored by: Alabama District Attorneys Association  
Cost: \$80  
For Information: (205) 261-4191

## 23-25

### MIDWINTER CONFERENCE

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

## 25 saturday

### MIDWINTER SEMINAR

Grand Hotel, Point Clear  
Sponsored by: Mobile Bar Association  
Credits: 4.0  
For Information: (205) 433-9790

## 30 thursday

### BASICS OF CONSUMER LAW

Law Center, Tuscaloosa  
Sponsored by: Alabama Bar Institute for CLE and the American Bar Association  
Credits: 5.4 Cost: \$120  
For Information: (312) 988-6200

## 30-31

### GOVERNMENT CONTRACTS II

Hyatt, Los Angeles  
Sponsored by: American Bar Association  
Credits: 14.7 Cost: \$400/members;  
\$425/nonmembers  
For Information: (312) 988-6200

## 31 friday

### APPELLATE PRACTICE

Civic Center, Birmingham  
Sponsored by: Alabama Bar Institute for CLE  
Credits: 7.0  
For Information: (205) 348-6230

### SOCIAL SECURITY DISABILITY LAW

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

### REPRESENTING AGRICULTURAL CLIENTS

Holiday Inn Southwest, Jackson  
Sponsored by: University of Mississippi Center for Continuing Legal Education  
Credits: 7.2  
For Information: (601) 982-6590



## 3-4

### BANKRUPTCY LITIGATION INSTITUTE

Holiday Inn on Union Square, San Francisco  
Sponsored by: Law and Business, Inc.  
Credits: 10.8 Cost: \$395  
For Information: (201) 472-7400

## 9-13

### JUVENILE JUSTICE

Fairmont, New Orleans  
Sponsored by: National College of Juvenile Justice  
Cost: \$250/members; \$275/nonmembers  
For Information: (702) 784-6012

## 13 thursday

### TRUST AND GIFT TECHNIQUES FOR FINANCING CHILDREN'S EDUCATION

Law Center, Tuscaloosa  
Sponsored by: Alabama Bar Institute for CLE and ALI-ABA  
Credits: 5.4 Cost: \$120  
For Information: (205) 348-6230



## 14 friday

### COMMERCIAL LAW

Law Center, Tuscaloosa

Sponsored by: Alabama Bar Institute for CLE

Credits: 6.0

For Information: (205) 348-6230

## 20-21

### GOVERNMENT CONTRACTS II

Hyatt, Washington

Sponsored by: American Bar Association

Credits: 14.7 Cost: \$400/members;  
\$425/nonmembers

For Information: (312) 988-6200

## 20-22

### TRIAL EVIDENCE, CIVIL PRACTICE AND EFFECTIVE LITIGATION TECHNIQUES IN FEDERAL AND STATE COURTS

Regent, Honolulu

Sponsored by: ALI-ABA

Credits: 22.8 Cost: \$425

For Information: (215) 243-1600

## 21 friday

### LOCAL GOVERNMENT LAW

Civic Center, Birmingham

Sponsored by: Alabama Bar Institute for CLE

Credits: 6.0

For Information: (205) 348-6230

## 26-28

### OIL AND GAS LAW AND TAXATION

The Westin, Dallas

Sponsored by: Southwestern Legal Foundation

For Information: (214) 690-2377

## 27 thursday

### ADVANCED FAMILY LAW

Civic Center, Montgomery

Sponsored by: Alabama Bar Institute for CLE

Credits: 7.0

For Information: (205) 348-6230

## 28 friday

### ADVANCED FAMILY LAW

Civic Center, Birmingham

Sponsored by: Alabama Bar Institute for CLE

Credits: 7.0

For Information: (205) 348-6230



## 7 friday

### FEDERAL PRACTICE AND PROCEDURE

Savannah

Sponsored by: ICLE of Georgia

For Information: (404) 542-1121

## 10-12

### EMPLOYMENT DISCRIMINATION

Doubletree Inn, Dallas

Sponsored by: Southwestern Legal Foundation

For Information: (214) 690-2377



## 20 thursday

### MEDICAL MALPRACTICE

Governors House, Montgomery

Sponsored by: Alabama State Bar

Credits: 3.0 Cost: included in Midyear

Meeting registration fee

For Information: (205) 269-1515

## 21 friday

### ADVANCED REAL PROPERTY LAW

Winfrey Hotel, Birmingham

Sponsored by: Alabama Bar Institute for CLE

Credits: 7.8

For Information: (205) 348-6230

### FORENSIC EVIDENCE

Atlanta

Sponsored by: ICLE of Georgia

For Information: (404) 542-1121

## 22-23

### MEDICAL MALPRACTICE AND PERSONAL INJURY

Reston, Virginia

Sponsored by: The Medical Quality Foundation

Credits: 14.4 Cost: \$125

For Information: (703) 437-3333

## 28 friday

### BANKING LAW

Winfrey Hotel, Birmingham

Sponsored by: Alabama Bar Institute for CLE

Credits: 6.5

For Information: (205) 348-6230



---

# Lawyers in the Family



*Charles M. Kelly (1985) and James W. Kelly (1950) (admittee and father)*



*David J. Guin (1985) and Judge J. Foy Guin, Jr. (1948) (admittee and father)*



*A. Langley Kitchings (1985) and Atley A. Kitchings (1950) (admittee and father)*



*Ted A. Mills (1984); Gail Livingston Mills (1985); David C. Livingston (1985); Alan C. Livingston (1973); and Jack Livingston (1950) (spouse/brother-in-law, admittee/sister, admittee/brother, brother/brother-in-law and uncle)*





*Nat Bryan (1985) and Judge John N. Bryan, Jr. (1955) (admittee and father)*



*Robert M. Pears (1985) and Gary C. Pears (1976) (admittee and brother)*



*Charles Anderson (1985) and James Anderson (1979) (admittee and brother)*



*John Burruss Riis (1985) and Erling Riis, Jr. (1953) (admittee and father)*



*Deborah Lynn Alley (1985) and L. Murray Alley, Jr. (1959) (admittee and father)*



*Mark E. Fuller (1985) and Kenneth T. Fuller (1957) (admittee and father)*





*James Milton Copeland (1985); Wayne Copeland (1951); and Frank W. Bailey (1983) (admittee, father and cousin)*



*William Harold Albritton, IV (1985) and William Harold Albritton, III (1960) (admittee and father)*



*Mary Pilcher Hunter (1985); Joe T. Pilcher, Jr., (1953); and John E. Pilcher (1981) (admittee, father and brother)*



*Richard Cary Dean, Jr. (1985); Denise Boone Azar (1984); George Bernard Azar (1956); and Edward J. Azar (1947) (admittee, cousin, uncle and uncle)*





*Katherine Corley (1985) and Donald E. Corley (1969) (admittee and father)*



*Richard E. Fikes (1985) and Holly J. Fikes (1982) (admittee and sister-in-law)*



*J. Bartley Cavender (1985) and C. Paul Cavender (1984) (admittee and brother)*



*Sandra Carlin Guin (1985) and James C. Guin, III (1980) (admittee and husband)*



*Jack Jordan Hall, Jr. (1985) and Jack J. Hall, Sr. (1955) (admittee and father)*



*Trisha McGee (1985) and M. Clinton McGee (1940) (admittee and father)*





*Barry Alan Ragsdale (1985) and Joan Crowder Ragsdale (1983) (admittee and wife)*



*Jacob Allen Walker, III (1985) and Jacob Allen Walker, Jr. (1949) (admittee and father)*



*Kenneth Lee Cleveland (1985) and Charles Cleveland (1952) (admittee and father)*



*John Clement Brutkiewicz (1985); Donald Elmore Brutkiewicz (1954); Donald E. Brutkiewicz, Jr. (1979); and Henry Neal Cook (1985); (admittee/cousin, father/uncle, brother/cousin and admittee)*





Lisa P. Fann (1985) and Robert P. Fann (1985) (wife and husband admittees)



Chris McKoy Drake (1985) and Tom Drake (1963) (admittee and husband)



Charles A. Stewart, III (1985); Ann Shashy Stewart (1985); and William A. Shashy (1981) (co-admittees [husband and wife] and brother-in-law/brother)

## 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

Experienced Lawyer

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



Patrick M. Sullivan (1985); Joseph C. Sullivan, Sr. (1932); and Joseph C. Sullivan, Jr. (1970) (admittee, father and brother)





*Lucie U. McMomore (1985) and Kenneth W. Underwood, Jr. (1949) (admittee and father)*



*Charles Grantham Baldwin (1985) and William H. Baldwin (1951) (admittee and father)*



*Nancy Howell Mitchell (1985) and W. Eason Mitchell (1975) (admittee and husband)*



*Susan Elizabeth Baker (1985); Janie Baker Johnston (1985); Clyde Dilmus Baker (1977); and John Martin Baker (1967) (co-admittees and cousin/brother) [cousins], father/uncle*





*Beverly Poole Baker (1985) and James K. Baker (1967) (admittee and husband)*



*Matthew Clay McDonald (1985) and Mark Charles McDonald (1982) (admittee and brother)*



*Luther Maxwell Dorr, Jr. (1985) and JoAnne Henderson Dorr (1985) (husband and wife admittees)*

## Telecast Schedule 1986\*

(as of November 1, 1985)



DATE (Noon—4 p.m. ET)	DAY	SPONSOR	SUBJECT
January 16, 1986	Thursday	ALI-ABA	Liquor Liability Litigation
January 30, 1986	Thursday	ABA	Basics of Consumer Law
February 13, 1986	Thursday	ALI-ABA	Trust and Gift Techniques for Financing Children's Education
February 27, 1986	Thursday	ABA	Emerging Theories of Lender Liability
March 13, 1986	Thursday	ALI-ABA	Trial Tactics
March 26, 1986	Wednesday	ABA	Legal Audits: Advising Corporations about Potential Liabilities
April 10, 1986	Thursday	ALI-ABA	Will Drafting
April 22, 1986	Tuesday	ABA	Defending Fraudulent Claims
May 8, 1986	Thursday	ALI-ABA	How to Recognize a Medical Malpractice Case
May 22, 1986	Thursday	ABA	Professional Liability of Accountants
June 5, 1986	Thursday	ALI-ABA	Pension Program
June 19, 1986	Thursday	ALI-ABA	To Be Announced
To Be Announced*		ALI-ABA	New Tax Act
		ABA Tax Section	





Charles Averett Stakely, IV, (1985) and Charles Averett Stakely, III, (1960) (admittee and father)



Paula D. Levitt (1985) and Ronald H. Levitt (1983) (admittee and husband)



Daniel E. Boone (1985) and Denise Boone Azar (1984) (admittee and niece)



R. Alan Alexander (1984) and Stephanie K. Alexander (1985) (husband and admittee)

### Charter Members of Litigation Section Sought

Sixty bar members attended the organizational meeting of the proposed Alabama State Bar Litigation Section July 26, 1985. Proposed section goals are:

- (1) provide a forum where all trial attorneys may meet and discuss common problems;
- (2) undertake an extensive educational program to improve the competency of the trial bar; and
- (3) improve the efficiency, uniformity and economy of litigation and work to curb abuses of the judicial process.

Charter membership dues of \$15 a year were set. All lawyers interested in improving their skills as litigators and advocates are urged to join. Please send a photocopy of the following application with your check for \$15 payable to Alabama State Bar Litigation Section, c/o Charles M. Crook, Treasurer, P.O. Box 671, Montgomery, Alabama 36101.

#### Charter Membership Application

Name: \_\_\_\_\_

Business Address: \_\_\_\_\_  
 \_\_\_\_\_

Business Telephone: \_\_\_\_\_

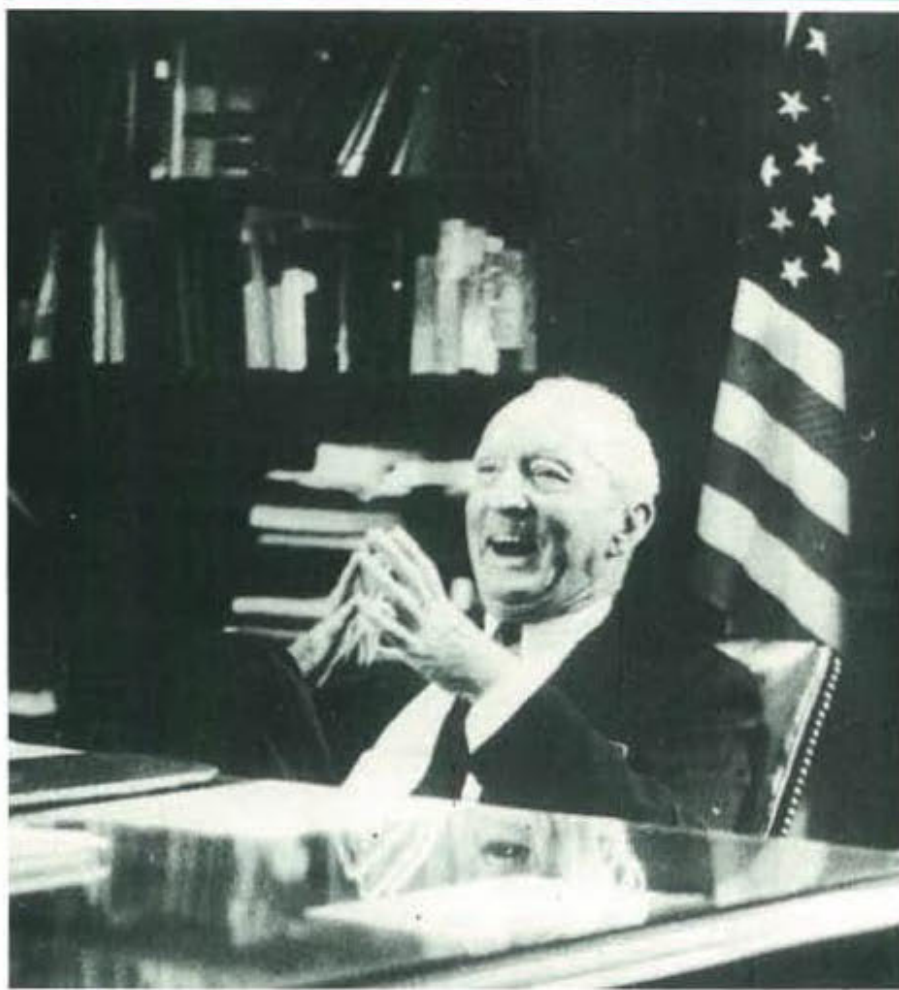
Committee Preference: (choose one)

- |  |   |
|--|---|
| <input type="checkbox"/> Membership          | <input type="checkbox"/> Newsletter     |
| <input type="checkbox"/> CLE                 | <input type="checkbox"/> Annual meeting |
| <input type="checkbox"/> Law schools liaison | <input type="checkbox"/> Finance        |



**ALABAMA STATE BAR  
 LITIGATION  
 SECTION**





---

## HUGO BLACK CENTENNIAL CELEBRATION

Justice Hugo Black and The Constitution, 1937 - 1971

---

**The University of Alabama School of Law March 17 - 18, 1986**

As part of its commemoration of the 100th anniversary of the U.S. Supreme Court Justice Hugo L. Black, The University of Alabama will present a conference March 17-18, 1986. Participants in the program will include some of America's most distinguished jurists, journalists, and scholars. They will explore Black's unique contribution to the role of the Supreme Court in modern America and the Court's relationship to the Constitution and public affairs.

In addition to the formal presentations, there will be several social occasions during which those attending the conference will have the opportunity to meet and talk with the other participants.

The conference is free and will be held on campus of The University of Alabama, in Tuscaloosa, Alabama. For more information and/or registration materials, write:

Dean Charles W. Gamble  
The University of Alabama  
School of Law  
P.O. Box 1435  
University, AL 35486

---

Honorable William J. Brennan  
Honorable Arthur Goldberg  
Honorable Harry T. Edwards  
Honorable John C. Godbold  
Honorable Frank M. Johnson, Jr.  
Honorable Truman Hobbs  
Irving Dilliard  
Max Lerner

Anthony Lewis  
Dr. Howard Ball  
Dean Guido Calabresi  
Professor Gerald T. Dunne  
Professor A. E. Dick Howard  
Professor Daniel J. Meador  
Dr. Abigail M. Thernstrom



March 17 - 18, 1986

---





Craig, left, and Sparks inside the downtown location of Hibbett Sporting Goods

## QUERY:

**WHICH TWO ALABAMA ATTORNEYS MARKET TRIVIA?**

Two members of the Alabama Bar have applied the Socratic method to a trivial pursuit. Mark Craig, an Auburn graduate who practices in Decatur, and Larry Sparks, an Alabama graduate who practices in Birmingham, have produced football board games which are licensed, copyrighted, trademarked and marketed commercially. Both games are sold throughout the state of Alabama in sporting goods stores, gift shops, bookstores and department stores and by mail order. The games have been on the market approximately six to eight months and together have had sales of approximately 4,000 games prior to December 1985.

**QUERY: NAME THE FAMOUS CRIMSON TIDE FOOTBALL COACH WHO ONCE ROOMED WITH GEORGE GIPP, THE LEGENDARY NOTRE DAME STAR.**

Larry Sparks created "Tide Trivia" with the help of a partner, Ron Richardson, a physical therapist and ex-Alabama football player. "We started kicking around the idea of an Alabama trivia game about a year ago. At that time, no one else had come out with anything like it." To prepare their 1,022 questions, which cover material dating from 1892, Sparks and

## ANSWER:

Mark Craig, "Auburn Tiger Trivia"  
Larry Sparks, "Tide Trivia"

Richardson went through the football archives at Gorgas Library in Tuscaloosa and at the Birmingham Public Library. They interviewed players, poured over old newspaper clippings and talked with Ray Perkins and members of his staff. What started as a hobby quickly grew into a business enterprise.

**QUERY: WHAT FORMER ALABAMA LINEMAN HAD A SONG WRITTEN ABOUT HIM?**

The end result of Sparks' efforts is a board game in which the players move down a football field game board answering questions from five categories: player/coaches, nicknames, history, games/bowl games and numbers/biography. If the player scores a touchdown, he progresses to a second set of categories covering the Alabama/Auburn series, Tennessee series, Sugar Bowl games and national championships. The game is patterned after an Alabama season, the goal being to win all games, advance to the Sugar Bowl and then to the National Championship.

**QUERY: WHAT WAS SHUG JORDAN'S FIRST NAME?**

Mark Craig, with the assistance of three Auburn classmates, Monty Cross, Ted

Thompson and Lynn Stockton, all engineers, produced a game played with two question/answer books, a game board in the design of a football field and a Dye (instead of dice). Craig's group hunted down many of Auburn's most avid football fans and searched media guides and old football programs. After countless hours of getting questions proofed and typed, their efforts resulted in 1,700 questions.

**QUERY: HOW MANY KICKS DID AUBURN BLOCK IN THE '72 ALABAMA GAME?**

"Auburn Tiger Trivia" is divided into five categories: players, games and seasons, opponents, general and coaches. Yardage is awarded for each question answered correctly, and players can move vertically and horizontally on the board. The yardage given depends on the difficulty of the question with the object being to score as many touchdowns as possible while outdistancing your opponent along the way.

**QUERY: WHAT WAS THE BIGGEST ODDITY SURROUNDING THE 1971 GATOR BOWL GAME BETWEEN AUBURN AND OLE MISS?**

Both games have obtained licensing from Collegiates Concepts, Inc., a licensing agent for colleges and universities, which is headed by Bill Battle, a former Alabama player. The licensing agent will receive a percentage of the proceeds of each game sold and at least half of that amount will go to the respective school. Both games sell across the counter for \$24.95. "Auburn Tiger Trivia" can be obtained from CUB Corporation, P.O. Box 1802, Decatur, AL 35602, (add \$2.50 for postage and handling) and "Tide Trivia" can be ordered through Number One, Inc., P.O. Box 19702, Birmingham, AL 35219 (total mail order price, including tax and handling charges, \$29.20). ■

**Answers to trivia questions: page 61**

*Carol Ann Smith is a graduate of Birmingham-Southern College and the University of Alabama School of Law. She is a partner with the Birmingham firm of Starnes & Atchison and serves as the associate editor of The Alabama Lawyer.*



# Emergency Questionnaire

## Professional Liability Captive

Your **Insurance Programs Committee** continues to seek a solution to the current crisis in the professional liability insurance market for Alabama lawyers. One frequent suggestion is the state bar's formation of a captive mechanism (bar-owned insurance company). Two factors have a significant impact on such a step. These are (1) broad participation by

membership and (2) re-insurance capabilities.

The captives currently used by seven other state bars have done two things: (1) insured the availability of coverage and (2) maintained a rating stability. These would be our goals. If the membership shows sufficient support for this concept, the committee will seek to have a forum on

this at the Midyear Conference on March 19-20, 1986, in Montgomery.

We need your immediate and candid response to this questionnaire. Each sole practitioner should respond, and **one person** for all firms and/or true partnerships of two or more lawyers. Each person in a "sharing of space and expenses" arrangement should respond individually.

### Please Respond Today

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

PRESENTLY INSURED?  YES  NO

INSURER'S NAME \_\_\_\_\_ HOW LONG \_\_\_\_\_

FORMER CARRIER (IF CHANGED IN LAST TWO [2] YEARS) \_\_\_\_\_

REASON FOR CHANGE \_\_\_\_\_

SIZE OF FIRM \_\_\_\_\_

FIRM RESPONSE

INDIVIDUAL RESPONSE

WOULD YOU/YOUR FIRM SUPPORT AN ALABAMA STATE BAR INSURANCE CAPTIVE?  YES  NO

Return this form to: **INSURANCE PROGRAM SURVEY/ALABAMA STATE BAR**  
P. O. BOX 671  
MONTGOMERY, AL 36101



# A General Practitioner's Introduction to Trademark Law

by Harold See

Trademarks and unfair competition are areas of the law frequently affecting the general practitioner and business lawyer. Since they often are mentioned along with patents and copyrights, it is useful to distinguish these major forms of "intellectual property."

## Definitions

The three major categories of intellectual property are patents, copyrights and trademarks. Rough definitions of these three follow:

- A. **Patent** A patent is a federal statutorily granted monopoly to *make, use or sell* a machine; a manufacture; a composition of matter; or a process.
- B. **Copyright** A copyright is a federal statutorily granted monopoly of the exclusive right to reproduce, distribute, perform or display certain original works of authorship. Basically, protection is against copying and extends only to the form of expression.
- C. **Trademark** A trademark (or trade name) is a state law granted monopoly in the right to use a mark on goods to designate them as coming from a particular source (or on a business to identify the business). There are federal and state registration schemes.



---

## A Primer on Intellectual Property, Part III

---



## Source of federal authority

The United States Constitution, Article I, Section 8, provides:

"The Congress shall have Power . . .

- (3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . .
- (8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive right to their respective Writings and Discoveries . . ."

Clause (8) is the source of federal power over patents and copyrights. By application of the supremacy clause conflicting state law must yield. Clause (3) is the source of federal authority for a trademark registration system. Therefore, although federal registration of trademarks is limited to interstate commerce, patents and copyrights are not.

**TRADEMARK LAW** (The "Lanham Act," 15 U.S.C.A. §§1051-1127; The Alabama Trademark Act, *Alabama Code* §§8-12-6-8-12-19)

### 1. Who may practice trademark law

Although federal registration is with the Patent and Trademark Office (PTO), any attorney may practice trademark law before the PTO or in courts to which he or she is admitted.

### 2. A trademark

Trademark law is an outgrowth of common law unfair competition. It relates to "marks" that identify goods as coming from a single source. The doctrine has been extended to cover service marks, which identify services as coming from a single source. Since the development of trademark law, the term unfair competition usually refers to the law of "trade names." While the law of trademarks and service marks relates to goods and services, trade name law relates to business names. That is, a trade name identifies a particular business. Here are some useful definitions from the federal statute (§1127), the Lanham Act. The same terms are defined similarly in the Alabama Act.

#### (a) Trademark

"The term 'trade-mark' includes any word, name, symbol, or device of any combination thereof adopted and used by a manufacturer or merchant to iden-

tify his goods and distinguish them from those manufactured or sold by others."

#### (b) Service Mark

"The term 'service mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor."

#### (c) Trade Name

"The terms 'trade name' and 'commercial name' include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions and any manufacturing, industrial, commercial, agricultural or other organizations engaged in trade or commerce and capable of suing and being sued in a court of law."

The difference between marks, whether trademarks or service marks, and trade names may be epitomized by the notion that trade names relate to businesses while marks relate to specific goods or services. A distinction is drawn between marks (or "trademarks" when the term is used expansively) and trade names for one principal reason. Under both federal law (§§1051-1054) and Alabama law (§8-12-7) marks that meet the other statutory requirements are registrable, but trade names are not. The same words or symbols may serve in more than one capacity. Thus, Xerox may be a trade name that identifies a particular company; it may be a trademark that identifies a particular source of copying machines; and it may be a service mark that identifies a particular source of computer repair services. It may be registrable as a mark, but is not registrable in its trade name capacity. In what follows, principles of ownership and infringement



will be the same whether one is discussing marks or trade names, but when registration is discussed the principles will apply only to trademarks.

(In addition to trademarks and service marks the Lanham Act, but not the Alabama Act, creates two additional types of marks. These are "collective marks" and "certification marks" (§1127). Collective marks are used by collective groups to show membership in the organization. Certification marks are owned by one other than the owner of the goods, and used to certify some characteristic of the goods, such as regional origin or compliance of the goods with certain standards.)

### 3. Ownership of a mark or name

Ownership of marks and trade names is a matter of state common law, and depends on use and consumer identification. Alabama has recognized this common law right in §8-12-1. A mark or name must be used, and must be capable of identifying the goods, services or business of the user. Ownership depends on the ability of the mark or name to identify the source of the goods with which it is associated. This in turn depends on how the consuming public does or will conceive the mark. It is not necessary that the public know the identity of the producer of the goods; it is sufficient that the public would believe all goods labeled with that mark originate with or are sponsored by the same source. For example, a package might be labeled "Rose Petal Paper Plates." The consuming public is unlikely to believe that all "paper plates" originate with the

---

# PATENT PENDING

---



same source; therefore, "paper plates" would not serve a trademark function. On the other hand, the consuming public might well believe that all "Rose Petal" paper plates do originate with the same source.

If a mark is sufficiently arbitrary, fanciful or coined, the ability of the mark to suggest a particular origin may be apparent without any showing of the ability of the mark to do so. On the other hand, if a mark performs a descriptive function, it still may perform a trademark function, but *only* if the mark has come to designate origin. This is referred to as "secondary meaning." The term "secondary meaning" refers to the chronological order of the meanings, and *not* to the relative significance of the term. In fact, a term has developed "secondary meaning," and may therefore serve as a trademark despite its descriptive character, only when the *primary* significance of the term to the consuming public is its source designation meaning.

Ownership extends only to those goods or markets that consumers do or are likely to identify with the mark. The same mark or name, therefore, may be used by two producers on the same product or business in different markets, or on different products or businesses in the same market. Each would own the mark or name in its market in connection with its product or business. If there are competing users, ownership goes to the prior user, but that use must be a genuine use.

Ownership may be lost in two principal ways: (1) if the mark or name becomes generic, that is, becomes the common descriptive term for the product (for example, the terms "aspirin," "nylon" and "thermos" were trademarks until they came to designate the product rather than a source for one particular brand of acetylene salicylic acid, of a petroleum-derived filament and of a vacuum-insulated bottle, respectively), or (2) if the mark or name is abandoned (non-use plus the intention not to use). Abandonment may be avoided by continued use. (Under §1127 of the Lanham Act two consecutive years of nonuse is *prima facie* abandonment.) It is more difficult to offer advice on how to keep a mark from "going generic," that is, becoming the common descriptive name of an article. Clearly, if

an alternative name for the product does not already exist, one should be provided. The makers of Kleenex launched a campaign to educate the public that "Kleenex" is a brand of *facial tissue*. And, one should not use the mark as a generic term. The makers of Xerox brand products have undertaken a campaign to educate the public that people do not xerox, they photocopy. Some practical advice often offered is to use an initial capital letter; to use the term as a noun only, not as a verb; and to use the term in connection with the word "brand" as in "Kleenex brand facial tissues." All this can come to naught, however, if the public nonetheless calls the *product*, for example, nylon, rather than to use the term as a designation of origin.

#### 4. What can serve as a mark or trade name

What is clear from the definitions of trade mark, service mark and trade name that appear in the previous section is that these terms are quite expansive. Not only may a word (Kodak) or name (Bic) serve as a mark or name, but also symbols (like that of the red cross or the Poppin' Fresh Doughboy) and trade dress (like the color and pattern configuration of the Tide box or the shape of the Coca Cola bottle) also may serve to designate origin and may be registrable as a mark.

#### 5. Reservation of corporate names

Many lawyers advise clients they can protect their business names by reserving them as corporate names. This clearly is *not* true. Corporate name reservation protects only against adoption by another as a corporate name. It creates no (or only very limited) trade name rights. (See, e.g., *Galt House, Inc. v. Home Supply Co.*, 483 S.W.2d 107 (Ky. 1972).) Only use and consumer identification can create ownership rights in a mark or trade name.

#### 6. Registration of a mark or name

Only *marks* are registrable. Trade names are not registrable under either the state or the federal registration scheme. And one may register, under both federal and Alabama law, only marks that one owns by virtue of state common law.

Registration is permissive. Because ownership does not flow from registration one need not register a mark, but

there are significant advantages to registration.

#### 7. Comparison of state and federal registration

Federal authority to regulate marks is derived from the commerce clause, therefore only marks used in interstate commerce are registrable (§1051). Alabama requires use in Alabama (§3).

One may register both in the state and federally. Since there are advantages to federal registration, it once was common practice to ship a few token items across a state line in order to establish use in interstate commerce. Such token shipments, if challenged, do *not* establish use in commerce. Bona fide shipments and sales are required, but a single bona fide shipment or sale is sufficient.

The chief advantage of federal registration is that it gives national constructive notice of the registrant's claim of ownership (§1072). Thus, subsequent users in different markets must yield to the registered user's movement into those markets. (This does not affect continued use, in that market, by a *prior* user.)

A second advantage of federal registration is that a certificate of registration is *prima facie* evidence of ownership of the mark (§1057(b)).

Third, after five years, if the proper affidavit is filed, the mark becomes "incontestable" (§1065). This does *not* mean that the mark is incontestable, but if the mark has become "incontestable," "the registration shall be conclusive evidence of the registrant's exclusive right. . ." except when one of seven specified defenses applies. The U.S. Supreme Court has ruled recently that §1057(b) means what it says (*Park 'N Fly v. Dollar Park and Fly*, 105 S.Ct. 658 [1985]).

A fourth advantage is that one is entitled to give notice of federal registration by use of any of the following: ®, Registered in U.S. Patent and Trademark Office, or Reg. U.S. Pat. & Tm. Off. Otherwise, one is limited to use of the terms trademark, TM or SM (service mark). The availability of the federal courts may be a fifth advantage.

An Alabama certificate of registration is merely evidence of registration, although, presumably, it also is construc-



tive notice of a claim of ownership in Alabama.

#### 8. How to register

(a) **Forms** Federal registration is with the Patent and Trademark Office. Alabama registration is with the Secretary of State. Each office has registration forms which will be supplied upon request.

(b) **Search** Ownership of a mark or trade name depends on use, and use implies the development of goodwill. Before investing in developing goodwill in a trademark or trade name, it is a good idea to have a search performed in order to determine whether someone has a superior right. There are companies that specialize in such searches, and this is not an expensive procedure.

(c) **Fees** Patent and Trademark Office Fees appear at 15 U.S.C.A. §113 and 37 C.F.R. §2.6. The basic filing fee is \$175.

Section 3 of the Alabama Trademark Act, Alabama Code §8-12-8, provides for a state filing fee of \$30.

#### 9. The limitations on registrability

The Lanham Act (15 U.S.C.A. §1052) and the Alabama Act (§8-12-7) identify those marks that are registrable. The basic categories of marks that are not registrable are (1) those that are likely to cause confusion with existing marks; (2) absent a showing of secondary meaning, those that are merely descriptive, or mis-descriptive, of the goods, or primarily geographically descriptive, or mis-descriptive, or primarily merely a surname; (3) those that identify a particular living individual—unless that person has given written consent; (4) those that consist of or comprise the flag, coat of arms or other insignia of a nation, state or municipality; (5) those that "may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or [bring] them into contempt, or disrepute;" and (6) those that consist of or comprise "immoral, deceptive, or scandalous matter."

#### 10. The duration of a trademark

Federal duration is 20 years and may be renewed for additional 20-year periods. However, registration is cancelled at the end of six years unless in the preceding year an affidavit of continued use is filed (§1058).

Alabama duration is 10 years, with 10-year renewal terms (§8-12-10). Inciden-

tally, any marks registered in Alabama prior to January 1, 1981, have expired if they have not been re-registered.

#### 11. Complications that can arise during registration

If the PTO believes that a mark is too close to another mark, it will declare an "interference." The owners of the two marks then will have the opportunity (and expense) of arguing the issue. Even if an interference is not declared, before the mark is registered it is published in the *Official Gazette of the Patent and Trademark Office*. This publication is monitored by the owners of trademarks (usually via trademark search firms) which, if they believe a mark is too close to their own, may file an "opposition" to the mark. Whether one is involved in an interference or an opposition, it greatly increases the costs and complexity of registration.

Even after registration, one may be faced with a cancellation proceeding (Lanham Act, §1064 and Alabama §8-12-13).

#### 12. Assignment of a mark

Both the Alabama (§8-12-11) and federal (§1060) law follow the common law rule that transfer of a trademark may be made only with the goodwill of the business. Otherwise it is a "naked" transfer and may invalidate the trademark. Assignments may be recorded. The federal fee for recording a transfer is \$100, and the Alabama fee is \$30.

#### 13. Waiting time to expect

An acknowledgement should come from the PTO in three to four weeks. Computerization is expediting procedures, and first action should be taken in about three to six months and registration should be in one to one and one-half years. These periods are getting shorter.

#### 14. Attorney time to do a simple trademark registration

Barring any difficulties with the PTO, or in determining whether a mark is registrable, the entire matter should not take more than a few hours of attorney time.

#### 15. Calling in an expert

What an attorney in general practice would need to learn in order to handle complications at the PTO may not justify the attorney's handling the matter him-

self. The attorney may, therefore, wish to associate special trademark counsel. Also, very valuable properties may justify counsel with special expertise even in routine matters.

#### 16. Finding a trademark attorney

Most large business law firms do a fair amount of trademark work. Also, for historical reasons, and because of the association with the PTO, it is quite common for patent lawyers also to do trademark work.

#### 17. The test of infringement

Under the common law for trade names and unregistered marks, under federal statute (§1114) for federally registered marks and under Alabama statute (§8-12-16) for state registered



marks, the test of infringement is the same: likelihood of confusion. The use of a mark or trade name, whether or not intentional, that is likely to cause confusion creates a case of infringement by the junior user. Likelihood of confusion depends on the goods or services in connection with which the mark is used, the market in which it is used, the sophistication of the consumer and similar factors. Thus, for example, marks may be much more similar when used on quite different goods (Ford on cars and Ford on gum), in widely separate markets (Birmingham Hardware Co. in Alabama and in Michigan) or when the buyers are likely to examine the source much more closely (as where the goods are very expensive or the buyers quite sophisti-



cated). Actual confusion of consumers is very good evidence of likelihood of confusion and may be shown by direct testimony, by misdirected mail, misdirected complaints or other indicative evidence. However, actual confusion is not the test and need not be shown.

The mark is not dissected to show the similarity or dissimilarity of its constituent parts. What is important is its overall impression to the consumer.

"Fair use" of a mark or trade name is not an infringement. For example, Pepsi Cola may refer to Coca Cola in its ads, provided it does so honestly in a way that does not lead the consumer to believe that Pepsi Cola is made or sponsored by Coca Cola. Similarly, one who uses a trademark good in his own product, for example, Coke floats, may truthfully state

that fact in a way that does not lead consumers to believe that Coca Cola makes or sponsors the floats.

#### 18. False designation of origin

Section 1125(a) of the Lanham Act provides a cause of action for false representation or false designation of origin. In addition to the false advertising space, which will not be discussed here, this has been held to create a federal cause of action for someone who is not federally registered. Depending on the circumstances, because §1125(a) is read very broadly by the courts, one may find a federal cause of action in many trademark cases even though one is not federally registered.

#### 19. Remedies

The remedies are damages, profits of the infringer and injunctive relief. For

registered marks, state or federal, all counterfeits or imitations may be destroyed. Federal registration also entitles one to up to treble damages, and not punitive, but this must be compensatory due to the inability of the party fully to prove damages. Also, in exceptional cases, the Lanham Act provides for award of reasonable attorney fees. (The remedy provisions are: Alabama, §8-12-18; Lanham Act, §§1116-1118.)

#### 20. Trademark counterfeiting

Alabama has a criminal statute, §13A-8-10.4, that makes theft of a trademark a Class C felony. Theft of a trademark occurs when one knowingly, without the owner's consent, "makes a copy or reproduction of a trademark for any commercial purpose; or sells an article on which a trademark is reproduced knowing said trademark was used without the owner's consent." Although this statute is drafted frighteningly broadly, one presumes it will be used as intended as a tool against counterfeit trademarked goods.

The Trademark Counterfeiting Act of 1984, 18 U.S.C. 2320, and certain changes in 15 U.S.C. §1116 and 1117, provide substantial criminal penalties for trafficking in counterfeit trademarked goods. ■

## THE SUN DIDN'T HAVE TO SET ON THE BRITISH EMPIRE



If only the British had known about title insurance! Title insurance would have protected them from anyone who questioned their right to ownership.

With MVT behind real estate investments, your clients are assured of clear ownership. That's because we'll defend their title against all challenges. In addition, we're fully computerized to serve you more effectively.

Don't let the sun go down on your empire—insure with Mississippi Valley Title.



**Mississippi Valley Title Insurance Company**

Home Office, Jackson, MS 39205

Wholly owned subsidiary of Title Insurance Company of Minnesota



*Harold F. See received his bachelor's degree from Emporia State University, his master's from Iowa State University and his law degree from the University of Iowa. Since 1976 he has been a professor at the University of Alabama School of Law.*



# Disciplinary Report

## Public Censures

● Pell City lawyer **C. Dennis Abbott** was publicly censured November 1, 1985, for having violated provisions of the *Code of Professional Responsibility* of the Alabama State Bar, by having willfully neglected a legal matter entrusted to him and by having collected \$2,175 for a client but then having failed, for a period of approximately eight months, to either pay the funds over to the client or maintain the funds in his trust account. (ASB 84-574)

● November 1, 1985, Dothan lawyer **Deanna S. Higginbotham** was publicly censured for willful neglect in violation of DR 6-101(A) and for intentional failure to seek the lawful objectives of a client, in violation of DR 7-101(A)(1). Ms. Higginbotham failed to conscientiously represent an indigent criminal defendant in an appointed case, including the failure to file an appellate brief on behalf of the client, and failed, for a substantial period of time, to pick up business mail delivered to her prior business address, despite numerous requests from her former associate that she do so. (ASB 85-166 & 85-207)

● Lanett attorney **Michael D. Cook** was publicly censured by the Alabama State Bar Board of Commissioners on November 1, 1985, for professional misconduct arising from his representation of an individual in an automobile accident case. It was determined that Mr. Cook filed suit against the wrong party, failed to keep appointments with his client, failed to keep the client advised as to the status of the matter in which he represented him, failed to advise the client that his physical and/or mental condition made it necessary for him to withdraw from the case and failed to properly supervise the lawsuit in question. Mr. Cook was found to have violated Disciplinary Rules 1-102(A)(5), 1-102(A)(6), 6-101(A), 7-101(A)(2), 7-101(A)(3) and 2-111(C)(4) of the *Code of Professional Responsibility* of the Alabama State Bar. The Disciplinary Commission determined that Mr. Cook should be publicly censured for these violations. (ASB 85-51)

## Private Reprimands

● Friday, November 1, 1985, an Alabama lawyer received a private reprimand for violation of Disciplinary Rules 2-102(A)(2) and 9-102(A)(1) and (2) of the *Code of Professional Responsibility*. The Disciplinary Commission found that this lawyer forwarded an announcement card, regarding the opening of a new law office, to an individual who was not at that time a client, with the notation on the card "free consultation with this card." In addition, the attorney was found to have applied \$200, paid to the attorney for costs, to fees, contrary to a contingency fee agreement between the attorney and the client. (ASB 83-434)

● November 1, 1985, a lawyer was privately reprimanded for having willfully neglected a legal matter entrusted to him, in violation of DR 6-101(A), by having failed to file a timely brief with the Alabama Court of Criminal Appeals on behalf

of a client whom the respondent attorney was representing on appeal. (ASB 84-627)

● Friday, November 1, 1985, an Alabama attorney received a private reprimand for violation of Disciplinary Rule 1-102(A)(4) when the Disciplinary Commission determined that the attorney had engaged in the conduct involving dishonesty, fraud, deceit, misrepresentation or willful misconduct. The commission found that the attorney had made deductions from his secretary's salary for unemployment compensation insurance, but that during the entire period of her employment he had failed to forward these sums to the proper state agency and to report either the deductions or her employment to the Department of Industrial Relations. The Disciplinary Commission determined that the attorney should receive a private reprimand. (ASB 84-717)

● November 1, 1985, an Alabama attorney received a private reprimand for violation of Disciplinary Rules 4-101(B) and 5-105(C) of the *Code of Professional Responsibility*. It was determined that the attorney had represented a party to a divorce and subsequently represented the adverse party to that divorce in a petition for modification relating to the same case. It further was determined that the attorney used confidential information gained during the first representation to the detriment of his initial client. The Disciplinary Commission determined that a private reprimand should be administered. (ASB 84-240)

● November 1, 1985, a lawyer was privately reprimanded for having intentionally failed to carry out a contract of employment, in violation of DR 7-101(A)(2), and having intentionally prejudiced or damaged his client during the course of the professional relationship, in violation of DR 7-101(A)(3), by having failed to file a timely brief with the Alabama Court of Criminal Appeals on behalf of a client whom the respondent attorney was representing on appeal. (ASB 83-518)

● November 1, 1985, a lawyer was privately reprimanded for misrepresentation, in violation of DR 1-102(A)(4), and willful neglect, in violation of DR 6-101(A), having failed to file suit on behalf of a client, as he had been retained to do, and, nonetheless, represented to the client that he had filed suit. (ASB 84-466)

● Friday, November 1, 1985, an Alabama lawyer received a private reprimand for violation of Disciplinary Rules 7-101(A)(2) and 7-101(A)(3) of the *Code of Professional Responsibility*. The Disciplinary Commission found the attorney had failed to carry out the contract of employment entered into with the client. In addition, he prejudiced or damaged his client during the course of the professional relationship by failing to investigate potential leads relating to the case he was handling for his client, by advising the trial judge, in chambers, that his client had no case and, further, by failing to defend against a motion for dismissal filed by the other party to the lawsuit. The commission considered these violations and determined the attorney should receive a private reprimand. (ASB 85-289) ■



# In Memoriam



**Doss, Merrill Willmore—Hartselle**

Admitted: 1940 Died: September 30, 1985

**Fitts, Sheldon—Marion**

Admitted: 1935 Died: October 26, 1985

**Hayden, George T.—Birmingham**

Admitted: 1921 Died: September 2, 1985

**Hill, John Blue—Montgomery**

Admitted: 1920 Died: September 22, 1985

**Lee, Walter Jerome, Jr.—Mobile**

Admitted: 1950 Died: October 24, 1985

**Nelson, Edward Stanwood—New Orleans, Louisiana**

Admitted: 1971 Died: August 28, 1985

**Russell, Noble Jefferson—Decatur**

Admitted: 1935 Died: September 12, 1985

**Selden, Armistead Inge, Jr.—Falls Church, Virginia**

Admitted: 1948 Died: November 14, 1985

**Sparkman, John Jackson—Huntsville**

Admitted: 1924 Died: November 16, 1985

---

These notices are published immediately after reports of death are received. Biographical information not appearing in this issue will be published at a later date if information is accessible. We ask you promptly report the death of an Alabama attorney to the Alabama State Bar, and we would appreciate your assistance in providing biographical information for *The Alabama Lawyer*.

---



WALTER JEROME LEE, JR.

Walter J. Lee, a member of the Mobile and Alabama State Bars, died October 24, 1985.

Lee was born in Birmingham, Alabama, December 29, 1921, and was educated in the public schools of Birmingham. He attended the University of Alabama and graduated from the University of Alabama Law School in 1950, where he was a member of Farrah Order and the Board of Editors of the *Alabama Law Review*.

In World War II, he served in the United States Air Force, and subsequent thereto served the Veterans of Foreign Wars as a post commander.

His civic activities include distinguished service as president of the Downtown Civitan Club, the Christian Businessmen's Association and the Civic Roundtable.

He was an active member of the Baptist Church, where he taught Sunday school for a number of years. He was a world traveler and a recognized collector of rare coins.

He practiced law in Mobile for a period of time with the Honorable Mylan Engel and later with the law firm of Reams, Vollmer, Philips, Killion, Brooks & Schnell.

Surviving him are his brother, Robert E. Lee, and several nieces and nephews.

The Mobile Bar Association, in regular meeting, assembled that the life of Walter J. Lee be recognized as one of deep dedication to the bar, to this community, to his country and to his church, and that his death represents a great loss to each, and the Mobile Bar Association extends its deepest sympathy to the family of Mr. Lee.



RAY WALKER MURPHY

Ray Walker Murphy, an outstanding Andalusia attorney, died Monday, September 2, 1985, in Andalusia, Alabama, following an extended illness.

Mr. Murphy was a lifelong resident of Andalusia, having been born there and attended the Andalusia Public Schools.



# Et Cetera

For the writers in our membership, the Commerce Clearing House is actively soliciting book ideas and suggestions from experienced legal professionals. The variety of areas requested include, but are not limited to:

- \* Antitrust law
- \* Banking law
- \* Business management
- \* Corporation law
- \* Energy
- \* Family law
- \* Financial and estate planning
- \* Labor and employment law
- \* Occupational safety and health
- \* Personnel management
- \* Securities regulation
- \* Taxation

Those interested in submitting manuscripts, outlines or proposals for books to be considered for publication by CCA should contact:

Richard J. Vittenson  
Book Acquisitions Department  
Commerce Clearing House, Inc.  
4025 W. Peterson Ave.  
Chicago, Illinois 60646  
(312) 583-8500, Ext. 3276

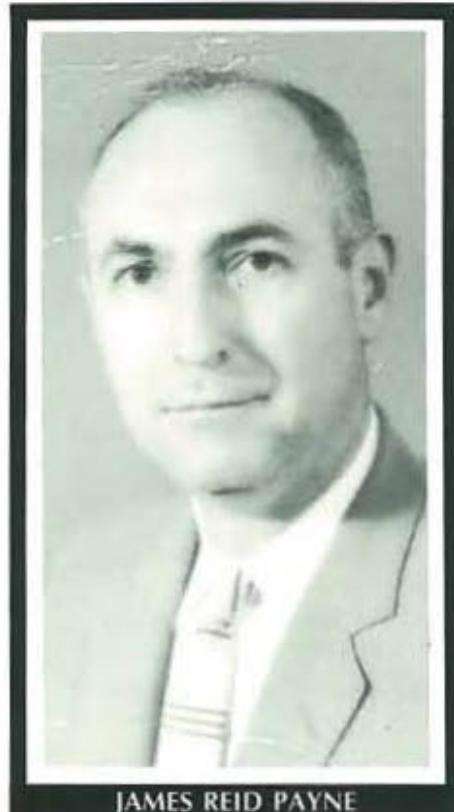
## Etc.

Birmingham attorney Samuel Rumore is gathering materials for a publication about Alabama's courthouses, past and present.

He particularly is interested in information about the courthouses of "today and yesterday" in the following counties:

Barbour, Bullock, Chambers, Cleburne, Conecuh, Covington, Dallas, Etowah, Franklin, Geneva, Hale, Lamar, Lawrence, Macon, Marion, Marshall, Perry, Pickens, Pike, Russell, Sumter, Walker and Wilcox.

Please contact him at 1007 Colonial Bank Building, Birmingham, Alabama 35203-4054. Phone 323-8957. ■



JAMES REID PAYNE

James Reid Payne died September 8, 1985, in Montgomery, Alabama. He was 76 years old. Mr. Payne was born August 24, 1909, in Jefferson County and attended the University of Alabama, Howard College and the Birmingham School of Law. Mr. Payne was enlisted in the United States Marine Corp and served in the South Pacific.

He was employed in the Legal Department of the Revenue Department by the State of Alabama for approximately 27 years and was an assistant attorney general.

He was a member of the American Bar Association, Montgomery Bar Association and the Alabama State Bar. Jack was well liked by other members of the bar and leaves fond memories of a gentle man.

He married the former Wanda Smith on July 2, 1937. He is survived by his wife and his son, James Dixon Payne, of Montgomery. ■

Upon graduation from high school Mr. Murphy enrolled as a student on an English scholarship in Emory University in Atlanta where he was a member of Sigma Nu Fraternity and the Emory Glee Club.

It was then that World War II interrupted Mr. Murphy's education, and in 1941 he entered the Army Air Corps where he served as a navigator of a B-17 aircraft over North Africa. His military service was outstanding, and he received the Air Medal with nine clusters and the distinguished Flying Cross. In 1947 he was discharged as a major.

After his military duty Mr. Murphy completed his education and received a law degree from the University of Alabama; he then married the former Edwina Morgan of Thomasville, Alabama. Upon graduation Mr. Murphy joined his father, Mr. J.L. Murphy, Sr., a south Alabama attorney. For years they practiced under the firm name of Murphy & Murphy Attorneys and particularly emphasized the practice of real estate transactions in their legal work. In later years, after the death of his father, Mr. Murphy formed the law firm of Murphy, Murphy, Persons & Bush in Andalusia and was a senior member of this firm until the time of his death.

In 1981 Mr. Murphy retired because of poor health but continued to oversee his law firm and remained a devoted and faithful member of the Kiwanis Club and the First Methodist Church.

Survivors include his wife; two sons, Michael T. Murphy of Birmingham and James Mark Murphy of Andalusia, who continues as a member of the old landmark Murphy law firm; one daughter, Mrs. Arthur M. Carlton, Jr., of Mobile; eight grandchildren; one brother; and two sisters.

In the death of Mr. Ray Murphy the Covington County Bar Association has suffered a great loss. He will be sorely missed by the members of the bar, his many friends and the membership of the First Methodist Church.





# Recent Decisions

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

## Recent Decisions of the Alabama Court of Criminal Appeals

### **Dison** distilled

*Cherry v. State*, 4 Div. 386 (July 2, 1985)—In *Cherry*, the court of criminal appeals further explained the *Dison* case and held that the person administering the oath to the officer for verification of the ticket must indicate not only his name but his official capacity. Thus, a uniform traffic ticket and complaint must contain:

- A. The signature of the officer;
- B. The signature of the person administering the oath to the officer;
- C. The title, agency or capacity of the person administering the oath.

### **Dison** applies to municipalities

*Gandy v. Birmingham*, 6 Div. 500 (October 8, 1985)—Following his conviction in the municipal court in Birmingham, Gandy argued the uniform traffic ticket and complaint was not properly sworn as required by *Dison*. The city of Birmingham argued that *Dison* did not apply to municipal court cases.

The court of criminal appeals disagreed and reversed. The appellate court reasoned that §12-12-53, *Code of Alabama*, (1975) and the Rules of Judi-

cial Administration require the use of the uniform traffic ticket and complaint by all law enforcement agencies and courts of the state of Alabama.

### What constitutes "systematic exclusion of blacks"

*Scott v. State*, 1 Div. 890 (July 23, 1985)—On appeal, Scott raised the alleged systematic exclusion of blacks from his jury citing *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 524, 13 L.Ed.2d 759 (1965). Judge Bowen, writing for the majority, rejected Scott's contention and set forth the "threshold requirement for systematic exclusion." Judge Bowen wrote that "a presumption exists that the prosecutor is using his challenges to obtain a fair and im-

partial jury. This presumption is not overcome merely by showing that he uses all of his strikes to remove blacks from the jury."

Judge Bowen's decision in *Scott* is clearly supported by the supreme court's language in *Swain* which sets out an extremely rigid standard to be met by a defendant seeking to allege "systematic exclusion."

### Not so fast . . . intentional withholding of *Brady* material compels reversal

*Knight v. State*, 5 Div. 887 (October 8, 1985)—Knight was in jail on other charges when detectives sought to question him about a rape. The inter-



*John M. Milling, Jr., is a member of the firm of Hill, Hill, Carter, Franco, Cole & Black in Montgomery. He is graduate of Spring Hill College and the University of Alabama School of Law. Milling covers the civil portion of the decision.*



*David B. Byrne, Jr., is a graduate of the University of Alabama, where he received both his undergraduate and law degrees. He is a member of the Montgomery firm of Robison & Belser and covers the criminal portion of the decisions.*



rogation resulted in a statement being obtained from Knight. This "confession" was offered at trial and was the sum of the evidence against the defendant. Knight was interrogated for over six hours and though there was a conflict in the testimony, he apparently was handcuffed to a chair for at least some portion of this time. Additionally, the state introduced physical evidence taken from the home of the victim and had the state toxicologist perform secretion tests upon it and make comparisons with secretions taken from the defendant. Prior to trial, counsel for the defendant filed a specific request for any and all scientific tests, results, procedures, etc. and the district attorney indicated that the results were essentially inconclusive. In fact, the secretion tests would have exculpated the defendant since only one person had committed the crime, and the secretions on the items taken from the victim's house were not consistent with the known secretions of the accused.

The intermediate appellate court concluded:

"We can conceive of no clearer factual situation in which the State would be re-

quired to produce exculpatory evidence whether it was requested by the defense or not."

The clear import of the *Knight* decision is once again to bring to the attention of prosecutors the continuing duty under *Brady* to produce exculpatory evidence whether requested or not.

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

### Estates . . .

#### homestead allowance of surviving spouse does not vest in all cases

*Carter v. Coxwell*, 19 ABR 3745 (September 27, 1985)—In a case of first impression, the supreme court considered Section 43-8-110 through Section 43-8-114, *Ala. Code* 1975, to determine whether a surviving spouse's right to a homestead allowance or exempt property out of the predeceased spouse's estate vests automatically without the surviving spouse making the claims. Section 43-8-110, *et seq.*, was enacted by the Alabama Legislature in 1982 and adapted from portions of the Uniform Probate Code.

In this case, Mr. Knight died testate in February 1983, leaving a widow and four children. The widow died intestate in May 1983, without claiming a homestead allowance or exempt property. Mr. Knight's will gave a life estate in the house and furnishings to the widow with a remainder, plus the residue, to one of the children. The trial court held that the widow's estate was entitled to a homestead allowance and exempt property, reasoning that these rights became vested when she survived her spouse by five days. The court also found that the value of these rights exceeded the value of the estate and awarded Mr. Knight's entire estate to her estate.

The supreme court disagreed with the trial court and held that homestead allowance and exempt property do not automatically vest in the surviving spouse. The supreme court reasoned that the trial court's holding would thwart the testate decedent's intent in this and the majority of cases. The court noted that the legislature created these rights to preserve part of the decedent's estate from creditors and to protect the surviving spouse and minor children. If the surviving spouse dies shortly after the predeceased spouse, there is no justification based upon support for the survivor for transferring property and frustrating the intent of the predeceased testator.

### Medical malpractice . . .

#### informed consent action recognized and objective standard adopted

*Fain v. Dr. R. T. Smith*, 19 ABR 3521 (September 6, 1985)—The plaintiff-patient brought this action charging that the defendant-doctor negligently failed to inform him of the risks involved in the performance of a pulmonary arteriogram. The plaintiff's heart was punctured during the procedure, and he maintained that had he been informed of this risk, he would not have consented to the procedure. The initial issue was whether the supreme court would recognize a malpractice action based on informed consent. In a case of first impression, the supreme court said yes. The next issue was one of "causation," i.e., whether the failure to advise the plaintiff of the risk proximately caused his injuries.

In deciding this issue, the supreme court looked to other states and found two lines of cases have developed. The majority has adopted the "objective stan-

# Introduce Your Clients to a Valuable Service.

Refer them to **Business Valuation Services** for expert determination of fair market value of businesses, and financial analysis and consultation in cases of:

- |   |  |
|---|--|
| <input type="checkbox"/> Estate planning                | <input type="checkbox"/> Bankruptcy proceedings      |
| <input type="checkbox"/> Estate settlement              | <input type="checkbox"/> Mergers or acquisitions     |
| <input type="checkbox"/> Marital dissolutions           | <input type="checkbox"/> Buy-sell agreements         |
| <input type="checkbox"/> Recapitalizations              | <input type="checkbox"/> Dissident stockholder suits |
| <input type="checkbox"/> Employee stock ownership plans |  |

Contact Dr. John H. Davis, III

4 Office Park Circle • Suite 304 • Birmingham, Alabama 35223

P.O. Box 7633 A • Birmingham, Alabama 35253

(205) 870-1026



dard," and the minority has adopted the "subjective standard." The plaintiff urged the subjective standard, by which causation is established solely by the plaintiff's testimony that he would not have consented to the procedure had he been advised of the particular risks. The supreme court rejected this standard and adopted the objective standard.

The objective standard resolved causality in terms of what a reasonably prudent person in the patient's position would have decided if suitably informed of all significant risks. The standard, however, requires consideration by the fact finder of what a reasonable person with all of the characteristics of the plaintiff, including his idiosyncrasies and religious beliefs, would have done under the same circumstances. Moreover, the question of whether the physician disclosed all substantial risks requires expert medical testimony as to the general practice of physicians in the general medical community.

#### Torts . . .

#### inadequate warning not actionable if plaintiff fails to read it

*E.R. Squibb & Sons, Inc. v. Cox*, 20 ABR 146 (October 4, 1985)—The plaintiff brought suit against Squibb, a manufacturer of insulin, alleging negligent and wanton failure to adequately warn of the consequences of taking a certain type of insulin. Squibb conceded it was under a duty to warn and for purposes of this suit also conceded that its warnings were inadequate. Squibb's defense was the lack of proximate cause. Squibb maintained since the plaintiff did not read the warning, it could not have altered his course of action and prevented the injury. The supreme court agreed.

The evidence was undisputed that the plaintiff never read any of the instructions or warnings Squibb provided on its insulin. Consequently, the adequacy of the warning is irrelevant. No amount of specificity would have protected this plaintiff because he did not read the warning. Therefore, the supreme court held that a plaintiff who does not read an allegedly inadequate warning cannot maintain a "negligent failure to adequately warn" action unless the nature of the alleged inadequacy is such that it prevents him from reading it.

#### Torts . . .

#### will conversion lie when an employer withholds wages pursuant to garnishment?

*Lewis v. Fowler*, 20 ABR 226 (November 1, 1985)—Garnishments were served on the plaintiff's employer, and the employer withheld a portion of the plaintiff's wages. One of the garnishments was paid in full. However, the amount owed to the Department of Revenue was never paid and the employer went into Chapter 7 bankruptcy. The plaintiff claimed that the employer converted this sum to its own use and filed this conversion action. The issue was whether conversion is an appropriate action for an employee to recover a sum of money withheld by an employer from the employee's wages in response to a garnishment. The supreme court said no.

In England, it was first held that money could not be converted so as to support an action in trover unless it was in a "bag or chest." In conversion actions, however, courts are not usually confronted with a particular coin or bill but with "identified or segregated courses from which money has come or types of accounts into



## Where there's a will... Now there's an easier way.

AmSouth Bank's new Will and Trust Form Book provides a complete and up-to-date compilation of will and trust forms to make your job easier and faster. In addition, extensive commentaries are helpful in the design and implementation of various estate plans. These forms reflect ERTA, TEFRA and recent revisions in the Alabama Probate Code and will be updated periodically to insure continuing accuracy.

To order your set of Will and Trust Form Books, send your check for \$95.00 payable to AmSouth Bank N.A. to the Trust Division at any of the addresses below, or contact the AmSouth Estate and Trust Planning Representative in your area.

**AmSOUTH**



AmSouth Bank N.A.  
P. O. Box 1128  
Anniston, AL 35201  
236-8241

AmSouth Bank N.A.  
P. O. Box 11426  
Birmingham, AL 35202  
326-5390

AmSouth Bank N.A.  
P. O. Box 1488  
Decatur, AL 35601  
353-0941

AmSouth Bank N.A.  
P. O. Box 1150  
Dothan, AL 36302  
793-2121

AmSouth Bank N.A.  
P. O. Box 389  
Gadsden, AL 35902  
543-3000

AmSouth Bank N.A.  
P. O. Box 507  
Huntsville, AL 35804

AmSouth Bank N.A.  
P. O. Box 1628  
Mobile, AL 36629  
694-1575

AmSouth Bank N.A.  
P. O. Drawer 431  
Montgomery, AL 36101  
834-9500



which money has been deposited." In this case, clearly there is no identifiable coin or bill and nothing placed in a bag or chest. Moreover, there was no evidence that the money was placed in a special account. Absent an obligation to return the identical money, only the relation of debtor and creditor exists, and the plaintiff's cause of action is *assumpsit* or on account.

#### Torts . . .

##### expert testimony in a slip and fall case not proper

*Wal-Mart Stores, Inc. v. White*, 19 ABR 3446 (September 13, 1985)—The plaintiff-customer slipped and fell just inside Wal-Mart's front door. The only substance on the floor was fresh rainwater. There was no unusual accumulation of water. Over the defendant's objection, the plaintiff's expert was permitted to testify as to the effect of rainwater on the floor and that Wal-Mart breached its duty of due care by failing to provide door mats or otherwise take proper and accepted safety precautions. The jury returned a verdict for the plaintiff and the supreme court reversed.

First, the supreme court endorsed the statement of law set forth in 32 C.J.S. Evidence §546(79) and held that the admission of expert testimony as to the effect of rainwater on the floor was error because an expert is permitted only to testify "where the matter is one so far removed from ordinary human experience that a jury will presumably not possess the skill or knowledge requisite to draw a proper inference from the facts." The court also held that it was error to permit the expert to opine that Wal-Mart failed to observe proper and accepted safety precautions by failing to place a door mat at the store's entrance because the court has previously held that absent an unusual accumulation of water or "other circumstances," the presence of rainwater on a floor is not a breach of due care. The effect of the expert's testimony is to create a higher standard of care than the standard imposed by law.

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

#### For the want of a warrant

*Ex Parte, Talley*, No. 84-692 19 ABR 3642 (September 20, 1985)—Bernard Talley was convicted of escape and the court of criminal appeals affirmed the conviction. The supreme court granted Talley's petition for writ of *certiorari* to decide whether the officers who arrested Talley in fact had the authority to do so.

On March 3, 1982, a Montgomery police officer went to the defendant's sister's residence with two other police officers in order to arrest Talley for three unpaid misdemeanor fines. None of the officers had a warrant with them at the time of the arrest. The actual purpose of their visit indicates that Talley also was wanted and/or suspected in reference to a burglary. The officers found Talley at his sister's house and attempted to place him under arrest. Talley fled from the house.

The supreme court held that Talley's arrest was illegal because the officers did not possess a warrant and reversed the conviction.

Justice Adams held:

"For an arrest to be valid on a misdemeanor offense which was not witnessed by the arresting officer, the officer must have an arrest warrant in his possession at the time of the arrest."

## INDUSTRIAL SAFETY CONSULTANT

56 Years Experience

1. Investigation of Accidents.
2. Depositions.
3. Expert Testimony.
4. Consultations.
5. Safety Training.
6. Safety Inspections.

## SERVICES FOR ATTORNEYS ONLY.

Fred Melof  
4 Pama Avenue  
Birmingham, Alabama 35209  
Telephone: (205) 879-5159

## AFFORDABLE TERM LIFE INSURANCE — FROM COOK & ASSOCIATES

Compare these low non-smoker annual rates for non-decreasing graded premium life:

MALE AGES	\$250,000	\$500,000	\$1,000,000
25	230.00	415.00	615.00
30	232.50	420.00	615.00
35	235.00	425.00	625.00
40	302.50	545.00	805.00
45	377.50	695.00	1,035.00
50	495.00	925.00	1,375.00
55	737.50	1,385.00	2,065.00
60	1,235.00	2,305.00	3,445.00
65	2,160.00	3,990.00	5,975.00

(smoker's rates slightly higher)

Renewable to age 100. Female rates same as males four years younger. All coverage provided by companies rated "A Excellent" by A.M. Best Co.

For a written quotation and policy description send your date of birth and amount of coverage desired to:

**COOK & ASSOCIATES**  
2970 COTTAGE HILL ROAD • SUITE 201  
MOBILE, ALABAMA 36606  
(205) 476-1737



It is interesting to note that the supreme court expressly denied the state's argument urging the court to adopt a new rule abandoning the requirement that a police officer actually possess the warrant when making a misdemeanor arrest.

## 11th Circuit Court of Appeals

### Big brother and the attorney-client relationship

*In Re, Grand Jury Subpoena, Beirman*, No. 84-5344 (July 15, 1985)—Beirman, an attorney practicing in the southern district of Florida, was subpoenaed before a grand jury in that district. The grand jury sought to compel information about Beirman's client who had not shown up to begin serving a prison sentence. Beirman appeared before the grand jury but invoked the attorney-client privilege. The government filed a motion

to compel citing the six questions asked, all of which related to communications between Beirman and his client with regard to turning himself in. Specifically, the last question propounded was, "On each such communication with reference to client's notice of surrender—what did you say and/or tell the client?"

The district court granted the government's motion with regard to the first five questions which were place, time and number of communications. The trial court further ruled that the sixth question would have the effect of invading the attorney-client privilege. The United States appealed from the district court's order.

The 11th Circuit Court upheld the district court and noted that if the government (as they had contended) wanted to know merely whether the attorney had advised the client of the date he was to turn himself in, they could have asked so with precision. The government chose

not to do so and did not bring the attorney back before the grand jury. The 11th Circuit found question six to be objectionable for two grounds: first, the breadth of the questions invited disclosure of communications which certainly would be protected, and secondly, the question implicates the "last link doctrine."

The last link doctrine arises out of the decision *In Re Grand Jury Proceedings (Jones)*, 517 F.2d 666 (1975) wherein the appellate court held that a client's identity is not privileged in and of itself. However, where disclosure of the client's identity would provide the last link necessary to convict, identity might well be privileged. In this case, the 11th Circuit reasoned that the information herein, if revealed under question six, could very easily provide this "last link and would therefore be privileged." ■

# MCLE News

by Mary Lyn Pike  
Assistant Executive Director



## MCLE Commission 1985-86

The Mandatory CLE Commission is composed of nine bar commissioners elected by their peers. Members' terms coincide with their terms as bar commissioners.

Serving this year are Commissioners John B. Scott, Jr., Montgomery (chairman); Gary C. Huckaby, Huntsville (vice chairman); Phillip E. Adams, Opelika; Wade H. Baxley, Dothan; J. Don Foster, Foley; Francis R. Hare, Jr., Birmingham; Ben H. Harris, Mobile; John David Knight, Cullman; and H. Wayne Love, Anniston.

Meetings are held either the same day as board meetings or the preceding afternoons, approximately bi-

monthly. Agendas are prepared by the commission's staff in consultation with the chairman. Bar members and sponsors submit most of the items considered; others are prepared by the administrator.

To submit an idea for consideration by the commission, send it in care of the Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101.

### November meeting

At its November 1 meeting in Montgomery, the commission:

1. Granted a retroactive special membership exemption to an attorney who practiced law for one month in 1985 before taking maternity leave;

2. Approved a temporary program of substitute compliance for an attorney with an injured back;

3. Approved permanent substitute programs for two permanently disabled attorneys;

4. Granted a temporary waiver of the 1985 requirement to an attorney recovering from surgery and practicing part time;

5. Declined to seek a modification of Rule 4.C., to provide CLE credit for teaching at the undergraduate level;

6. Tabled consideration of a request for credit for teaching at an unaccredited law school;

7. Approved full credit for a seminar entitled "Making and Saving Money for Clients and Lawyers in Litigation," sponsored by ICLE of Georgia;

8. Approved the concept of seminars broadcast via satellite; ruled that either telephone hookups to speakers at the broadcast location or a discussion leader/expert at the receiving location must be provided in order for such a program to qualify for CLE credit; and

9. Scheduled its next meeting for 6 p.m., Thursday, January 9, 1986, in Montgomery. ■



## Cumulative Index 1983-85

### Volumes 44-46

- Adams, Robert F.  
"Reflections of the Reflective Roundtable" 45:1:12
- Adams, W.J., Jr.  
"The Final Judgment" 45:1:57
- ADMITTEES  
Fall 1982 44:1:24; Fall 1983 45:1:21; Spring 1984 45:4:215; Fall 1984 46:1:16; Spring 1985 46:4:182
- Albritton, Robert Bynum  
"The Final Judgment" 44:2:113
- Albritton, W.H., Jr.  
"The Final Judgment" 44:4:231
- ALCOHOLISM AND ATTORNEYS  
"Am I My Brother's Keeper?" Thomas H. Claunch, Jr. 45:2:106  
"Facing My Most Difficult Trial" 45:2:100  
"We Have Met the Enemy and He is Us" Val L. McGee 45:2:102
- Aldridge, Gary  
"Prevention: A New Legislative Approach" 46:1:33
- APPELLATE PRACTICE  
"Alabama Supreme Court Practice—Avoidable Errors and Oversights" Bruce J. McKee 44:6:320  
"Appellate Court Workload More Than Triples in Twelve Years" Robert A. Martin 45:1:17  
"Appellate Practice Pointers for Alabama Lawyers in Civil Cases" Champ Lyons, Jr. 44:1:6  
"Complying with Rule 39(k), A.R.A.P. (How to Succeed on 'CERT')" Henry T. Henzel 45:2:270
- Arant, Douglas  
"Reflections of the Reflective Roundtable" 45:1:13
- ATTORNEYS  
"How to Write a Fee Letter and Other Ways to Make Ends Meet" William P. Pinna 44:2:100  
"Proving Attorneys' Fees in Alabama" Richard H. Gill 45:3:127  
"The First Thing We'll Do, Let's Kill All the Lawyers" E.M. Friend, Jr. 44:5:276  
"The Lawyer 'Explosion': Employment, Satisfaction, Salaries and Related Data" Nancy Campbell-Goymer 46:4:185
- Bagwell, David A.  
"The John Archibald Campbell Courthouse in Mobile" 44:3:154
- Ball, R. A.  
"The Final Judgment" 45:1:57
- BANKRUPTCY  
"Bankruptcy Practice Under the Rule" Wilbur G. Silberman 44:2:84
- Bar Commissioners 45:4:206; 46:5:235
- Barnes, R.B., Jr.  
"In Memoriam" 45:5:310
- Barron, Bishop Nordon  
"The Final Judgment" 44:3:173
- Bowen, William M., Jr.  
"A Judicial Perspective: Reimbursement of Appointed Counsel and Effective Assistance of Counsel" 46:4:202
- Bradford, Robert W., Jr.  
"Protection Against Intentional Breach of Contract Remedies in Tort" 45:6:320
- Brannan, J. Bernard, Jr.  
"Young Lawyers' Section" 46:5:271; 46:6:320
- Braswell, Nicholas T., III  
"Alabama Workmen's Compensation Law" 44:5:270
- Bryan, J.O., IV  
"The Final Judgment" 44:1:61
- Buffalow, Gregory C.  
"Co-Employee Immunity Among Alabama Longshoremen and Harborworkers" 45:2:76
- Byars, Walter R.  
"President's Page" 45:5:244; 45:6:316; 46:1:4; 46:2:60; 46:3:112; 46:4:168; "Meet Walter R. Byars" 45:5:255
- Caddell, John A.  
"Reflections of the Reflective Roundtable" 45:1:12
- Campbell, John Archibald  
"The John Archibald Campbell Courthouse in Mobile" David A. Bagwell 44:3:154
- Carter, James J.  
"Reflections of the Reflective Roundtable" 45:1:13
- Cherner, Marvin  
"Recognition of Pro Tanto Judgements" 46:4:197
- CHILD ABUSE  
"Child Abuse and the Juvenile Courts" Sandra H. Ross 46:1:33  
"Prevention: A New Legislative Approach" Gary Aldridge 46:1:33  
"Sexual Abuse—A Conspiracy of Silence" Mark Kennedy 46:1:30



- "The DA as a Mobilizer" Robert E. Cramer, Jr. 46:1:37
- CIVIL PROCEDURE**  
 "ARCP 15(c): Relation Back of Amendments Adding, Changing or Substituting Parties or Names of Parties" Jerome A. Hoffman 46:2:84
- CIVIL RIGHTS**  
 "Section 1983 Actions: A Practical Overview for the General Practitioner" David F. Daniell and John T. Mooresmith 45:1:34
- Claunch, Thomas H., Jr.  
 "Am I My Brother's Keeper?" 45:2:106
- CLIENT SECURITY FUND**  
 "Why Alabama Needs a Client Security Fund" James S. Ward 45:2:67
- COLLECTIVE BARGAINING**  
 "Rejection of Collective Bargaining Agreements: An Analysis of *In re Bildisco*" Tazewell T. Shepard and John A. Wilmer 45:3:154
- COMMERCIAL LAW**  
 "Sales Warranties in Alabama—The Notice Requirement" Nathaniel Hansford 45:1:7  
 Committee on Governance 45:5:253  
 Committees 1983-1984 45:2:94; 45:4:208  
 Committees and Task Forces for 1984-1985 45:5:263; Committees and Task Forces for 1985-86 46:5:248
- CONTRACTS**  
 "Protection Against Intentional Breach of Contract Remedies in Tort" Robert W. Bradford, Jr. 45:6:320  
 "Covenants not to Compete in Alabama" Michael L. Edwards 44:6:306
- Copeland, Albert Whiting  
 "The Final Judgment" 44:3:172
- Coxwell, John Milton  
 "In Memoriam" 46:3:159
- Cramer, Robert E., Jr.  
 "The DA as a Mobilizer" 46:1:37
- CRIMINAL LAW**  
 "The Criminal Justice System—A New Policy" George D. Schrader 44:3:140  
 "Fee Declarations in Indigent Criminal Cases" 45:6:331
- Crocker, Rowena M.  
 "IOLTA — 'NOW' Provides New Interest" 46:5:265
- Crosby, Samuel N.  
 "An Election Where Push Came to Shove" 44:1:53
- Curry, J.H.  
 "The Final Judgment" 45:3:177
- Daniell, David F. and Mooresmith, John T.  
 "Section 1983 Actions: A Practical Overview for the General Practitioner" 45:1:34
- Davis, Clayton  
 "Solving Common Problems in Long-term Care and Medicaid Financial Eligibility" 46:6:302
- Davis, Richard E.  
 "Time Share Ownership of Condominiums" 44:4:183
- DECEDENT'S ESTATES**  
 "Revised Probate Code" Annette C. Dodd 44:1:46
- Denniston, Robert P.  
 "Joint Tenancy and Tenancy in Common of Real Property—The Gulf Separating Them" 44:2:72
- DePaola, Susan Shirock and Norman, Keith B.  
 "A Look at Alabama State Bar Headquarters" 46:3:146
- Dodd, Annette C.  
 "Revised Probate Code" 44:1:46
- Douglass, Margaret Sizemore  
 "Legal Assistants Increase Productivity" 45:6:334
- Downing, Maurice A.  
 "In Memoriam" 46:4:220
- EDUCATION**  
 "Education of the Handicapped—The Lawyer's Role" Robert H. Smith 44:3:128
- Edwards, Michael L.  
 "Covenants not to Compete in Alabama" 44:6:306
- ELDERLY**  
 "Alabama Living Will Statute" Anne W. Mitchell 46:6:316  
 "Alabama State Bar Committee on Legal Needs of the Elderly" Harold V. Hughston, Jr. 46:6:300  
 "Recent Developments Concerning Eligibility for Social Security Disability" J.F. Janecky 46:6:312  
 "Solving Common Problems in Long-term Care and Medicaid Financial Eligibility" Clayton Davis 46:6:302
- Emens, Steven C.  
 "Social Security Disability Insurance" 46:2:62
- EVIDENCE**  
 "Can 'State of the Art' Evidence Be Used as a Defense Under Alabama Extended Manufacturer's Liability Doctrine?" Craig Olmstead 45:4:202  
 "Facing My Most Difficult Trial" (Alcoholism and Attorneys) [Anonymous] 45:2:100
- FAMILY LAW**  
 "Withholding Orders for Child Support: A Substantial Improvement" J. Noah Funderburg 46:2:72
- Favre, William Rudolph, Jr.  
 "In Memoriam" 46:3:160
- Feibelman, H.P., Jr.  
 "The Final Judgment" 44:5:291
- Fleming, Bud  
 "The Settlement Concept of the Eighties and Beyond" 45:4:190
- Flowers, W.W., Jr.  
 "The Final Judgment" 45:4:238
- Foster, H.T.  
 "The Final Judgment" 45:2:117
- Foster, J.S.  
 "The Final Judgment" 44:5:291
- Friend, E.M., Jr.  
 "The First Thing We'll Do, Let's Kill All the Lawyers" 44:5:276
- Funderburg, J. Noah  
 "Withholding Orders for Child Support: A Substantial Improvement" 46:2:72
- Garrett, James W., Jr. and Morris, F. Chadwick  
 "Review of Uninsured and Underinsured Motorist Law in Alabama" 46:3:142
- Gill, Richard H.  
 "Proving Attorneys' Fees in Alabama" 45:3:127
- Gordon, R.S.  
 "The Final Judgment" 44:3:174
- Goymer, Nancy Campbell  
 "The Lawyer 'Explosion': Employment, Satisfaction, Salaries and Related Data" 46:4:185
- Grant, G.M.  
 "The Final Judgment" 44:2:114
- Grisham, Sandy J.  
 "The Trial" 46:1:14
- Gross, C.W.  
 "The Final Judgment" 45:2:117
- Hairston, William B., Jr.  
 "Bill Hairston Talks About Bar Issues" 44:5:279
- Hairston, William B., Jr.  
 "President's Page" 44:5:236; 44:6:300; 45:1:4; 45:2:64; 45:3:124; 45:4:184
- Hamilton, T.A.  
 "The Final Judgment" 44:1:61
- Hamner, Reginald T.  
 "Executive Director's Report" 44:1:5; 44:2:69; 44:3:121; 44:4:181; 44:5:237; 44:6:301; 45:1:5; 45:2:65; 45:3:125; 45:4:186; 45:5:245; 45:6:317; 46:1:5; 46:2:61; 46:3:113; 46:4:169; 46:5:229; 46:6:289
- Hansford, Nathaniel  
 "Sales Warranties in Alabama—The Notice Requirement" 45:1:7
- Hardwick, W. Guy  
 "Reflections of the Reflective Roundtable" 45:1:14
- Hare, Francis Hutcheson  
 "It Happened at the Bar" 44:1:53; 44:2:108
- Hare, Francis H.  
 "The Final Judgment" 44:5:290
- Harrison, George Mortimer, Jr.  
 "In Memoriam" 46:3:161
- Harwood, Robert B. "Reflections of the Reflective Roundtable" 45:1:14
- Hawkins, Edward G.  
 "Pitfalls of Preparing Deeds Conveying Oil and Gas Interests" 46:5:236
- Henzel, Henry T.  
 "Complying with Rule 39(k), A.R.A.P. (How to Succeed on 'CERT') 45:5:270



- Hinton, J.F., Sr.  
"In Memoriam" 45:5:311
- Hocklander, J.M.  
"The Final Judgment" 44:3:173
- Hodges, Robert L.  
"Annabelle's Dilemma—A Christmas Story" 45:6:336
- Hoffman, Jerome A. "ARCP 15(c): Relation Back of Amendments Adding, Changing or Substituting Parties or Names of Parties" 46:2:84
- Hoffmann, T.H.  
"The Final Judgment" 45:3:178
- Holcomb, Paul E.  
"Computer Assisted Legal Research: Two Methods" 44:5:256
- Howard, Fontaine Maury  
"In Memoriam" 46:6:340
- Huckaby, Gary C.  
"Basic Client Relations" 44:3:156
- Hughston, Harold V., Jr.  
"Alabama State Bar Committee on Legal Needs of the Elderly" 46:6:300
- HUMOR**  
"Fairweather, Winters and Sommers" Arnold B. Kanter 44:1:54; 44:2:106
- INSURANCE**  
"Review of Uninsured and Underinsured Motorist Law in Alabama" James W. Garrett, Jr., and F. Chadwick Morris 46:3:142
- INTELLECTUAL PROPERTY**  
"A General Practitioner's Introduction to Patent and Trade Secret Law" Harold See 46:4:188  
"A General Practitioner's Introduction to Copyright Law: Part II" Harold See 46:6:326
- IOLTA**  
"All You Wanted to Know About IOLTA But Were Afraid to Ask" Stanley Weissman 46:5:267  
"IOLTA — 'NOW' Provides New Interest" Rowena M. Crocker 46:5:265
- Jackson, J. Theodore  
"Tax and Financing Benefits in the Renovation of Historic Buildings" 45:3:165
- Janecky, J.F.  
"Recent Developments Concerning Eligibility for Social Security Disability" 46:6:312
- Johnson, Frank M., Jr.  
"Judge Johnson Receives Devitt Award" 46:1:15
- Johnston, T.A., III  
"In Memoriam" 46:1:53
- JUDGMENTS**  
"Recognition of *Pro Tanto* Judgments" Marvin Cherner 46:4:197
- Kanter, Arnold B.  
"Fairweather, Winters and Sommers" 44:1:54; 44:2:106
- Kennedy, Mark  
"Sexual Abuse—A Conspiracy of Silence" 46:1:30
- King, J. Thomas, Jr.  
"Young Lawyers' Section" 44:1:22; 44:2:83; 44:3:138; 44:4:216
- Kracke, Robert R.  
"The Pros and Cons of Rehabilitation—Some Guidelines from Personal Experience" 45:4:227
- Lavine, Douglas  
"How to Deal with the Press" 44:3:167
- LEGAL MALPRACTICE**  
"Bar Endorses New Professional Liability Insurance Program" Duke Nordlinger Stern 45:2:73  
"Basic Client Relations" Gary C. Huckaby 44:3:156  
"How Much Insurance is Enough" Duke Nordlinger Stern 44:2:88  
"Preventing Pitfalls in Litigation Practice" Duke Nordlinger Stern 44:1:38  
"The Continuing Risk from Faulty Docket Control" Duke Nordlinger Stern 44:4:223
- Lightfoot, Ben H.  
"In Memoriam" 46:4:221
- LITIGATION**  
"Preventing Pitfalls in Litigation Practice" Duke Nordlinger Stern 44:1:38
- Lynne, Seybourn H.  
"Reflections of the Reflective Roundtable" 45:1:14
- Lyons, Champ, Jr.  
"Appellate Practice Pointers for Alabama Lawyers in Civil Cases" 44:1:6
- Martin, Robert A.  
"Appellate Court Workload More Than Triples in Twelve Years—Trial Judges Reduce Pending Caseload" 45:1:17
- McBee, Earl  
"In Memoriam" 46:4:221
- McCurley, Robert L., Jr.  
"Legislative Wrap-Up" 44:1:45; 44:3:162; 44:4:210; 44:5:274 45:1:33; 45:2:74; 45:3:143; 45:4:225; 45:5:293; 45:6:327; 46:1:7; 46:2:80; 46:3:125; 46:4:208; 46:5:273; 46:6:299
- McGee, Val H.  
"We Have Met the Enemy and He is Us" 45:2:102
- McIntyre, Joan and Smith, Robert Sellers  
"Personal Computers and Software for Your Law Office" 44:1:40
- McKee, Bruce J.  
"Alabama Supreme Court Practice—Avoidable Errors and Oversight" 44:6:320
- McKinley, Edmon  
"Young Lawyers' Section" 44:5:288; 44:6:330; 45:1:19; 45:2:98; 45:4:213
- McLeod, Grover S.  
"The Young Judge" 46:5:260
- Meadows, Robert T., III  
"Young Lawyers' Section" 45:5:279; 45:6:361; 46:1:25; 46:2:79; 46:3:123; 46:4:207
- MEDIA**  
"How to Deal with the Press" Douglas Lavine 44:3:167
- Miller, G.O., Jr.  
"The Final Judgment" 44:2:114
- Mitchell, Anne W.  
"Alabama Living Will Statute" 46:6:316
- Mooresmith, John T. and Daniell, David F.  
"Section 1983 Actions: A Practical Overview for the General Practitioner" 45:1:34
- Morrow, William H., Jr.  
"Opinions of the General Counsel" 44:1:56; 44:2:110; 44:3:168; 44:4:218 44:5:284; 44:6:346; 45:1:51; 45:2:113; 45:3:172; 45:4:235; 45:5:306; 45:6:363; 46:1:50; 46:2:98; 46:3:152; 46:4:216; 46:5:274; 46:6:338
- Morton, W.H.  
"The Final Judgment" 44:6:352

## JAMES G. MUNGER AND ASSOCIATES

Fire/Building/Safety Code Consultants  
Fire/Explosion/Liability Investigations

P.O. BOX 1773  
CULLMAN, ALABAMA 35056

(205) 739-3755

## Answers to trivia questions from page 44

1. The late Alabama head coach, Frank Thomas, went to Notre Dame and roomed with the Gipper.
2. Fred Sington—The song was entitled "Football Freddy" by Rudie Valle.
3. James—Ralph was his middle name.
4. Three—two blocked punts and a blocked extra point.
5. Neither head coach was at the game. John Vaught of Ole Miss was recovering from a heart attack, and Auburn's Shug Jordan was bedridden following surgery.



## NEGOTIATION AND SETTLEMENT

"The Settlement Concept of the Eighties and Beyond" Bud Fleming 45:4:190

Nichols, G.W., Jr.

"The Final Judgment" 44:6:353

Nicol, F.W.

"The Final Judgment" 44:5:292

Noel, J.B., Jr.

"The Final Judgment" 44:6:353

Nolen, Charles William

"In Memoriam" 46:6:341

Norman, Keith B. and DePaola, Susan Shirock

"A Look at Alabama State Bar Headquarters" 46:3:146

North, James L.

"President's Page" 46:5:228; 46:6:288

Nowell, Jen

"Bill Hairston Talks About Bar Issues" 44:5:279

Nowell, Jen

"Lawyers 'Rehabilitating' [Historic Structures] Statewide" 45:3:168

Nowell, Jen

"Renovations Running Rampant" 45:4:230

## OFFICE AUTOMATION

"Personal Computers and Software for Your Law Office" Joan McIntyre and Robert Sellers Smith 44:1:40

## OIL AND GAS

"Pitfalls of Preparing Deeds Conveying Oil and Gas Interests" Edward G. Hawkins 46:5:236

Olmstead, Craig

"Can 'State of the Art' Evidence Be Used as a Defense Under Alabama Extended Manufacturer's Liability Doctrine?" 45:4:202

## OPINIONS OF THE GENERAL COUNSEL

Acting as your own lawyer 44:1:57

Attorney as witness for will 44:2:110

Attorney representing a public entity which comes within scope of Sunshine Law conferring with client in closed session 46:3:152

Attorney withdrawing or increasing contingent fee when recoverable damages are less than initially thought 45:2:114

Client confidences—suicide threats 44:3:169

Collecting a fee from an indigent defendant 44:5:285

Contingent fees in domestic relations cases 44:4:218

Disbursal of funds deposited in trust account prior to drawee payment 45:4:235

Disbursal of trust funds deposited in attorney's personal account 45:4:235

Dual representation of plaintiffs 44:2:111

Duty of lawyer to report unprivileged knowledge of conduct of opposing counsel which violates disciplinary rules 46:6:338

Interest bearing trust fund accounts 44:1:56

Lawyer as witness 44:4:219

Lawyer witness sitting at counsel table 45:1:51

Legal services rendered to insureds by insurer's house counsel 45:1:52

Liability for costs of litigation 44:3:168

May an attorney allow a reputable legal directory to indicate a lawyer as specializing in a certain area of law 46:4:216

Misrepresentations by client 44:5:284

Recommendation of mortgagee's title insurance and title insurance in real estate transaction by issuing agent 45:2:113

Recording conversations without consent 45:3:172

Represent one client but later becoming a partner or associate of a firm that represents an adverse party 45:5:306

Special assistant attorney general 44:6:346

Tape recording of conversations without prior consent of all parties to conversation 46:5:274

Where one party in a domestic relations case is not represented by counsel and the attorney complies with Disciplinary Rule 5-105(C)(1) the attorney may thereafter represent his original client in a post decretal proceeding 45:6:363

Whether attorneys for plaintiff and defendant both called as witnesses must withdraw 46:1:50

Whether it is unethical for attorney to mail out letters to debtors without first determining the demand is for a valid claim 46:2:98

Orrick, Judson H.

Pick a name to suit your image, "It Happened at the Bar" 44:4:225

Parker, Penny J.

"Anna S. Fitts—Registrar, Counselor and Friend" 45:6:350

Pike, Mary Lyn

"Bar Committees" 45:2:94; 45:3:162; 45:4:208

"CLE News" 45:2:92; 45:3:152; 45:4:212; 45:5:281; 45:6:344; 46:1:23; 46:2:71; 46:3:124; 46:4:199; 46:5:243; 46:6:321

"Committees Continue Hard Work Into 1985" 46:1:24

"Committees Pursuing Excellence" 45:6:348

Pinna, William P.

"How to Write a Fee Letter and Other Ways to Make Ends Meet" 44:2:100

Pipes, Sam Wesley, III

"The Final Judgment" 44:1:59

Pitts, W.M.

"The Final Judgment" 44:2:114

Porter, C.E.

"The Final Judgment" 45:3:176

## PROFILES

"Bob Cunningham, Jr.—From Mobile to Maui . . . Swimming, Biking, Running" Jen Nowell 45:5:282

"A Remarkable Lady—Olive Greene Still on the Job After 75 Years" 45:4:218

## REAL PROPERTY

"The Title Question: Do Bankruptcy Courts Have Jurisdiction Over Mortgaged Alabama Real Property?" Romaine S. Scott, III 45:5:248

"Time Share Ownership of Condominiums" Richard E. Davis 44:4:183

Reaves, Randolph P.

"Legislative Wrap-up" 44:3:162; 44:4:210; 44:5:274; 44:6:340; 45:2:74; 45:3:143; 45:4:225; 45:5:293

## RESEARCH

"Computer Assisted Legal Research" Paul E. Holcomb 44:5:256

Rives, Richard Taylor

"The Final Judgment" 44:1:59

Ross, Sandra H.

"Child Abuse and the Juvenile Courts" 46:1:35

Rowe, B.B., Sr.

"The Final Judgment" 45:3:177

St. John, F.E., Jr.

"The Final Judgment" 45:3:177

**SAVE 30-60%**

\* \* \*

**USED LAW BOOKS**

\* \* \*

- West • Lawyers Coop • Harrison
- Matthew Bender • Callaghan • Others

**WE BUY — SELL — TRADE**

**Law Book Exchange**

P. O. Box 17073  
Jacksonville, FL 32216  
1-800-325-6012

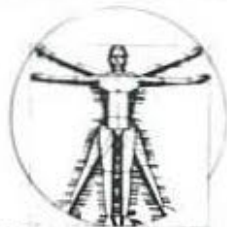
**Richard Wilson  
& Associates**

**Registered  
Professional  
Court Reporters**

132 Adams Avenue  
Montgomery, Alabama 36104

**264-6433**





## Expect the unexpected!

By way of introduction, we're SOUTHEASTERN MEDICOLEGAL ASSOCIATES, INC., and we know we've got a hard pitch to make. We know you've used services like ours before... but the similarity ends there. As the headline says Expect the unexpected.

- Evaluation and analysis of cases with an honest answer as to its worth.
- Preparation of pleading and discovery documents, we can take or assist at depositions.
- Research on drugs and procedures.
- Can supply actively practicing Board Certified Physicians as expert witnesses for valid malpractice cases.

When you call SOUTHEASTERN MEDICOLEGAL ASSOCIATES, INC. expect answers, expect your case handled in a professional manner, and on time... in short Expect the Unexpected.



SOUTHEASTERN  
MEDICOLEGAL ASSOCIATES, INC.  
P.O. BOX 550129/BIRMINGHAM, ALABAMA 35255-0129  
(205) 879-4700



## Interstate Investigations and Consultants, INC.

RECONSTRUCTION INVESTIGATIONS  
CONDUCTED THROUGHOUT THE U.S.

LAND AIR SEA RAIL  
ACCIDENT INVESTIGATION  
ACCIDENT RECONSTRUCTION  
WRONGFUL DEATH  
INCAPACITATING INJURY  
PRODUCTS LIABILITY  
EXPERT WITNESS  
COURT CONSULTANT  
WRONGFUL CHARGE  
PROPER PARTY LIABILITY

**PHILIP W. STUART, P.E.**  
PRESIDENT  
MEMBER

NATIONAL SOCIETY OF  
PROFESSIONAL ENGINEERS  
INSTITUTE OF TRANSPORTATION  
ENGINEERS  
(ITE ACCIDENT INVESTIGATION  
COMMITTEE MEMBER)  
AMERICAN SOCIETY OF SAFETY  
ENGINEERS

AOPA AIR SAFETY FOUNDATION  
**REGISTERED ENGINEER**  
**FORMER STATE TROOPER**

716 INGLESIDE AVENUE  
TALLAHASSEE, FLORIDA 32303  
(904) 222-7101

"FOR THE SPECIFIC PURPOSE OF  
DETERMINING CAUSATION"

St. John, Finis Ewing, III  
"In Memoriam" 46:2:106

Schrader, George D.  
"The Criminal Justice System—A New  
Policy" 44:3:140

Scott, Romaine S., III  
"The Title Question: Do Bankruptcy  
Courts Have Jurisdiction Over Mortgaged  
Alabama Real Property?" 45:5:248

### SECURITIES

"Sophistication and the Private Offering of  
Securities in Alabama" Michael D. Waters  
44:5:240

"The Alabama Securities Act Meets the  
Average Practitioner [or 'Blue Skies Smil-  
ing(?) At Me']" R. Frank Ussery 45:5:295

### See, Harold

"A General Practitioner's Introduction to  
Patent and Trade Secret Law: A Primer on  
Intellectual Property" 46:4:188

"A General Practitioner's Introduction to  
Copyright Law: A Primer On Intellectual  
Property, Part II" 46:6:326

### Sentell, J.O., Jr.

"In Memoriam" 46:2:105

Shepard, Tazewell T. and Wilmer, John A.  
"Rejection of Collective Bargaining  
Agreements: An Analysis of *In re Bildisco*"  
45:3:154

### Silberman, Wilbur G.

"Bankruptcy Practice Under the Rule"  
44:2:84

Smith, Gary P. "The Lighter Side of Law: Oh,  
Canada" 45:6:328

Smith, Helen C. "Huntsville—Heritage and  
High Tech" 46:3:120

### Smith, J.W.

"The Final Judgment" 44:1:60

### Smith, Robert H.

"Education of the Handicapped—The  
Lawyer's Role" 44:3:128

Smith, Robert Sellers and McIntyre, Joan  
"Personal Computers and Software for  
Your Law Office" 44:1:40

### SOCIAL SECURITY

"Social Security Disability Insurance"  
Steven C. Emens 46:2:62

### Starnes, S.R.

"The Final Judgment" 45:2:118

### Stern, Duke Nordlinger

"Bar Endorses New Professional Liability  
Insurance Program" 45:2:73

"How Much Insurance is Enough" 44:2:88  
"Preventing Pitfalls in Litigation Practice"  
44:1:38

"The Continuing Risk from Faulty Docket  
Control" 44:4:223

### Stewart, C.A., Jr.

"The Final Judgment" 45:2:118

Stewart, Robert Browder "In Memoriam"  
46:3:161

Stone, Norborne C., Jr.  
"President's Page" 44:1:4; 44:2:68;  
44:3:120; 44:4:180

### Suggs, Fred W., Jr.

"Advising Your Corporate Client on Avoid-  
ing Charges of Sexual Harassment"  
46:4:176

### Tally, John Benton, Sr.

"In Memoriam" 46:5:283

### Tapley, Allen L.

"Administrative Office Report" 46:6:297

### TAX

"Differences in Federal and State of Ala-  
bama Income Tax Laws" Robert C. Walt-  
hall 44:6:332

"Income Taxation of Wrongful Death Pro-  
ceeds in Alabama" David M. Wooldridge  
46:3:127

"The Tax Reform Act of 1984—Significant  
Changes Made by New Tax Law" Richard  
P. Woods 45:6:357

### Thomas, A.J.

"In Memoriam" 46:1:53

### TORTS

"Commentary: Co-Employee Immunity  
Among Alabama Longshoremen and Har-  
borworkers" Gregory C. Buffalow 45:2:76

### Ussery, R. Frank

"The Alabama Securities Act Meets the  
Average Practitioner [or 'Blue Skies Smil-  
ing(?) At Me']" 45:5:295

### Walthall, Robert C.

"Differences in Federal and State of  
Alabama Income Tax Laws" 44:6:332

### Ward, James S.

"Why Alabama Needs a Client Security  
Fund" 45:2:67

### Ward, Walter G.

"The Decision" 45:3:135

### Waters, Michael D.

"Sophistication and the Private Offering of  
Securities in Alabama" 44:5:240

### Weissman, Stanley

"All You Wanted to Know About IOLTA But  
Were Afraid to Ask" 46:5:267

### Williams, J.M., Jr.

"The Final Judgment" 44:4:230

### Wilmer, John A. and Shepard, Tazewell T.

"Rejection of Collective Bargaining Agree-  
ments: An Analysis of *In re Bildisco*"  
45:3:154

### Woods, Richard P.

"The Tax Reform Act of 1984—Significant  
Changes Made by New Tax Law" 45:6:357

### Wooldridge, David M.

"Income Taxation of Wrongful Death Pro-  
ceeds in Alabama" 46:3:127

### WORKMEN'S COMPENSATION

"Alabama Workmen's Compensation Law  
—A Primer" Nicholas T. Braswell, III  
44:5:270



# Classified Notices

RATES: Members: No Charge; Nonmembers: \$35 per insertion of (50) words or less, \$.50 per additional word. Classified copy and payment must be received no later than the 1st day of the month prior to publication. (No exceptions). Send classified copy and payment, made out to The Alabama Lawyer, to: Alabama Lawyer Classifieds, c/o Margaret Dubberley, P.O. Box 4156, Montgomery, AL 36101.

## SERVICES

### EXAMINATION OF QUESTIONED

Documents: Handwriting, typewriting and related examinations. Internationally court-qualified expert witness. Diplomat, American Board of Forensic Document Examiners. Member: American Society of Questioned Document Examiners, the International Association for Identification, the British Forensic Science Society and the National Association of Criminal Defense Lawyers. Retired Chief Document Examiner, USA CI Laboratories. **Hans Mayer Gidion, 218 Merrymont Drive, Augusta, Georgia 30907, (404) 860-4267**

**REAL ESTATE EXPERT** Testimony: Tort liability of real estate brokers, agents, closing attorneys and mortgage lenders. Licensed attorney and real estate broker. Author of *Home Buyers: Lambs to the Slaughter?* **Sloan Bashinsky, Suite 100, 6 Office Park Circle, Birmingham, Alabama 35223. Phone 870-3500.** *No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.*

**LEGAL RESEARCH HELP:** Attorney with seven years' experience in legal research/writing. Access to University of Alabama and Cumberland libraries, Westlaw available. Prompt deadline service. \$35/hour. **Sarah Kathryn Farnell, 112 Moore Building, Montgomery, Alabama 36101, Phone 277-7937.** *No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.*

**LAMAR MILLER,** Examiner of Questioned Documents Qualified in most Alabama courts. American Society of Questioned Document Examiners, American Academy of Forensic Sciences, certified by American Board of Forensic Document Examiners. Handwriting, forgery, typewriting, alteration of medical and other records. Miscellan-

eous document authentication problems. **P.O. Box 55405, Birmingham, Alabama 35255, (205) 979-1472**

## WANTED

**WANTED: LAW FIRM** by a passive investment group who is looking for community-oriented law firm to serve as the active organizer of either a bank or savings and loan and its holding company. Responsibilities to include choosing the board of directors, officers and site location. Investment group will be responsible for providing all front money necessary to obtain government regulatory approvals in exchange for a minority shareholder interest without voting rights. **Reply to: Investment Group, P.O. Box 3146, Pompano Beach, Florida 33072. All replies held confidential.**

## FOR SALE

**END OF AN ERA:** Fifteen full-color prints of Farrah Hall still available. Prints measure 20" x 26" and have some of the lower numbers in the 40s, 50s and 60s. Signed and numbered limited edition prints available for \$80 each through: **Pete's Framing Shop, P.O. Box 288, Tuscaloosa, Alabama 35402.**

**FORT WALTON BEACH** condominium for sale or trade. One bedroom, third floor on the beach on Okaloosa Island. Completely furnished, new paint, carpet and wallpaper. Appraised for \$72,000 and has first of \$57,000. Pay \$5,000 equity and I will pay all closing costs. Will trade for anything of value. A buy back or equity share agreement can be negotiated. **Call (904) 651-4424 or (205) 598-9372, Write Bob Ayers, 159 Richbourg Avenue, Shalimar, Florida 32579.**

**FOR SALE:** Alabama Digest; Southern Reporter 1 & 2; Federal Reporter 1 & 2; Federal Supplement; F.R.D.; U.S. Led 1 & 2; Am Jur 2d, Am Jur Legal Forms 2d; ALR 2, 3, 4 & Federal; Williston on Contracts, 3d, complete tax library. For all your law book needs: **The Lawbook Exchange, Ltd., buys & sells, 135 W.**

**29th Street, New York, New York 10001, (212) 594-4341**

**FOR SALE:** IBM Displaywriter, Model 6360, IBM Printer, Model 5215. Word processing software included. Two and one-half years old. Excellent condition. **For information call (205)937-2411 or write to P.O. Box 547, Bay Minette, Alabama 36507.**

## MISCELLANEOUS

**DO YOU KNOW** of some historic church, building or monument in your town or city that you think would be an interesting part of an illustrated book about Alabama? **Call or write Grover S. McLeod, 1204-17th Street South, Birmingham, Alabama 35205-4798, Phone 251-5780.**

**ANIMAL CRUELTY LAW:** Attorneys wanted to join newly formed group of Alabama attorneys interested in animal cruelty law and matters. **For more information contact: James R. Foley, 223 East Side Square, Suite C, Huntsville, Alabama 35801, Phone 534-4589.**

**THE ALABAMA** Department of Environmental Management maintains a mailing list of interested individuals who wish to receive notification of proposed environmental permitting actions. Legal notices regarding proposed permits are mailed directly to those persons. If you wish to receive such notices contact: **Marilyn Elliott, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36130.**

*All requests for classifieds placement must be submitted typewritten and are subject to approval. Alabama State Bar members are not charged for classified notices up to two insertions per calendar year, except for "position wanted" or "position offered" listings, which are at the regular rate. Non-member advertisers must pay in advance and will receive a complimentary copy of The Alabama Lawyer in which their advertisement is published. Additional copies are \$3.00 plus postage.*





---

# LEGAL PRINTING

---

*Legal and Financial Printers Since 1910*  
Experienced, Dependable, Responsible,  
Confidential


**Prospectuses, Proxy Statements,  
Official Statements, Tender Offers,  
Indentures and Briefs**



**BIRMINGHAM PUBLISHING COMPANY**

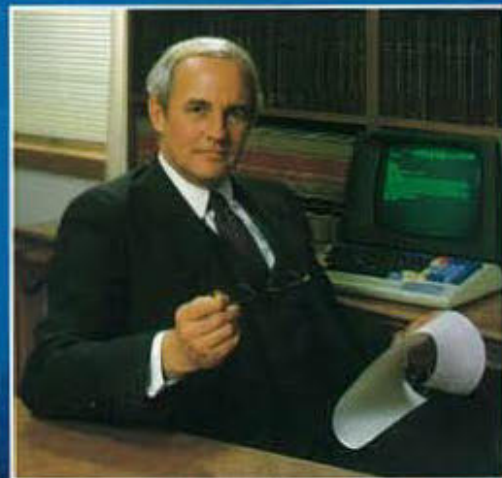
130 South 19th Street  
Birmingham, Alabama 35233  
Telephone: 205/251-5113  
Contact: Harold Fulton, *Vice President*

---





Only WESTLAW magic  
gives you full text  
*plus* time saving  
headnotes and synopses.



Discover how the magic of WESTLAW's  
exclusive Full Text Plus gives you more.

The full text of an opinion **plus**  
headnotes and synopses that put your  
research on target faster.

Additional concepts and relevant

words for 15% more case finding power.

And Key Numbers that open doors to  
thousands of West legal publications.

Full Text Plus.™

Only from WESTLAW.

Call today for more information.

**WESTLAW**  
*Superiority That's No Illusion*

West Publishing Co.  
P.O. Box 43526  
St. Paul, MN 55164-0526  
1-800-328-0109 (or 612/228-2450)

Copyright 1985 West Publishing Company