


# The Alabama Lawyer

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# IN BRIEF

January 1994

Volume 55, Number 1

## ON THE COVER:

The new Judicial Building on Dexter Avenue in Montgomery opened in late 1993. The Greek Revival structure houses the state appellate courts, the State Law Library and the Administrative Office of Courts. — *Photo by James W. Guier, Jr.*

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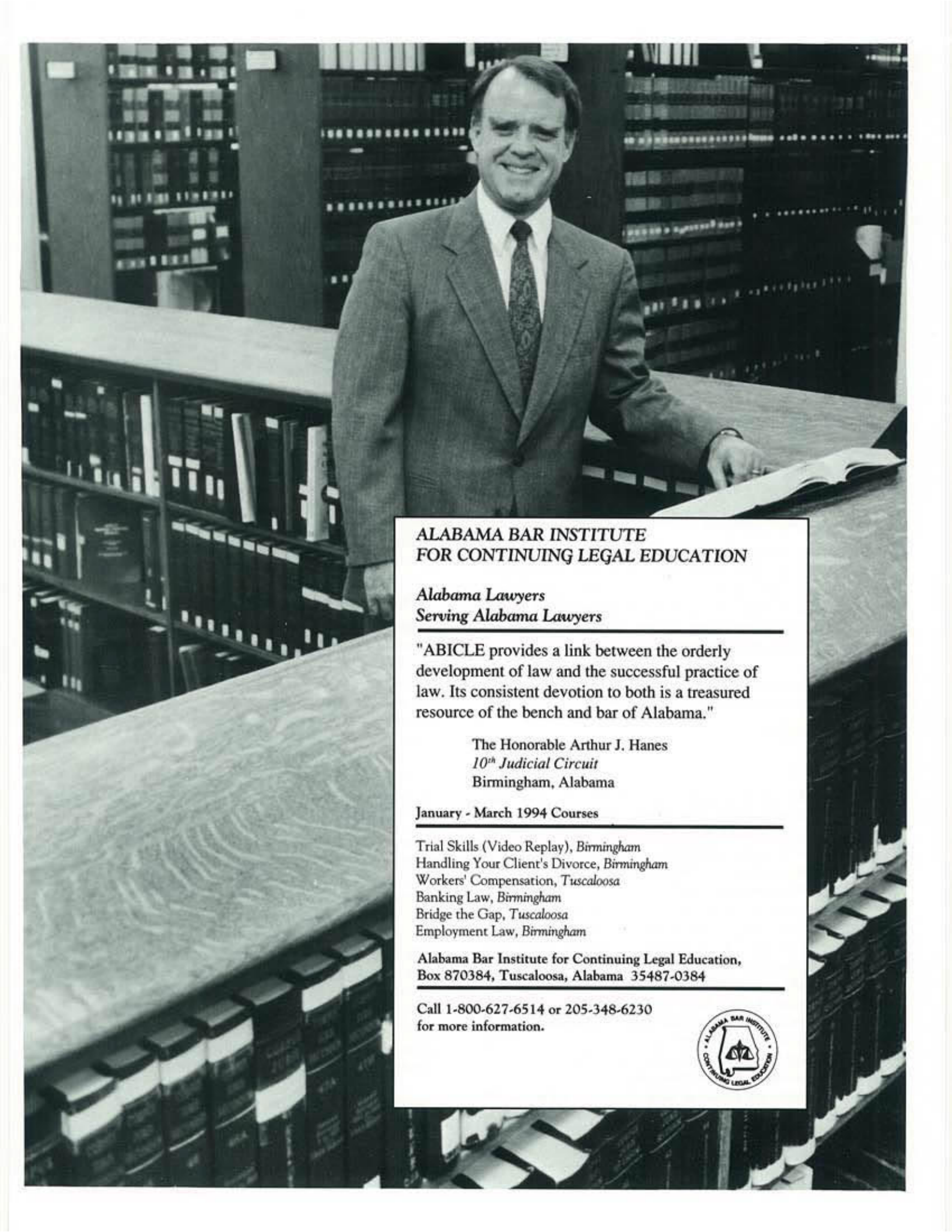
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## INTERVIEW WITH JAMES R. (SPUD) SEALE

*President, Alabama State Bar*

Q. How does a fellow with the name of "Spud" become a bar president?

A. I think maybe "Spud" helped me become the bar president in that there are not many "Spuds" around. There was a judge from over in the Auburn/Opelika area, Spud Wright. There is a lawyer who was in law school with me who was a year ahead, Spud Schramm, but there are just not many "Spuds" around.

Q. Is that a family nickname?

A. No, it's a nickname bestowed upon me by my uncle who walked in when I came home from the hospital and just said hello Spud. It stuck, and I have been called Spud all my life. I tried to shake it when I first came to Montgomery and become Jim Seale, but that didn't work, so long ago I abandoned all pretenses of being anything but Spud.

Q. You are four or five months into your presidency. Have the demands on you been more than you anticipated they would be?

A. I have to say yes.

Q. In what way?

A. I spend the time that I feel I've got to spend to do the job I want to do. In all honesty, I don't think that I have to spend as much time as I do spend, but I don't think you can do the job without it. It is a very demanding, very time-consuming job. There are any number of committee meetings that I want to attend, and the correspondence from the ABA to be considered. You may not know it, but the ABA is the largest publisher in the world, and having become the president of the bar, I see why. It's a paper mill, and I do try to read the majority of the information that the ABA sends us that they think is pertinent to state and local bar associations and state presidents. That is very time-consuming. I don't know whether being here in Montgomery if I'm called any more than I would be if you are out of Montgomery, but there is something every day. The meetings that you attend take a lot of time, and I don't think that anybody ought to seek this position thinking that it's not going to take a very, very significant chunk of their time. Alva Caine told me that I may as well just give up my law practice for a year. It has not been that bad, but I do find that it's very difficult to become involved in anything that's going to take you out of your office

or involve you the whole week so you cannot respond to matters at the bar.

Q. Is there one central theme of your administration or any particular areas you are focusing on?

A. Shortly after I became president, I sent out a survey to the board of bar commissioners, to past presidents of the state bar, to local bar presidents, to committees and task force chairs, and to section chairs. I asked them what their ideas were, what direction they thought the bar should be going, and what were the most important issues facing the bar.

Q. What were the results?

A. Overwhelmingly, they said the most important issue facing the bar was the image of the profession. Other issues of importance to them were the advertising/solicitation, professionalism, ethics, judicial selection reform, and legal services to the poor. There were other areas, but these were just the ones getting the most response. Without question, the number one issue that lawyers see facing them is the question of the profession's image.

Q. That's been a problem for a number of years. I don't presume that you feel you can necessarily solve that, but what do you see as the bar's involvement in trying to enhance our image?

A. I guess everybody's point of reference or certainly bar leaders' point of reference in determining what people think of us is probably determined by the Hart Survey. In August 1992, the ABA had a survey conducted by Peter D. Hart Research Associates. They did a survey just of ABA members. Then in January 1993, Hart Research Associates did another survey, of 1,200+ adults to determine how they felt about lawyers. I knew that our image was tarnished, but I don't guess I really had focused on how tarnished it was until we found out from the survey that Americans rate lawyers 56th in honesty and integrity out of a list of 71 professions. Not to disparage any other professions, but we were ahead of labor union leaders, real estate agents, car salesmen, politicians, prostitutes, and drug dealers.

Q. What can the bar do about this?

A. One thing that the Hart Survey focused on was that people had positive images of lawyers when they were providing a real



service to people, pro bono-type activities. That is a matter of great concern to me, the growing number of people who are being excluded from the legal process. I think legal services in some of our pro bono efforts are directed to the very poor, the very low income people, and all of them do not get served by any stretch of the imagination, not even close, but the people of moderate means are being frozen out of the market. They have no access to legal services. They just can't afford it.

Q. What programs does the state bar have in the pro bono area?

A. I addressed that in this November 1993 issue of *The Alabama Lawyer*, when I talked about our volunteer lawyers program headed by Melinda Waters, and I addressed the mandatory versus voluntary aspects of pro bono. I am quick to add that I don't want to see anything else be mandatory and that I think that lawyers tend to rebel against the word "mandatory." I think that mandatory CLE is a great thing, but just the word mandatory seems to connote something evil to a large part of our profession. They don't want to be told they've got to do anything, but having addressed the voluntary aspect of that last time, I think that we need more participants in this voluntary lawyer program. If we don't have enough participation in the volunteer lawyers program, we are going to see a proliferation of non-lawyer services in a number of areas: real estate closings, simple bankruptcies, simple wills, collections, things that paralegals and many organizations in some of these other states are already asking for permission to do. In my opinion, it's unauthorized practice of law for these people to get involved in these areas, but if we don't have a response to the people who need these services, we are going to see non-lawyers move into some of these areas.

Q. I know the bar received some adverse publicity about perceived solicitation efforts regarding the Amtrak train tragedy. Could you give us a background on that?

A. When the Amtrak derailment occurred outside of Saraland, the Alabama State Bar had a disaster response plan in place. That morning, I was already scheduled to be at the bar but I went over early to meet with Reggie to determine what action the state bar should take. Reggie and I decided that we ought to go ahead and issue a news release. We contacted Tom Bryant, president of the Mobile Bar Association, and asked him to send a team out to the site to see whatever it could do to help families of the victims and the victims, and to prevent these "parachute" lawyers and investigators from trying to solicit these cases in time of tragedy and severe emotional distress on these families.

Q. Was the team sent?

A. The team was sent. The team did not have the credentials to get on the accident site. I acknowledge this is a shortcoming in

our plans, something that has to be worked out with the emergency management agency in Alabama and the federal emergency management authorities so in the future we can have access to the sites. We sent the team, and while they were not able to get actually on the site, we set up a booth at the Adams Mark Hotel in Mobile, where we had personnel from the Mobile Bar Association. They were all members of the Mobile Bar Grievance Committees, and they were there the whole time. I think it was about three days or so that they had this booth at the hotel. While they never observed any direct solicitation, we do know without question that a brother of one of victims was approached by someone who got him to sign a contract with this lawyer. The lawyer gave the victim his card, and this was a lawyer from New Orleans, Louisiana. We know for sure that this lawyer was there. It was reported to us by the police that investi-



Spud Seale

gators were present, and our team on-site actually observed at least three investigators at the site and at the hotel. Again, while we did not actually see an investigator talking to a victim or any family member of a victim, the police and family members told us that these investigators did contact them, and a local lawyer was contacted by an attorney out of Texas wanting to refer victims to him. So there is no question that there were people down there making attempts to solicit business. I firmly believe that the Alabama State Bar's presence there, in some way, prevented those solicitations and assisted the families in not jumping to any conclusion or any reason to hire a lawyer immediately, or to sign any release from the railroad or the tugboat company in these times of great emotional distress.

Q. Didn't the news media draw the wrong conclusions about what the bar's activities were to be?

A. Absolutely. The first news release that came out made it sound like the state bar had sent lawyers to solicit business. They were accusing us of the very thing that we had sent people out there to prohibit, and that was rectified to a small extent. The Mobile Bar, and in particular, Tom Bryant, did an absolutely outstanding job in monitoring this, in running the booths down there, in seeing that our disaster response plan was adhered to, and in trying to prevent the solicitation that our plan was put in place to prevent. The board of bar commissioners adopted a resolution praising Tom Bryant and the Mobile Bar Association for the job that they did.

Q. Another area that you mentioned was concern over the responses to your questionnaire involving the selection of judges. Has the bar taken a position on the judicial selection process?

A. The bar has a Task Force on Judicial Selection, chaired by Bob Denniston of Mobile, and the commissioners have received a report from that task force. The report has not actually been adopted yet, and we have sent the task force back to develop some voluntary criteria to try to get candidates in judicial elec-



tions to agree to. My personal opinion, not the opinion of the Alabama State Bar, is that I would like to see some type of non-partisan elections or some type of merit retention. I realize that there are great pros and cons to both sides of that, but from the standpoint of the money being spent on these judicial races, I would think that all of the candidates and the judges would like to have a plan limiting the amount of money that they would have to spend or could spend.

Q. When do you expect the task force to complete its work?

A. We asked them to report back to us as soon as possible.

Q. Lawyer discipline appears to be a continuing problem.

A. Lawyer discipline *is* a problem, and it is of great concern to the lawyers in Alabama. It is of concern to the board of commissioners, and it is certainly of concern to me. Presently, there is before the Alabama Supreme Court proposed modifications to the rules of disciplinary procedure. These proposed modifications were prompted in part by the McKay Commission Report which our own retired Justice Oscar Adams served on.

Q. What was the purpose of the McKay Commission Report?

A. The thrust of the McKay Commission Report was that the disciplinary procedure for lawyers ought to be opened up some. In response to that, the board of bar commissioners proposed changes which would add a lay member to each of the disciplinary panels. The disciplinary proceeding itself would still remain a confidential proceeding until the time there is a guilty plea or an actual finding of guilt. Also, there is a recommendation to the court that all judicial circuits with less than two bar commissioners not have a local grievance committee. There would not be any investigation done at the local level in those judicial circuits with less than two bar commissioners.

Q. Why was that a recommendation?

A. These are small circuits, and it is just self-inspection. Whether the "good old boy" network, for want of a better word, is actually present in these proceedings or not, is immaterial. There is certainly the perception of impropriety in these small circuits and that is what matters. From my standpoint and my background on the disciplinary commission, and I don't say this disparagingly of any of the small circuits, the reports were not as detailed. It meant that the disciplinary commissioners had to do

a great deal more to evaluate those reports. We seem to have gotten better reports from the larger circuits, for whatever reason that is, and again I truly think that it has to do with the fact that in these smaller circuits, you have people who are basically investigating their friends, people they see all the time. Let me add one thing to this. I think it is important for the smaller circuits to understand that they are really not losing anything because all they were doing was the investigation and making a recommendation to the disciplinary commission. Really, you are saving some of these smaller circuits work; you are not taking anything away from them. However, some of them don't see it that way. As a matter of fact, on December 8 there was a hearing before the supreme court in which some of these circuits challenged the decision of the bar commissioners

Q. It seems that the lawyer advertisements in the Yellow Pages continue to mushroom. What is the bar's position with respect to advertising?

A. Advertising is one of the key concerns to lawyers throughout the state. In particular, the Hart Report that was done in January 1993 viewed the decline in the image of lawyers and the decline in professionalism as having a direct correlation to advertising. The public, on the other hand, does not seem to be offended so badly by advertising, except by those ads that lack dignity. What seems to incense Alabama lawyers the most is the direct mail advertising.

Q. Why doesn't the bar regulate direct mail advertising?

A. General Norris' office is looking at ways to tighten our rules on advertising and bring some form of dignity to it. We are considering several things, some of which are already being done in other states. I am aware of direct mail letters because of my work at the bar and my position on the disciplinary commission. There is a cottage industry actually growing up around advertising. There are entities that you can subscribe to and you get all of the foreclosure notices, all of the accident reports, and all of the suits filed. Then they enter this into a computer, and can send out literally hundreds of letters. This seems to be what offends so terribly. We can't stop that because of the Shapiro decision, but we are considering ways to tighten that. One is to require lawyers to put on the envelope or in letters, in a way to catch your attention, that this a lawyer advertisement. I don't know whether you pay attention to television ads, but I do. The disclaimer there is sometimes flashed so quickly that you can't read it and don't know what it says. Sometimes you barely even see it. What we are thinking about doing with these ads is to have the disclaimer, when it is flashed on there, run for a certain period of time and have it in type of a certain size so that people can see it. We are not being a trendsetter in this; we are following the lead of some of these other states. You have seen the dramatizations on television, the wreck, the sirens, the flashing lights, the actors. We are seeing if we can prohibit the dramatizations and the wreck scenes, and prohibit the use of the actors.

Q. Advertising is a type of solicitation, isn't it?

A. We had it "advertising/solicitation" on the survey, but I don't know that the bar commissioners and the people who responded

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to the survey really distinguished between advertising and solicitation. From the commissioner meetings, however, I can tell you that solicitation is a major concern of the commissioners, and they state that they are voicing the concern of the lawyers in their circuits.

Q. Are there many grievances filed arising from complaints about solicitation?

A. I won't say that there are many. We have had a number of complaints on solicitation, but the problem has been that when we investigate the complaint, and it comes time to have the lawyer or the person making the complaint come forward and testify, they are not willing to throw that rock at another lawyer. At present, the State of Texas has adopted a new Champerty and Barratry statute. That statute makes it a felony for anyone to directly solicit business and this applies to both the lawyer and the investigator. Our rules address the lawyer, and most of the time it's not the lawyer who is making this direct contact with the prospective client. It's some investigator or someone appearing on his behalf. It's difficult to relate that back to the lawyer. The investigator will say he was not making any contact for the lawyer or, again, the complaining lawyer, when it comes right down to it and he's got to actually testify against another lawyer, he has not done that. We are looking at proposing legislation similar to the Texas statute. Obviously, the Legislature will have to act on it, and I don't know what the chances would be of its passing the Alabama Legislature, but solicitation is something that concerns us and it something that we are working on. I hope we are going to come up with some better solution to it than we have at the present time.

Q. What do you foresee for the remaining six months of your term?

A. We have the Legislature coming into session this month. I have been told that we are going to have some more of the same types of bills that were put in last year, particularly, bills that addressed campaign contributions. I'm certainly for judicial reform, but I think if you are going to have it, it's got to be across the board. You don't just address it by prohibiting a lawyer from making a contribution. It should be all people, in my opinion. Again, that's my opinion and not necessarily that of the state bar. I hope we can get through the legislative session without any major problems, and certainly with the education reform that seems to be of primary importance to Governor Folsom and to the Legislature, maybe they won't have time for some of these bills that have been characterized as anti-lawyer bills.


Q. What is the bar's position, if it has one, on the need for education reform?


A. The bar has its own "Alabama First" program, and had its program before the Governor adopted the name for his task force. They asked us if we minded their using that, and certainly we did not. I don't think that you would find any commissioner in the bar who doesn't think that education reform in Alabama is absolutely essential. Certainly, that has been the thrust of the bar's "Alabama First" campaign. Before Alabama can be first, we've got to have an educational system in this state that pro-

duces and guarantees a first-class education for all of our citizens. Only then will we educate our citizens to the extent to attract the topflight industry and get the jobs needed to support our economy.

Q. I understand that Reggie Hamner, the bar's long-time executive director, has announced his retirement. What is the bar doing to replace him?

A. I have a search committee that is in place and working. The committee is formulating the job description for the position of executive director and determining what the criteria are going to be for the persons applying for that position. I hope we are going to be ready to advertise for the position this month. I may be overly optimistic, but I certainly hope that we can have someone on board by March or April. Reggie is going to be with us through September 30. I can't tell you how fortunate we are to have an executive director like Reggie. Reggie is the dean of all executive directors in the country, and he has received an honor as the most outstanding executive director in the country. When you see other bar associations at work and see their staffs and their executive directors, then you know how well the Alabama State Bar runs. You realize how lucky we've been, and how fortunate we are to have the staff that we've got. In short, they are simply wonderful. ■

  
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# EXECUTIVE DIRECTOR'S REPORT

## 1993 — A LOOK BACK

*"I didn't realize the bar does all it does."*

**T**his is not an uncommon expression by new commissioners, new committee and task force members, and the host of new volunteers who "sign on" to become actively involved in the work of our bar each year. The annual Bar Leadership Conference is an eye-opener to many.

Both the president and I utilize our *Alabama Lawyer* space to highlight activities from time to time. In addition, special reports are included in the publication as new programs are initiated. I decided to try and review some of 1993's more significant events and activities.

Active memberships now total over the 10,000 mark. Just the maintenance of this many individual records is no small task. We celebrated the first full year of the central licensing process and the administration of the new pro hac vice rule this year. The accuracy and efficiency these two changes have brought to our recordkeeping process has enhanced our accountability to our courts and the public. The instances of suspected unauthorized practice are significantly easier to track. Our personal accountability can be validated.

Fiscal accountability is maintained by the Examiners of Public Accounts. We underwent a nine-week compliance audit for fiscal years 1989 through 1992. For a state agency as complex as the bar with the fiscal operation in excess of \$2,000,000 annually, only ten findings with recommendations for corrections were made. Two of these findings related to inventory control. Nothing was missing and a duplicate set of records in the state auditor's office confirmed total accountability. Five findings related to personnel records where the recordkeeping was the issue, but, again, there was no irregularity with the exception of an overpayment to a former employee in the amount of \$126. This money was recouped when the error was pointed out to the former employee. Two exceptions to records documentation were noted, but records, in fact, were in place to validate the payments which were also maintained in the Office of the State Comptroller. The final exception noted related to an increase in certain bar examination fees which appeared to be in excess of the \$25 limitation in any calendar year. Every penny of bar

money was properly accounted for and all rules and regulations were being followed.

The IOLTA program and the Volunteer Lawyers Program are exemplary. Over 3,600 lawyers are IOLTA participants in this worthwhile program, making our participation one of the highest participating percentages of a voluntary program in the United States. Likewise, over 1,500 Alabama lawyers are actively participating in the statewide Volunteer Lawyers Program where members of the bar are meeting the needs of the legally indigent in Alabama.

Our Task Force on Professional Discipline has finished its work. Our bar's efforts to meet with the McKay Commission recommendations have proceeded nicely. The role of small local grievance committees will be eliminated. The disciplinary process will become more open and lay persons will serve on disciplinary boards. These recommendations follow the national trend. They are designed to enhance the public's confidence in the profession's self-regulation. The board of commissioners' actions will place Alabama in the forefront of professional enhancement. Lest we forget, the Alabama State Bar gave the nation's lawyers their first Code of Ethics.

The first major effort by the Long-range Planning Committee is underway. This committee will seek to ascertain the needs, the goals and the opportunities for our bar through the year 2025. Every aspect of our 114-year-old association is on the table for review. Our public responsibilities will also be visited in this study.

The state bar's "Alabama First" effort came into its own in 1993. What began as an inspired activity following our 1992 annual meeting has become a vehicle to allow Alabama lawyers an opportunity to assist in meeting the future needs of the State of Alabama. The educational reform currently underway in Alabama has adopted our "Alabama First" name for denominating its campaign. The board has expressed its support for general education reform, but it did not endorse any specific proposal at the time it took this action.

The specialization report was received and the mechanism is in place to establish the Alabama State Bar Board of Legal Specialization upon receipt of the formal order of the Supreme Court of Alabama.



**Reginald T. Hamner**



A communications audit has been authorized to address the long-term needs of the bar to more effectively communicate with the public — and our own members. Lawyers are virtually unanimous in their concern for our image problem. *The Alabama Lawyer* cannot do the job alone. The misinformation and misunderstandings surrounding our bar's initiative following the Amtrak disaster pointed to our need for more effective communications. It did not seem to matter that our actions exactly followed a well-thought-out disaster preparedness plan approved in 1991. Our effort won praise in the national press and even at home after a rocky start.

At its last meeting in 1993, the board of commissioners instructed its Task Force on Judicial Selection to draft and submit to the board a set of voluntary guidelines to be provided to all candidates for judicial office in future elections.

This year-end report is only a highlighter. It is not intended to be inclusive. It does not address the tremendous work being done by our disciplinary commission, our disciplinary boards and the Office of the General Counsel. I am confident our bar continues to meet its statutory responsibilities — and I grateful for the many volunteer hours our members give in this cause of professionalism. ■

## Rule 4. (a), Alabama Rules of Appellate Procedure

**Correction:** *The amendment to Rule 4, Alabama Rules of Appellate Procedure, described below, notice of which was published in the November 1993 issue of **The Alabama Lawyer**, will become effective February 1, 1994 rather than December 1:*

Appellate practitioners should be advised that the Alabama Supreme Court has approved an appellate rule amendment which will alter the procedures established in *Ex parte Andrews*, 520 So.2d 507 (Ala. 1987); *Owens v. Coleman*, 520 So.2d 514 (Ala. 1987); and *Herring v. Shirah*, 542 So.2d 271 (Ala. 1989).

The court has amended Rule 4(a), Alabama Rules of Appellate Procedure, effective February 1, 1994, to provide that a notice of appeal filed after the announcement of a decision but before the entry of judgment will be treated as filed after the entry of judgment and on the day thereof. The rule was further amended to provide that a notice of appeal filed after the entry of a judgment but prior to the disposition of a post-judgment motion filed pursuant to Rules 50, 52, 55 and 59, Alabama Rules of Civil Procedure, will be held in abeyance until all post-judgment motions are ruled on. In such a case, the notice of appeal will become effective on the date of disposition of the last of such post-judgment motions. The appellant should notify the appellate court clerk upon discovery that the notice of appeal is being held in abeyance.

**Robert G. Esdale**  
Clerk, Supreme Court of Alabama



# YOUNG LAWYERS' SECTION

By Les Hayes III, president

## WINTER MEETING WITH YLD NATIONAL OFFICERS

**T**he Alabama Young Lawyers' Section has, in recent years, developed a strong and positive relationship with the National Young Lawyers Division officers and representatives. This has proven beneficial to us in that the Alabama YLS has become more involved in the ABA/YLD. In an effort to keep and foster our relationship with the national YLD, we have made plans to invite several YLD officers to our winter executive committee meeting held next month. In the past, we have been fortunate to have had ABA/YLD chairs and officers join us at this meeting. Their welcomed participation has been most helpful and allowed us to gain a better insight into the workings of the ABA/YLD and what it has to offer young lawyers. We expect at least three or four national officers to join us at our annual winter executive committee meeting and look forward to exchanging opinions and ideas with them.

### Young lawyers assist in statewide projects and programs

We currently are involved in a number of exciting projects which we hope will be beneficial and provide useful information to young people throughout Alabama. The Youth Judicial Program, a project headed by the YMCA in each community, involves high school students throughout the state participating in mock trials. Our Young Lawyers' Section has been very active in this program, providing judges, jurors and coaches for the high school teams. **Charlie Anderson** of Montgomery has worked tirelessly in this program for the past several years and part of the success of the program should be attributed to

him. **Candis McGowan** of Birmingham has coordinated the preparation of a booklet to be distributed to teenagers in schools throughout the state. The book-



Les Hayes III

let contains useful information concerning everyday laws applicable to teenagers and how the laws affect them. Candis' hard work and commitment to this project are greatly appreciated. **Andy Birchfield** of Montgomery has been in charge of the admissions ceremony for new bar admittees, the latest one in November 1993. Andy is commended for a job well done. **Fred Gray, Jr.** of Tuskegee is chairing a committee exploring the possibility of establishing a statewide minority high school pre-law program. We are excited about this idea and appreciate Fred's efforts.

There are several local young lawyer affiliates in cities throughout the state. The YLS Executive Committee is always willing to work with these groups and provide support for them in any way possible. If any of you are members of a

local group and need assistance or are simply interested in finding out what it takes to start a local affiliate, please let me know.

### 1994 Annual Sandestin Seminar

We are already in the planning stages for our Sandestin Seminar. The two-day seminar, which has become an annual event, will be at Sandestin Resort in Destin, Florida on **May 20-22, 1994**. For those of you who have attended this seminar, you are familiar with the excellent array of speakers that we always have and this year promises to be no different. In addition, a full range of activities has been planned for everyone, including a golf tournament, beach parties, cocktail parties and a band party. This is a great opportunity to obtain valuable CLE credits and socialize with friends at one of Florida's finest vacation resorts.

To meet the increasing demand for attendees which we have experienced in recent years, we are asking everyone to register in advance for the seminar. Just fill out the application on the next page and return it and your registration fee to **Buddy Smith** at the address shown on the application. Early registrants will receive a discount on the price of the seminar. If you register between now and February 25, the fee is only \$110. Afterwards, the fee will be \$140. Room reservations must be made directly with the Sandestin Resort. You can make your reservations by calling 1-800-342-7040 (Bayside Inn). The resort is holding a number of rooms on a first come, first served basis. Make your plans now to attend the Sandestin Seminar and encourage your fellow attorneys to join you. I look forward to seeing you there. ■



# ALABAMA YOUNG LAWYERS' SECTION SANDESTIN SEMINAR

May 20-22, 1994

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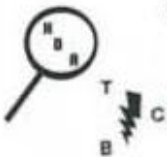
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\_\_\_\_\_ \$110.00 Seminar registration fee

\_\_\_\_\_ Check here if you wish to enter the golf tournament. (Green fees will be paid at Sandestin.)

Make check payable to: **"Alabama Young Lawyers' Section"**

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THE ALABAMA LAWYER

JANUARY 1994 / 11



# BAR BRIEFS

• Visitors to the capitol complex are invited to visit the new **Judicial Building**, seat of the judicial branch of Alabama government. Completed in 1993, this Greek Revival structure is home of the Supreme Court of Alabama, the courts of criminal and civil appeals, the state law library, and the Administrative Office of Courts. Tours of the public areas, including the historical and informational exhibits, are offered. High-

lights include the supreme court courtroom, the state law library and the museum areas. Here is a unique opportunity to learn about the history and development of the legal profession and the judicial branch of government in Alabama.

Tours begin on the hour between 9 a.m. and 4 p.m., Monday through Friday.

For more information or to book a tour contact:

**Bob Warren**  
**Supreme Court and**  
**State Law Library**  
**Judicial Building**  
**300 Dexter Avenue**  
**Montgomery, Alabama 36104-3741**  
**(205) 242-4347**

• Volunteers are also needed to conduct tours of the new judicial building and open the doors of legal and judicial history to visitors to the capitol complex. These volunteers are needed Monday through Friday, 8:30 – 4:30, and Saturday, 9 – 4. For information on training, contact Bob Warren at 242-4347.

## SUPREME COURT APPOINTEE HONORED

**S**amford University's Cumberland School of Law and members of the Cumberland Black Law Students Association honored **Alabama Supreme Court appointee Ralph D. Cook** at a reception recently. Pictured with the honoree are, from left, BLSA President Lee Loder, BLSA officer Rita Treadwell, Alabama Supreme Court Justice Hugh Maddox, reception coordinator Rick Ransom, Justice Cook, and Cumberland Dean Parham H. Williams.

Cook has served as a circuit judge in Bessemer since 1981.



**Davis**

• **Joseph R. Davis**, a 1967 admittee to the Alabama State Bar and assistant director of the Federal Bureau of Investigation's Legal Counsel Division, was recently awarded the

Presidential Rank of Distinguished Executive. Davis has served as legal counsel for the FBI for six years.

The director of the FBI, with the assistance of the deputy director, Rank Awards Selection Committee, Special Agent in Charge Advisory Committee, associate deputy directors, assistant directors, and inspectors in charge, recommends nominees through the Attorney General and to the President.

The purpose of the Rank Awards is to recognize exceptional sustained performance over a period of at least three years by a career senior executive service member. These executives are nominated for one of two Presidential ranks: Distinguished Executive or Meritorious Executive.

Annually, the President holds a ceremony to honor each of these awardees. Distinguished Executives receive a payment of \$20,000, a handcrafted gold lapel pin and a Presidential certificate. Meritorious Executives receive a payment of \$10,000, a handcrafted silver lapel pin and



a Presidential certificate. A career executive may be awarded the same rank only once in a five-year period.

Davis is a 1967 graduate of the University of Alabama School of Law.

• Three free sample issues of *Southeastern Tax Alert* are available to members of the Alabama State Bar who have an interest in Alabama, Florida and Georgia state taxes.

Published monthly by State Taxation Institute, this 12-page newsletter focuses on "quick-read" news briefs covering income taxes, sales taxes and property taxes in all three states.

To receive three free issues, write State Taxation Institute, P.O. Box 81143, Atlanta, Georgia 30366 or call (800) 846-2202. Mention "3 free SETA issues" in your request.

•The **Young Lawyers' Section of the Birmingham Bar Association** recently sponsored a fundraiser for the benefit of the Remedial Reading Program of the Central Alabama Counsel of Camp Fire Boys and Girls. Almost \$3,000 was raised from ticket sales and donations made by many Birmingham law firms and court reporting firms. The Soul Practitioners donated their time and talents to provide the entertainment for this special occasion.

Camp Fire Girls was founded in 1910 as the first national non-sectarian organization open to all girls in the United States. In 1975, the agency became coed and more program-oriented to the family unit. Because of the great need for services to children who could not be served in the more traditional ways, the agency developed what it calls "response programs".

The Remedial Reading Program is designed to teach reading skills to children in grades one through five who are capable of learning to read but are falling behind because they lack this most basic skill for success. Camp Fire's experience has been that once children start to "catch on" and start feeling better about themselves, their reading skills increase at an accelerated rate.

•Alabama Supreme Court **Justice Janie Shores** is one of a prestigious group of appellate judges who will spend three intensive days training lawyers from across the nation in a program to improve appellate advocacy skills. The 9th



**Shores**

**Appellate Practice Institute** will held May 4-8, 1994 in Aspen, Colorado.

The judges receive no compensation for their efforts, but participate because they believe the justice

system is the ultimate beneficiary by having highly trained advocates representing litigants. At the 9th Institute, judges will meet privately with lawyers to critique a brief from the standpoint of issue identification, case analysis, writing clarity, persuasiveness, and style. Each lawyer who attends the Institute presents an oral argument before a

three-judge panel. Immediately following the argument, the judges critique the presentation. The emphasis is not on winning but on improving.

Thirty appellate judges from state and federal courts, including Solicitor General Drew Days, will be in Aspen. Besides the personal brief critiquing and oral argument presentations, panel discussions are presented on brief writing, oral argument and persuasive writing.

Registration is restricted to keep a student/faculty ratio of four to one. The program is supported solely from tuition revenue. For more information about the Institute or to register, write or call Cari Minter at the American Bar Association, 750 N. Lake Shore Drive, Chicago, Illinois 60611, (312) 988-5697. ■

## Notice Judicial Award Of Merit Nominations Due

The Board of Commissioners of the Alabama State Bar will receive nominations for the state bar's Judicial Award of Merit through **May 15**. Nominations should be prepared and mailed to **Reginald T. Hamner, Secretary, Board of Bar Commissioners, Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101**.

The Judicial Award of Merit was established in 1987, and the first recipients were Senior U.S. District Judge Seybourn H. Lynne and retired Circuit Judge James O. Haley.

The award is not necessarily an annual award. It may be presented to a judge whether state or federal court, trial or appellate, who is determined to have contributed significantly to the administration of justice in Alabama. The recipient is presented with a crystal gavel bearing the state bar seal and the year of presentation.

Nominations are considered by a three-member committee appointed by the president of the state bar which makes a recommendation to the board of commissioners with respect to a nominee or whether the award should be presented in any given year.

Nominations should include a detailed biographical profile of the nominee and a narrative outlining the significant contribution(s) the nominee has made to the administration of justice. Nominations may be supported with letters of endorsement.



# ABOUT MEMBERS, AMONG FIRMS

## ABOUT MEMBERS

**James L. O'Kelly**, formerly of Arendall & O'Kelly, announces the relocation of his office to 300 Park Place Tower, 2001 Park Place, North, Birmingham, Alabama 35203. Phone (205) 252-9551.

**Michael Parman** announces the relocation of his office to 3704 N. State Street, #4, Jackson, Mississippi 39216. He is a 1986 admittee to the Alabama State Bar.

**Scott Hawkins** announces the relocation of his office to 4000 Cumberland Parkway, Suite 300A, Atlanta, Georgia 30339. Phone (404) 438-6675. He is a 1977 admittee to the Alabama State Bar.

**Martha T. Roper** announces the relocation of her office to 801 Patton Chapel Way, Birmingham, Alabama 35226. Phone (205) 979-5060.

**Lewis W. Page, Jr.** announces the opening of his office at 1540 AmSouth/Harbert Plaza, 1901 Sixth Avenue, North, Birmingham, Alabama 35203. Phone (205) 324-1800.

**James G. Curenton, Jr.** announces a change of address to **Smith & Curenton**, P.O. Box 416, Fairhope, Alabama 36533. Phone (205) 928-1355.

**Silver B. Eberly** announces a change of address to 2510 Belknap Beach Road, Prospect, Kentucky 40059. Phone (502) 228-6658.

**Brian Dowling**, former city attorney for Dothan, Alabama, announces the relocation of his office to 355-3 N. Oates Street, Dothan 36303. Phone (205) 794-3733.

**J. Russell Pigott** announces the opening of his office at 105 W. Berry Avenue, Foley, Alabama 36535. Phone (205) 943-3535.

**James M. Hivner** announces the opening of his office at 217 N. Seminary Street, Suite 105, Florence, Alabama 35630. Phone (205) 766-3400.

**George B. Foss, Jr.**, former assistant city attorney and planning director for the City of Birmingham and later a member of the Fowler, White firm in Tampa, St. Petersburg and Miami, Florida, announces he has attained "inmigrado" status. He announces his office at Francisco Villa 319, Colonia Rancho Cortes, Cuernavaca 62130, MO, Mexico. Phone 52 (73) 17-0594. His contact address is Courthouse Tower 550, 44 W. Flagler Street, Miami, Florida 33130. Phone (305) 358-7178.

**Mark J. Williams** has been named executive director of the **Alabama State Employees Association**. Offices are located at 110 N. Jackson Street, Montgomery, Alabama 36104. Phone (205) 834-6965.

**Glenn A. Shedd**, formerly of Charles A. McGee & Associates, announces the opening of his office at 300 Alabama Avenue, South, P.O. Box 1105, Fort Payne, Alabama 35967. Phone (205) 845-6300.

**Rufus R. Smith, Jr.** announces that **William C. Maddox** has become associated with the firm. The address is 103 S. St. Andrews Street, Dothan, Alabama 36302. The mailing address is P.O. Drawer 6629, Dothan 36302-6629. Phone (205) 671-7959.

**Melissa A. Posey** announces the relocation of her office to 605 Bel Air Boulevard, Suite 25, Mobile, Alabama 36606. Phone (205) 476-0210.

**Richard M. Kemmer, Jr.** announces the relocation of his office to 1619 Broad Street, Phenix City, Alabama 36867. The mailing address is P.O. Box 1643, Phenix City 36868-1643. Phone (205) 480-4070.

**David R. Arendall** announces the relocation of his office to 1900 SouthTrust Tower, 420 N. 20th Street, Birmingham, Alabama 35203. Phone (205) 252-1550.

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## AMONG FIRMS

**Emond & Vines** announces that **Benjamin E. Baker, Jr.** has become an associate of the firm. Offices are located at 2200 Southtrust Tower, 420 N. 20th Street, P.O. Box 10008, Birmingham, Alabama 35202-0008. Phone (205) 324-4000.

**Barker & Janecky** announces the firm name has changed to **Barker, Janecky & Newell** and **Kevin F. Masterson** has become an associate with the firm. Offices are located in Mobile and Birmingham, Alabama and Pensacola, Florida.

**Lightfoot, Franklin, White & Lucas** announces that **Kim A. Craddock, Wynn M. Shuford** and **John P. Dulin, Jr.** have joined the firm as associates. Offices are located at 300 Financial Center, 505 20th Street, North, Birmingham, Alabama 35203-2706. Phone (205) 581-0700.

**Wolfe, Jones & Boswell** announces the relocation of their offices to 905 Bob Wallace Avenue, Suite 100, Huntsville, Alabama 35801. Phone (205) 534-2205.

**Adams & Reese** announces that **J. Forrest Hinton** has become a partner in the New Orleans office. The firm also announces **Ralph H. Wall** and **Gerald M. Spedale** have become associates in the New Orleans office, and **Terry A. Moore** is an associate in the Mobile office. Offices are located in New Orleans and Baton Rouge, Louisiana; Mobile; Houston, Texas; and Washington, D.C.

**Jerome Tucker, III** announces that **Clay R. Carr** has become an associate of the firm. Offices are located at Suite 3, 701 37th Street, South, Birmingham, Alabama 35222. Phone (205) 252-1166.

**Byrd & Spencer** announces that **Bryan S. Blackwell** has become an associate. The mailing address is P.O. Box 536, Dothan, Alabama 36302. Phone (205) 794-0759.

**Johnson & Cory** announces that **D. Bruce Petway** and **Annesley H. DeGaris**, former law clerk to United States District Judge E. B. Haltom, Jr. and former staff attorney, United States Court of Appeals for the Eleventh Circuit, have joined the firm. Offices are located at 300 N. 21st Street, Suite 900, Birmingham, Alabama 35203. Phone (205) 328-1414.

**Harp & Miglionico** announces the relocation of their offices. The new address is 2017 Morris Avenue, Birmingham, Alabama 35203. Phone (205) 322-7333.

**Wilson, Pumroy & Turner** announces that **Lori A. Brown** has joined the firm as an associate. Offices are located at 1431 Leighton Avenue, Anniston, Alabama 36201. The mailing address is P.O. Box 2333, Anniston 36202. Phone (205) 236-4222.

**Vreeland G. Johnson** announces that **Michael L. Jones, Jr.** has become associated with the firm. Offices are located at 5 E. Court Square, Andalusia, Alabama 36420. The mailing address is P.O. Drawer 7, Andalusia 36420. Phone (205) 222-1158.

**Harris, Caddell & Shanks** announces that **Jeffrey S. Brown** has become associated with the firm. Offices are located at 214 Johnston Street, S.E., Decatur, Alabama 35601. The mailing address is P.O. Box 2688, Decatur 35602. Phone (205) 340-8000.

**Hubbard H. Harvey, Sr.** announces that his son, **Hubbard H. Harvey, Jr.**, has joined his firm as a partner. The new name will be **Harvey & Harvey**. Offices are located at 401 S. Cedar Avenue, P.O. Drawer Y, Demopolis, Alabama 36732-0710. Phone (205) 289-3325.

**Bond & Botes** announces the opening of their Montgomery office, and that **J. Suzanne Carlson** has become a shareholder of the firm, and **Melissa Wynn Wetzel** and **H. Marie Thornton** have become associated with the firm. Offices are located at Colonial Financial Center, One Commerce Street, Suite 101, Montgomery, Alabama 36104. Phone (205) 264-3363.

**Michael E. Auffenorde** and **Daco S. Auffenorde** announce the formation of **Auffenorde & Auffenorde**. Offices are located at the Civic Plaza Building, 307 Clinton Avenue, West, Suite 100, Huntsville, Alabama 35801. Phone (205) 533-5383.

**The University of Alabama at Birmingham, Office of Risk Management & Insurance** announces that **Charles H. Self, Jr.** has been appointed director, effective October 1, 1993. His office is located at 301 S. 20th Street, Suite 800,

Birmingham, Alabama 35233. Phone (205) 934-5382.

**J. Jawan Smith**, formerly of Burr & Forman, and **David E. McGehee**, formerly of Price, Pearson & McGehee, announce the formation of **Smith & McGehee**. Offices are located at 724 Madison Street, Huntsville, Alabama 35801. Phone (205) 534-0400.

**Gorham & Waldrep** announces that **Mary H. Thompson, Nancy E. Khalaf** and **Michelle M. Wales** have become associates with the firm. Offices are located 2101 6th Avenue, North, Suite 700, Birmingham, Alabama 35203. Phone (205) 254-3216.

**The University of Alabama Health Services Foundation** announces a change of address for **Samuel W. Jackson, Jr.**, executive vice-president, general counsel and chief financial officer,



Between October 1 and November 30, 1993, the following attorneys made a pledge to the Alabama State Bar Building Fund.

**Mac Bell Greaves**

**John Ralph Gunn**

**William Michael Hanlin**

Their names will be included on a wall in the portion of the building listing all contributors.

Their pledges are acknowledged with grateful appreciation.

For a list of those making pledges prior to October 1, 1993 please see previous issues of *The Alabama Lawyer*.



and **Patricia J. Pritchett**, associate general counsel, Office of Administration. Their new address is 300 Liberty National Building, 301 S. 20th Street, Birmingham, Alabama 35233-2023.

**J.E. Whittington** and **Scott Douglas Waldrup** announce the formation of **Whittington & Waldrup**. Offices are located at The Williamson Commerce Building, 801 Noble Street, Anniston, Alabama 36201. Phone (205) 238-1831.

**Balch & Bingham** announces new associates in the Birmingham office. They are **G. Scott Morris**, **Teresa G. Minor**, **Lorrie L. Lizak** and **Leigh Anne Hodge**. The address is 1710 Sixth Avenue, North, Birmingham, Alabama 35203. The mailing address is P.O. Box 306, Birmingham 35201. Phone (205) 251-8100.

**Pate DeBardeleben** and **Daniel G. Hamm** announce the formation of **DeBardeleben & Hamm**. Offices are located at 2835 Zelda Road, Montgomery, Alabama 36106. Phone (205) 213-0609.

**Lloyd, Schreiber & Gray** announces that **Ralph D. Gaines, III** has joined the firm as a partner and **Laura C. Nettles**, **Thomas J. Skinner** and **Catherine L. Hogewood** are new associates. Offices are located at Two Perimeter Park, South, Suite 100, Birmingham, Alabama 35243. Phone (205) 967-8822.

**Rives & Peterson** announces **Joseph H. Driver** and **Donald B. Kirkpatrick, II** have become associates with the firm. Offices are located at 1700 Financial Center, 505 N. 20th Street, Birmingham, Alabama 35203. Phone (205) 328-8141.

**Dominick, Fletcher, Yeilding, Wood & Lloyd** announces that **John W. Dodson** has become associated with the firm. Offices are located at 2121 Highland Avenue, Birmingham, Alabama 35205. Phone (205) 939-0033.

**Cabaniss, Johnston, Gardner, Dumas & O'Neal** announces that **Douglas B. Kauffman** and **Gary W. Filligim** have become associates of the firm. Offices are located at Park Place Tower, 2001 Park Place, North, Suite 700, Birmingham, Alabama 35203. Phone (205) 252-8800.

**Smith, Spires & Peddy** announces **D. Gregory Dunagan** and **Alan B. Laseter** have become associates with the firm. Offices are located at 650 Financial Center, Birmingham, Alabama 35203. Phone (205) 251-5885. ■



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# BUILDING ALABAMA'S COURTHOUSES

## CHILTON COUNTY COURTHOUSE

By SAMUEL A. RUMORE, JR.

*The following continues a history of Alabama's county courthouses—their origins and some of the people who contributed to their growth. The Alabama Lawyer plans to run one county's story in each issue of the magazine. If you have any photographs of early or present courthouses, please forward them to: Samuel A. Rumore, Jr., Miglionico & Rumore, 1230 Brown Marx Tower, Birmingham, Alabama 35203*

### CHILTON COUNTY

**C**hilton County is the geographic center of Alabama and likes to call itself "The Heart of the Heart of Dixie".

In the early days of the state, the area was also the center of Indian inhabitation. The county is famous for its peaches and proudly boasts the name "Peach Capital of Alabama." This reference to the peach can also be traced to Indian days. As early as 1734, a French map included an Indian village named Pocanatchie, which should have been spelled "Pokana Tallahassi", on the west side of the Coosa River in the area of the present county. The name means "Old Peachtree Town."

This county was the last of 13 counties established by the Alabama Legislature during the Reconstruction years of 1866 to 1868. It was created on December 30, 1868. To form the county the Legislature took territory from Shelby, Bibb, Perry and Autauga counties. The new county was originally named Baker.

The people of Baker County were prin-



Chilton County Courthouse

cipally independent-minded small farmers. They had lobbied for the creation of a new county because of population growth and to reduce the distances they had to travel to conduct official business. The Legislature obliged and named the county for one of its own members, Alfred Baker, a resident of the Autauga section and a prominent citizen.

Alfred Baker was born in South Carolina in 1828. When he was six weeks old, his family moved to Autauga County, Alabama. In 1867 he bought land where the city of Clanton is now located and became a local leader. Baker served as a justice of the peace, state legislator and postmaster. He was instrumental in hav-

ing the town of Clanton surveyed and laid off into lots in 1870. He was the first mayor of Clanton. Besides his political activity, Baker kept a store, ran a local hotel, and operated a farm. He died February 9, 1896, and is buried in Clanton Cemetery.

The Act establishing Baker County named five commissioners to conduct an election and select the county seat site. They were also authorized to build a county courthouse and jail. The Legislature authorized a tax to pay for any construction.

The citizens selected a location approximately two and a half miles northeast of the present courthouse at a



place named Grantville. The first circuit court was held in the spring of 1869 at the old log Walnut Creek Church building. Judge J.Q. Smith of Montgomery presided. For the fall term of court, a log courthouse was built by A.J. Cooper. It was a one-room structure about 16 feet by 20 feet. It was built within 50 yards of the present-day crossing of Interstate 65 over Walnut Creek. This first courthouse burned in 1870.

James Monroe Parrish was the first county treasurer. When the courthouse burned, "Mon" Parrish had the county money with him at his home and so the treasury was not lost. The county commission quickly rented a house from Henry J. Maddox at Dake's Old Mill, three miles northeast of present-day Clanton, for use as a court. The county paid \$34 per quarter as rent.

Instead of rebuilding the courthouse at Grantville, a heated competition ensued among four communities to become the county seat town. On the first Saturday in April 1871, the citizens of Baker County chose their favorite from among Clanton, Benson, Verbena and Lomax. Clanton and Benson were the two highest vote recipients. A runoff election took place on the last Saturday in April 1871. Clanton won and became the county seat town. It retains that distinction today.

Prior to Clanton's creation, its location was the private property of Alfred Baker. By 1870, Baker laid out the town with the assistance of a government surveyor, George W. Floyd. Before the development of the area and the coming of the railroad in 1870, this community was called Goose Pond. Baker changed the name in late 1870 to honor Confederate General James Holt Clanton.

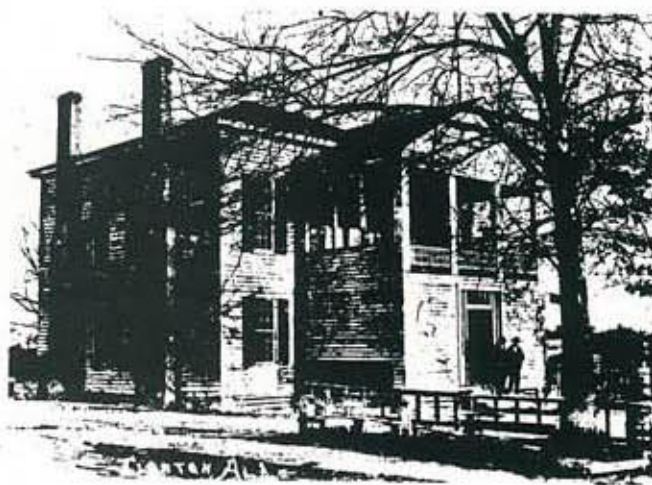
General Clanton was born in Georgia in 1827. His family moved to Alabama when he was a child in 1835. After serving in the Mexican War, he read law in a Tuskegee law office and coincidentally attended Judge Chilton's law school there. By 1850 he was admitted to practice law in Alabama and he set up his

office in Montgomery. In 1861, he continued his military career as colonel of the First Alabama Cavalry. By war's end, he had attained the rank of brigadier general.

After the war, General Clanton resumed his law practice and became a prominent attorney. On September 26, 1871, he represented the State of Alaba-



*Chilton County's first courthouse located in Grantville c. 1869*



*Frame courthouse in Clanton was built in 1872*

ma in a federal court suit involving the Alabama and Chattanooga Railroad in Knoxville, Tennessee. In the evening following the court proceedings, General Clanton engaged in a heated argument with David M. Nelson about the case, during which Nelson shot and killed Clanton on a street in Knoxville. His remains were returned to Alabama where his body lay in state at the capitol.

He was buried in Montgomery.

A common lesson in Alabama history is that what the Legislature giveth, the Legislature can also taketh away. As stated before, the Legislature honored their peer, Alfred Baker, by naming a newly created county after him in 1868. For some reason, unknown now, Baker subsequently fell out of favor. The representative of Baker County in the state Legislature at the time was an influential lawyer named William A. Collier. In 1874 Collier was instrumental in having Baker County renamed Chilton County in honor of William P. Chilton.

Chilton was a Kentuckian who could trace his ancestry to Virginia as far back as 1650. He was born in 1810 and came to Alabama as a young man in the 1830s. He settled in Talladega and soon opened a law practice there. He was elected to the Alabama Legislature in 1839 but unsuccessfully ran for Congress in 1843. In 1846, he moved to Tuskegee for one year and conducted the law school that James Holt Clanton attended.

In 1847 the Legislature elected Chilton a justice of the Supreme Court of Alabama. He served as an associate member of the court from 1847 to 1852. He became the eighth chief justice of Alabama on December 6, 1852 and served in that capacity for a little more than three years until his retirement in 1856.

After he left the bench, Chilton continued to serve his state. In 1859 he became a state senator from Macon County. In 1860 he moved to Montgomery and became the law partner of William Lowndes Yancey. Dur-

ing the War Between the States, he served in the provisional Congress of the Confederacy and two regular Congresses. Following the war he continued to practice law in Montgomery with Jack Thorington. He died January 20, 1871. On December 17, 1874, the Legislature commemorated his life by renaming Baker County in his honor.

The first court held in Clanton after it



was chosen county seat took place in an old house on the Adams lot in 1871. Alfred Baker then donated land to the county for the construction of a new building. The first courthouse in Clanton was a two-story frame structure erected at Second Avenue and Sixth Street. An early photograph depicts the courthouse with two chimneys and a covered porch on the second floor. Alex G. Dake and his nephew, John Grant of Montgomery, built this courthouse in 1872.

In 1894 the courthouse was sold and physically removed from the property. Dr. Sam Johnson bought the building and legend has it that a mule named Rhodie was used to draw the block and tackle that rolled the building to its new location. Rhodie lived 37 years and was fondly known to the citizens of Clanton as the mule that moved the courthouse. Rhodie died in 1927.

A new two-story brick and stone courthouse with a tall steeple was constructed on the northeast corner of Second Avenue and Sixth Street in 1896. The interior of this building burned on August 30, 1918. Most records of the county were saved because they were locked in fire-proof vaults. A new building was completed in 1919 which included an annex on the rear of the structure. The cost was approximately \$60,000. The building had a neoclassical facade with four Doric columns and a triangular pediment above the front entranceway. During the rebuilding of the courthouse, courts were held at the Hayes Building.

On September 6, 1960 construction began on a much-needed new courthouse and jail. The new building was designed by Charles H. McCauley and Associates of Birmingham, and Bear

Brothers, Inc. served as contractor. The total cost exceeded \$700,000. The building, when constructed, consisted of three stories, 53 offices and a total of 139 rooms. Dedication ceremonies for the latest Chilton County Courthouse

took place Sunday, February 18, 1962.■

*The author acknowledges the assistance of Clanton attorney John Hollis Jackson, Jr. in obtaining early Chilton County Courthouse photographs.*



*Chilton County Courthouse prior to its demolition after the construction of the present courthouse*

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**Samuel A. Rumore, Jr.**

Samuel A. Rumore, Jr. is a graduate of the University of Notre Dame and the University of Alabama School of Law. He served as founding chairperson of the Alabama State Bar's Family Law Section and is in practice in

Birmingham with the firm of Miglionico & Rumore. Rumore serves as the bar commissioner for the 10th Circuit, place number four.



# OPINIONS OF THE GENERAL COUNSEL

By ROBERT W. NORRIS, general counsel



## Question:

A Mobile attorney has requested a formal opinion regarding an association with Legal Services Funding, Inc. of Kansas City, Kansas. He has provided documents for review which are attached to this opinion. Basically, Legal Services Funding, Inc. will finance attorney's fees for persons who cannot otherwise afford to pay. A participating lawyer makes this option available to his clients, much in the same way charge/credit cards are used. The client opens a charge account with Legal Services Funding, Inc. solely for payment of legal fees. It is called "LAWCARD". "Vouchers" for payments are sent directly from the lawyer to Legal Services Funding, Inc. The lawyer may pay an initial \$500 set-up fee which is taken out of the first voucher payment.

There are three levels of services for clients and that apparently is based on their relative credit-worthiness. There are A, B, and C eligible services. A client's credit-worthiness determines whether a particular legal service sought can be

financed as A, B, or C eligible. Legal Services Funding, Inc. encourages lawyers to contact clients who are behind in their legal bills and offer them information about financing their outstanding balances. Is utilization of "LAWCARD" by Alabama attorneys in violation of the Rules of Professional Conduct?



## Answer:

Alabama lawyers may offer "LAWCARD" to their clients as an alternative means of paying legal fees incurred in the past or to be incurred in the future.



## Discussion:

Disciplinary Rule 2-107(B) under the old Code of Professional Responsibility provided for payment of attorney's fees via an approved credit card plan. There is no counterpart in the Rules of Professional Conduct.

In RO-84-112 and Ethics Opinion 298, the Disciplinary Commission approved the payment and receipt of legal fees via an approved credit card plan. No higher credit fee can be charged because of the lawyer's participation.

ABA Committee on Professional Ethics Formal Opinion 320 (1968) held that it was not unethical for lawyers to arrange with lending institutions for credit-worthy clients to finance legal fees.

Since the lawyer is not providing any financial assistance *per se*, there is no problem with Rule 1.8(e) which states:

"Rule 1.8 Conflict of Interest:

### Prohibited Transactions

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) A lawyer may advance or guarantee emergency financial assistance to the client, the repayment of which may not be contingent on the outcome of the matter, provided that no promise or assurance of financial assistance was made to the client by the lawyer, or on the lawyer's behalf, prior to the employment of the lawyer."

As long as the lawyer is simply offering information on "LAWCARD" as an option to his clients and has no affirmative role in the credit application process, no rules are seemingly violated. The lawyer cannot charge higher fees to those clients who avail themselves of this financing nor can the lawyer make any money from the financing itself. They must not represent Legal Services Funding, Inc. in any debt actions against the client arising out of any legal fee financing. ■

(RO-93-19)

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**Kyle W. Brown (1993) and Judge John M. Patterson (1949)**  
(admittee & cousin)

## Fall 1993 Bar Exam Statistics of Interest

Number sitting for exam .....	495
Number certified to Supreme Court of Alabama .....	355
Certification rate .....	72 percent
<b>Certification percentages:</b>	
University of Alabama .....	87 percent
Cumberland School of Law .....	83 percent
Birmingham School of Law .....	41 percent
Jones Law Institute .....	31 percent
Miles College of Law .....	9 percent



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# THE TORT OF OUTRAGE IN ALABAMA:

## EMERGING TRENDS IN SEXUAL HARASSMENT

BY: CHRISTINE WHITESELL LEWIS, JANE R. GOODSON  
AND RENEE DANIEL CULVERHOUSE

Nationally, a trend toward additional compensation for sexual harassment victims has emerged.<sup>1</sup> Victims' claims are not being barred by state workers' compensation acts because courts are recognizing the intentional nature of harassment,<sup>2</sup> are refusing to recognize it as a normal risk of employment,<sup>3</sup> or are distinguishing sexual harassment from the type of physical injury workers' compensation was designed to cover, recognizing that sexual harassment creates an injury to an individual's psyche and dignity.<sup>4</sup> Additionally, victims are suing and recovering for the tort of outrage under a relaxed standard due to public policy favoring the compensation of such victims.<sup>5</sup> This article addresses the development of the tort of outrage in Alabama and compares Alabama law to national trends.

Until the tort of intentional infliction of emotional distress or outrage was recognized in Alabama in *American Road Service Co. v. Inmon*,<sup>6</sup> it was necessary for individuals seeking redress for mental stress associated with sexual harassment to prove that mental injuries were accompanied by physical injuries. In *Inmon*, the Alabama Supreme Court generated a new avenue for sexual harassment cases in its decision, stating that "one who by extreme and outra-

geous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress and for bodily harm resulting from the distress."<sup>7</sup> While the court required that "the emotional distress thereunder must be so severe that no reasonable person could be expected to endure it," this 1981 decision nevertheless opened the door for potential recovery for mental suffering in Alabama.<sup>8</sup>

Since the establishment of this tort, victims of sexual harassment have had a means of recovery for mental anguish. As this tort has continued to evolve, the view of what was necessary to establish a successful cause of action against the employer also has shifted. In fact, Alabama appears to be following many of the other state courts in imputing liability for sexual harassment under the tort of outrage.

Guidelines for employers' liability for the intentional torts of employees in the area of sexual harassment were first established in 1985 in *Joyner v. AAA Cooper Transportation*.<sup>9</sup> In this case, the harassing coemployee was accused of attempting to force the plaintiffs to engage in homosexual acts. In response to the complaints, the general manager of the company conducted an investigation and informed the accused employee

that subsequent complaints would result in his dismissal. According to the court, the company could not be held liable unless their agent acted in the line and scope of his employment, furthered the business of the company, or the company "participated in, authorized, or ratified the wrongful acts."<sup>10</sup> The court found that the employer's reaction to the complaint prevented further harassing activities, and thus could not be construed as ratification of the employee's behavior.

In a 1986 case based on sexual harassment, *McIsaac v. WZEW-FM Corp.*,<sup>11</sup> the Supreme Court of Alabama strictly enforced its definition of the tort of outrage. In this case, the owner of a radio station repeatedly asked a female employee to have an affair with him, attempted to arrange out-of-town trips for both of them, and frequently leered at her and touched her. The court found no evidence of severe emotional distress, holding instead that the defendant's conduct was not extreme or outrageous enough for recovery. According to the court, the harasser's behavior merely consisted of "insults, indignities, threats (or) annoyances," not subject to liability in tort.<sup>12</sup>

In a later case, *Busby v. Truswal Systems Corp.*,<sup>13</sup> female employees sued their employer for outrageous conduct,



seeking damages for psychological injuries caused by a supervisor's repeated sexual harassment. The facts showed that the supervisor had engaged in lewd behavior and comments, including an invitation to swim in his pool in the nude with him, comments about his sexual desires involving the plaintiffs, comments about the plaintiffs' bodies, and physical contact (touching) with the plaintiffs.<sup>14</sup> Citing the *Inmon* case, the court held that the plaintiffs had presented evidence from which a jury could reasonably determine that the supervisor's conduct was "so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized society."<sup>15</sup> However, because the supervisor died prior to resolution of the case, the plaintiffs instead pursued the tort of outrage against the employer.

Several key issues for sexual harassment cases arose from the court's decision in this case. First, the company attempted to use the exclusivity provision of the Alabama Workmen's Compensation Act to bar action using the tort of outrage. The court refused to

accept this argument, determining that such a bar would leave plaintiffs without a remedy for psychological injuries resulting from harassment, verbal abuse, or invasion of privacy. According to the court, "exception is thus made to the exclusivity provision of the Alabama Workmen's Compensation Act for purely psychological injuries inflicted during the course of employment; such an action must lie in tort."<sup>16</sup> As with many other states, the tort of outrage was established in Alabama as a clear means for recovery for possible psychological outcomes of sexual harassment.

Second, the court clarified its interpretation of employer liability under the tort of outrage. Because the tort of outrage provides a remedy only in situations of extreme and outrageous conduct, it "should not be the basis for vicarious or respondeat superior liability except in the most compelling circumstances."<sup>17</sup> The court refused to hold the employer liable for the supervisor's extreme conduct. According to the court:

Because [the tortfeasor] clearly was not acting in furtherance of Truswal's business by engaging in the alleged conduct, because [the tortfeasor's supervisor] was not initially told the details or the full extent of that conduct, and because the plaintiffs did not allow [the tortfeasor's supervisor] time to correct the situation after detailing their complaints, Truswal cannot be held liable as having ratified [the tortfeasor's] alleged outrageous conduct.<sup>18</sup>

In his strongly-worded dissent, Justice Kennedy condemned the court's view of the supervisor's conduct, insisting that "sexual harassment in the workplace should be viewed . . . as a flagrant violation of public policy. The threat of economic coercion in sexual harassment as well as the abuse of power by supervisory personnel, should be sufficient to sustain a cause of action for the tort of outrage."<sup>19</sup> Referring to Ohio cases because its standard for the tort of outrage is similar to Alabama's,<sup>20</sup> Justice Kennedy deplored the summary judgment ruling on the outrage claim and said: "It would be unconscionable if we were to assume that [the supervisor's] alleged actions should be considered as nothing more than a hazard of the

plaintiffs' employment merely because they were female."<sup>21</sup>

The most recent decision of the Alabama Supreme Court reflects a stronger stance against sexual harassment, and demonstrates a change in the position of the Court in several areas. In *Potts v. BE & K Construction Company*, the plaintiff alleged sexual harassment, assault and battery, invasion of privacy, and outrage.<sup>22</sup> She alleged that a coemployee, Sanders, made lewd comments, posed invasive questions about her sex life, made sexual advances toward her, and repeatedly touched her in a sexual and offensive manner. The employer, BE & K, alleged that the harassing employee was not its agent and was not acting within the scope of his duties. In addition, the company pointed out that it had taken immediate action when notified of the complaint. The Alabama Circuit Court, Judge Phelps, granted summary judgment in favor of the employer.

On appeal, the court assumed, for purposes of the appeal, that the employee's conduct was sufficient to establish the torts alleged. The only issue on appeal was whether the plaintiff submitted substantial evidence that BE & K ratified the conduct of its employee, Sanders. The company first identified the problem when the office manager, Bynum, approached Potts and asked her about Sanders' conduct, which had been reported to him by another supervisor. She confirmed that the report was accurate and specified additional incidents of harassment. In response to this discussion, Bynum met with Sanders, who denied that he had harassed Potts. Bynum testified that he warned Sanders to stop any harassing behavior. For two weeks, Sanders and Potts continued to work unsupervised in the tool room, until Potts again complained of sexual harassment from Sanders. After this complaint, Potts was transferred to another position, and Sanders was suspended without pay for two weeks.

The court referred to the standard it set for intentional torts in *Joyner*. The court focused on the issue of ratification and the conditions under which ratification by the employer would be found. The court explicitly established what must be proven to show an employer "ratified" or "tolerated" one employee's

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sexual harassment of another.

[I]n addition to proving the underlying tortious conduct of an offending employee, a complaining employee must show that the employer (1) had actual knowledge of the tortious conduct of the offending employee and that the tortious conduct was directed at and visited upon the complaining employee; (2) that based upon this knowledge, the employer knew, or should have known, that such conduct constituted sexual harassment and/or a continuing tort; and (3) that the employer failed to take 'adequate' steps to remedy the situation.<sup>21</sup>

The court relied on *Busby* in determining that unless the employer takes effective action to stop the harassing conduct, the "steps taken by the employer are not 'adequate'."<sup>22</sup> The court distinguished *Joyner* because the employer took immediate action to investigate and deter the harassing behavior as soon as a report of the conduct was made. The actions of the employer in *Joyner* were presumed to be adequate because the tortious conduct stopped. In *Potts* the court looked carefully at the fact situation to see if the steps taken by the employer were adequate. BE & K had knowledge of the harassing behavior prior to Bynum's discussion with Potts. Bynum met with the victim and the alleged tortfeasor separately. No disciplinary action was taken against Sanders, and the employer did not monitor the employees' work in the tool room despite evidence from third parties who had witnessed the offending behavior. BE & K initiated its disciplinary procedures and moved Potts to another position only after her subsequent complaint two weeks later. The court found that it was appropriate for the jury to consider the length of time between BE & K's knowledge of the tortious conduct and subsequent disciplinary action, as well as the severity of the disciplinary action taken relative to the seriousness of the conduct. Due to the employer's failure to investigate further, to move one of the employees from the tool room, to monitor the situation further, to take steps to ensure that the harassing conduct was not repeated, or to act with greater

force and seriousness, the court noted that a jury could find that BE & K ratified Sanders' conduct because the behavior was allowed to continue.<sup>23</sup>

The court specifically limited the ruling to cases of sexual harassment, declining to find that "what constitutes sufficient evidence of ratification by an employer in a case of sexual harassment would be sufficient evidence of ratification in cases involving other intentional torts."<sup>24</sup> This statement shows that, like other states, Alabama has differentiated torts involving sexual harassment from other torts and may be establishing its own standard in this area.

Following the Alabama cases from *Joyner* to *Potts*, the standard has slowly evolved into one that reflects a strong public policy against sexual harassment. In the earlier *Joyner* case, the fact that the tortious behavior of the harasser was stopped was evidence enough that adequate steps had been taken by the employer. The court was not forced to address the issue of adequacy under circumstances where the behavior did not stop. Later, in *Busby*, the court acknowledged that failure to stop harassing behavior would support the

inference that the company ratified the harasser's behavior. However, even though the harasser's behavior continued over several months, the court found that the accused employee was not acting in the furtherance of the company's business. Thus, if a court adheres strongly to this aspect of the doctrine of respondeat superior in cases of sexual harassment, the employer can often avoid liability.

The court also found in *Busby* that the plaintiffs did not give sufficient information about the harassing behavior to supervisors, despite the fact that the plaintiffs detailed the lewd and offensive statements that were made. The *Busby* court reaffirmed *Inmon* in stating that the tort of outrage "is a limited remedy to be applied only in egregious circumstances."<sup>25</sup> The behavior of the harasser was not viewed as compelling enough to support the tort of outrage claim. In *Potts*, however, the tort of outrage in cases of sexual harassment was distinguished from torts involving other abuses, like the distinction made by Justice Kennedy in his dissent in the *Busby* case. In contrast to *Busby*, the court was more forceful in

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assuming that the harasser's behavior was tortious, that the company had knowledge of the harasser's behavior, and that the company knew, or should have known, that such conduct constituted sexual harassment. In addition, the court took a stronger stand against the employer by closely examining whether the company took steps that were reasonably calculated to stop the harassing conduct.

## NATIONAL TRENDS

In reviewing court cases nationwide, it is apparent that courts are refusing to adhere to the exclusivity rule of workers' compensation statutes when sexual harassment is involved, just as the Alabama court did in *Busby*. The courts have noted the differences in the purposes of the laws regarding sexual harassment and workers' compensation in their decisions, recognizing that while workplace injuries rob a person of resources, sexual harassment robs the person of dignity and self-esteem.<sup>28</sup> States which interpret the two statutes in this way create the possibility of recovery under both statutes, depending upon how mental injuries are treated by the state's workers' compensation act. For example, in *Palmer v. Bi-Mart*,<sup>29</sup> the court found that the employee had suf-

fered two distinct injuries: a personal injury for work-related stress and an injury to her right to be free from sexual harassment. Since workers' compensation and tort remedies are available for each of these injuries, the employee was allowed to recover under both. As this trend develops, and courts in additional states move toward defining the injuries involved in sexual harassment as separate wrongs, the legal risk for companies will increase dramatically.

It is also clear that many state courts are requiring a less stringent standard of proof for intentional torts involving sexual harassment than for other intentional torts. Even in states like Alabama, where the tort of outrage is relatively new, the standards are evolving to the point where outrageousness may be assumed due to the act of sexual harassment itself. The leading states in this area, such as Ohio, have not required plaintiffs in sexual harassment cases to meet the heightened standard usually required by the tort of outrage; other states are likely to follow.

## CONCLUSION

As can be seen from the chronology of the Alabama cases, Alabama courts are beginning to follow the national trend in giving sexual harassment special sta-

tus under the tort of outrage. The issues addressed in *Potts* bring Alabama at least to the threshold of following leading states in recognizing the unique injury sexual harassment victims suffer. Many court opinions reflect condemnation of sexual harassment as a practice,<sup>30</sup> and the enactment of state legislation also shows a distaste for such practices. For example, state human rights statutes in states such as California, Florida, Ohio, Michigan and Tennessee are aimed at ending gender discrimination. Current cases seem to indicate that courts have relaxed the standard necessary to establish a claim for the tort of outrage in cases of sexual harassment.<sup>31</sup> However, it remains to be seen what course the Alabama Supreme Court will



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Christine Whitesell Lewis is an assistant professor of management in the School of Business at Auburn University at Montgomery, and has been at AUM since 1988. She earned her law degree from the University of Alabama School of Law. Lewis is the author of several published articles on constitutional, employment and tort laws. She has served as a management consultant to public and private industry.



### Jane R. Goodson

Jane R. Goodson is an associate professor of management and MBA director in the School of Business at Auburn University at Montgomery. She received her M.A. in human resource management and her Ph.D. in organizational behavior from the University of Alabama. She has published articles on organizational effectiveness,

leadership, strategic human resource management, and employee relations, and has done extensive consulting in both private and public industry.



### Renee Daniel Culverhouse

Renee Daniel Culverhouse is director of legal and personnel services and general counsel for the Alabama Department of Postsecondary Education in Montgomery. She earned her law degree from Cumberland School of Law at Samford University. Over an 11-year period, she held various faculty and administrative

positions at AUM. She has authored a monograph on sexual harassment and published extensively in the area of employment law. She has served as a consultant in the area of employment discrimination to both public and private industry.

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take in the future on this issue. *Potts* was just a reversal of the lower court's decision of summary judgment for the employer. It simply kept the issues alive for the alleged sexual harassment victim to bring her case to trial. However, it does signify that Alabama may be moving in the same direction as other state courts. ■

### Endnotes

1. See, Christine W. Lewis, Jane R. Goodson, & Renee D. Culverhouse, *Trends in Compensating Sexual Harassment Victims: The Treat of Double Recovery*, 2 (2) J.INDIVIDUAL EMPLOYMENT RTS. 123-132 (forthcoming 1993).
2. Arizona, Maryland, and Washington have state legislation automatically allowing tort action if the employer actually intended to harm the employee.
3. *Hart v. National Mortgage & Land Co.*, 189

- Cal.App.3d 1420 (Cal. 1987); *Harman v. Moore's Quality Snack Foods, Inc.*, 815 S.W.2d 519 (Tenn.Ct.App. 1991); *Dias v. Sky Chefs, Inc.*, 919 F.2d 1370 (9th Cir. 1990); *Carr v. U.S. West Direct Company*, 779 P.2d 154 (Or.Ct.App. 1989); *Pryor v. United States Gypsum Co.*, 585 F.Supp. 311 (W.D.Mo. 1984).
4. *Palmer v. The Bi-Mart Company, Inc.*, 758 P.2d 888 (Or.App. 1988).
  5. *Dias v. Sky Chefs, Inc.*, 919 F.2d 1370 (9th Cir. 1990); *McCalla v. Ellis*, 341 N.W.2d 525 (Mich. 1983).
  6. 394 So.2d 361 (Ala. 1981).
  7. *Id.* at 365.
  8. *Id.*
  9. 477 So.2d 365 (Ala. 1985).
  10. *Id.* at 365.
  11. 495 So.2d 649 (Ala. 1986).
  12. *Id.* at 651.
  13. 551 So.2d 322 (Ala. 1989).
  14. *Id.* at 324.
  15. *Id.*
  16. *Id.* at 325, citing Note, *Testing the Exclusivity Provision of the Alabama Workmen's Compensation Act*, 11 AM.J. TRIAL ADVOC., 121, 130 (1987).

17. *Id.* at 327.
18. *Id.* at 328.
19. *Id.*
20. *Shrout v. Black Clawson Co.*, 689 F.Supp. 774 (S.D. Ohio 1988); *Yeager v. Local Union 20*, 6 Ohio St.3d 369, 453 N.E.2d 666 (1983).
21. 551 So.2d 322, 329 (Ala. 1989).
22. 604 So.2d 398 (Ala. 1992).
23. *Id.* at 400.
24. *Id.* at 401.
25. *Id.* at 402.
26. *Id.*
27. 551 So.2d 322, 328 (Ala. 1989).
28. *Byrd v. Richardson-Greenshields Securities, Inc.*, 552 So.2d 1099 (Fla. 1989); *King v. Consolidated Freightways Corp. of Delaware*, 763 F.Supp. 1014 (W.D.Ark. 1991).
29. 758 P.2d 888 (Or.Ct.App. 1988).
30. *Byrd v. Richardson-Greenshields Securities, Inc.*, 552 So.2d 1099 (Fla. 1989).
31. *Dias v. Sky Chefs, Inc.*, 919 F.2d 1370 (9th Cir. 1990); *McCalla v. Ellis*, 341 N.W.2d 525 (Mich. 1983); *Cremen v. Harrah's Marine Hotel Casino*, 680 F.Supp. 150 (D.C.N.J. 1988); *Kerans v. Porter Paint Company*, 575 N.E.2d 428 (Ohio 1991).

## IN THE SUPREME COURT OF ALABAMA

August 31, 1993

Whereas, the Board of Bar Commissioners of the Alabama State Bar has recommended to this Court that the Alabama Rules of Professional Conduct be amended to add Rule 3.10; and

Whereas, the Court has considered the recommended amendment and considers that amendment appropriate; It is, therefore, ordered that the Alabama Rules of Professional Conduct be amended to add Rule 3.10, to read as follows:

### "Rule 3.10 THREATENING CRIMINAL PROSECUTION

"A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

### "COMMENT

"The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting his or her legal rights and when that happens the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of the criminal process tends to diminish public confidence in our legal system."

This amendment shall be effective January 1, 1994.

Hornsby, C.J., and Maddox, Almon, Shores, Adams, Houston, Kennedy, and Ingram, JJ., concur.



# SECTIONS

1993-1994

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Stan Blanton, *Birmingham*—251-8100

## COMMUNICATIONS LAW SECTION

Attorneys who might be interested in joining this section include those who have an interest in radio, television, cable, newspaper, magazine/book publications, public utility to common carrier issues (including cellular telephone service), and related subjects such as defamation, privacy and public access law. Not only attorneys who represent business of this nature, but also attorneys representing municipalities on these issues would likely be interested in this section.

### Chair:

D. Owen Blake, Jr., *Birmingham*—972-2556

### Vice-chair:

Mark D. Wilkerson, *Montgomery*—265-1500

### Secretary/Treasurer:

Hollinger F. Barnard, *Birmingham*—458-9400



## CORPORATE COUNSEL SECTION

The Corporate Counsel Section serves members of the Alabama State Bar who provide legal services to corporate clients, either as in-house corporate attorneys or as attorneys in private practice who regularly advise corporate clients. The benefits of participation in this section are: (1) the exchange of information about library holdings, sample policies and practice, methods for managing in-house law offices, in-house training and development, and (2) opportunities to provide continuing legal education focusing on the needs of in-house counsel in Alabama.

### Chair:

B. Judson Hennington, III, *Huntsville*—730-2521

### Vice-chair:

S. Revelle Gwyn, *Huntsville*—551-0171

### Secretary/Treasurer:

Gary Lee Smith, *Andalusia*—222-2571

### Executive Council:

Samuel W. Jackson, Jr., *Birmingham*—731-9633

Rebecca G. Williams, *Birmingham*—870-6011

Barry A. Ragsdale, *Birmingham*—879-3737

J. Fred Kingren, *Troy*—566-5570

## CORPORATION, BANKING AND BUSINESS LAW SECTION

This section is involved in projects of interest to every member of the bar. The section works with the Alabama Law Institute, revising the corporate laws of Alabama, and publishes a newsletter for section members.

### Chair:

George F. Maynard, *Birmingham*—254-1044

### Vice-chair:

Neil C. Johnston, *Mobile*—432-5511

### Secretary/Treasurer:

Curtis W. Jones, *Birmingham*—945-6509

### Council Members:

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Joseph W. Spransy, *Birmingham*—254-7252

Walter R. Byars, *Montgomery*—832-8800

## CRIMINAL LAW SECTION

The Criminal Law Section is comprised of bar members having an interest in matters relating to the criminal justice system of our state and federal courts. The area of criminal law is constantly changing and provides many opportunities for active discussion and input. Involvement in this section will provide members with contacts throughout the state.

### Chair:

George M. Higginbotham, *Bessemer*—425-3214

## ENVIRONMENTAL LAW SECTION

Services and activities of the Environmental Law Section are professional improvement in the field of environmental law, analysis and reporting to members of developments in the field, and communication with other lawyers practicing in the environmental law area.

### Chair:

Thomas L. Johnston, *Montgomery*—271-7855

### Chair-elect:

John P. Courtney, III, *Mobile*—432-4481

### Vice-chair:

Duane A. Wilson, *Tuscaloosa*—349-4300

### Secretary:

J. Michael Fincher, *Mobile*—432-5511

### Treasurer:

O. James Goodwyn, Jr., *Montgomery*—242-3165

## FAMILY LAW SECTION

The Family Law Section of the Alabama State Bar was established in 1984. It publishes a newsletter for the benefit of family

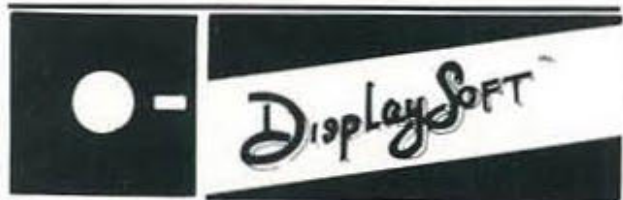
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law practitioners. It also has a legislation subcommittee whose function is to consider state and federal legislation in the area of family law and the law of domestic relations, and to suggest needed reforms. The section has a legal education subsection which presents programs for the members.

**Chair:**

Amy A. Slayden, *Huntsville*—533-7178

**Vice-chair:**

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**Secretary:**

J. Timothy Smith, *Birmingham*—870-3363

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**Immediate Past Chair & Council Member:**

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**Council Members:**

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William K. Bell, *Huntsville*—533-2410

William W. Lawrence, *Talladega*—362-0081

J. Floyd Minor, *Montgomery*—265-6200

Randall W. Nichols, *Birmingham*—930-9000

Bryant A. Whitmire, Jr., *Birmingham*—324-6631

## HEALTH LAW SECTION

This section is open to members of the plaintiffs and defense bar who are interested or involved in the ever-broadening interface between law and health care, including but not limited to various state and federal issues such as Medicare fraud and abuse, payment problems, merger and acquisition of health care entities, antitrust, fiscal management, peer review, provider malpractice, individual rights, and supreme court actions.

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**Vice-chair:**

Rick E. Harris, *Montgomery*—242-5052

**Secretary/Treasurer:**

Charles H. Durham, *Montgomery*—277-2710

**Council Members:**

Scott Donaldson, *Tuscaloosa*—758-2585

Adine Bertucci Waddell, *Mobile*—639-0188

Joe W. Campbell, *Huntsville*—535-1100

Lant B. Davis, *Birmingham*—521-8623

## LABOR & EMPLOYMENT LAW SECTION

This section includes lawyers from throughout the state whose practice involves work in the areas of labor law, fair employment law, employee benefits law and occupational safety

and health law. In addition to providing a forum for the exchange of information and ideas, the section sponsors an annual two-day labor law seminar and, with the labor law sections of various other state bars, co-sponsors an annual multi-state labor and employment law seminar.

**Chair:**

Gregory B. Stein, *Mobile*—433-2002

**Vice-chair:**

Jay St. Clair, *Birmingham*—251-8344

**Secretary/Treasurer:**

Paul Myrick, *Mobile*—432-3444

**Members at Large:**

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John J. Coleman, III, *Birmingham*—251-8100

David M. Smith, *Birmingham*—254-1000

Bruce J. Downey, *Montgomery*—241-8000

## LITIGATION SECTION

The Litigation Section seeks to (1) provide a forum where all trial attorneys may meet and discuss common problems; (2) provide 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.

**Chair:**

Richard H. Gill, *Montgomery*—834-1180

**Secretary/Treasurer:**

John P. Scott, Jr., *Birmingham*—251-8100

## OIL, GAS AND MINERAL LAW SECTION

The Oil, Gas and Mineral Law Section was established in 1976 and consists of an oil and gas division and a hard minerals division. The primary purpose of the section is to keep its members apprised of developments in the law, and this is accomplished by co-sponsoring with ABICLE an annual seminar on oil, gas and mineral law, as well as sponsoring a "mini-seminar" at the section meeting during the annual meeting of the state bar.

**Chair:**

Thomas W. Holley, *Tuscaloosa*—345-1577

**Vice-chair, Oil & Gas:**

William E. Pritchard, III, *Mobile*—432-4481

**Vice-chair, Hard Minerals:**

Harold D. Rice, *Birmingham*—481-6105

**Secretary:**

Duane A. Graham, *Mobile*—432-6751

**Treasurer:**

S. Marvin Rogers, *Tuscaloosa*—349-2852



## REAL PROPERTY, PROBATE AND TRUST LAW SECTION

This section cooperates with and assists the Cumberland Institute for Continuing Legal Education in preparing and presenting programs relating to real property, trust and probate matters for members of the Alabama State Bar. The section, also in cooperation with the Cumberland School of Law, publishes a periodic newsletter reviewing recent court decisions dealing with real property, trust and probate matters and reports other matters of current interest relating to these topics. An annual seminar is held in conjunction with the annual meeting of the state bar.

### Chair:

Palmer Smith Lehman, *Montgomery*—241-8000

### Vice-chair:

Kay K. Bains, *Birmingham*—251-9600

## TAXATION SECTION

Membership in this section is primarily composed of tax practitioners. The section gives special emphasis to Alabama tax matters and has been involved in changing Alabama law and assisting the Department of Revenue in writing tax regulations. A program is held each year during the annual meeting of the state bar.

### Chair:

Scott Edward Ludwig, *Huntsville*—517-5149

### Vice-chair:

J. William Rose, Jr., *Birmingham*—458-9400

### Secretary:

Andrew James Potts, *Birmingham*—328-0480

### Treasurer:

J. Reese Murray, III, *Birmingham*—326-5386

## WORKERS' COMPENSATION SECTION

The Workers' Compensation Law Section seeks to raise the awareness and understanding of the bar community with regard to workers' compensation legal matters.

### Chair:

R. Wayne Wolfe, *Huntsville*—534-2205

### Vice-chair:

Stephen E. Brown, *Birmingham*—254-1000

### Secretary/Treasurer:

Gary C. Pears, *Birmingham*—254-7090

### Council Members:

Randy James, *Montgomery*—262-0500

Robert W. Lee, Jr., *Birmingham*—323-1061

William H. Sisson, *Mobile*—344-7744

## YOUNG LAWYERS' SECTION

The Young Lawyers' Section of the Alabama State Bar is composed of all lawyers who are 36 years of age and under or who have been admitted to the bar for three years or less. The section conducts various seminars throughout the year for lawyers and other professionals. It also sponsors service projects designed to aid the public in their understanding of the law and assist in solving legal problems. There are no dues since persons who are members of the Alabama State Bar and fulfill the age or admission requirements automatically are members.

### President:

A. Lester Hayes, III, *Montgomery*—263-6621

### President-elect:

H. Harold West, Jr., *Birmingham*—252-8800

### Secretary:

Barry A. Ragsdale, *Birmingham*—879-3737

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If you are actively practicing or anticipate practicing law in Alabama between October 1, 1993 and September 30, 1994, PLEASE BE SURE THAT YOU HAVE THE REQUIRED OCCUPATIONAL LICENSE.

The dual invoice which was mailed in mid-September provided you with the option of paying special membership dues (if you were not in active practice in Alabama) or buying the required occupational license to practice (if you were in active practice in Alabama) on this one invoice.

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# Remarks by Senior Circuit Judge John C. Godbold, United States Court of Appeals, Eleventh Circuit Montgomery, Alabama October 11, 1993



*Judge and Mrs. Godbold beside portrait*

I am grateful to the Montgomery County Bar Association — the bar association in which I practiced — for making possible the portrait presented this morning. President Williams, thank you, and please convey my thanks to my bar association.

As I look at the events of today and look back on the quarter of a century I have been on the bench I see this ceremony as much more than the dedication and hanging of a portrait of one judge. To me it is a demonstration of healing, of bridge-building, of drawing together. In 1966 when I was sworn in our country was in the midst of great social changes that were dividing us as a people. The federal courts were deeply involved in those changes. Federal judges and bar associations did not associate together. They held each other at arms' length and at times were even disdainful of each other. Lawyers in general were at least uneasy with us judges, and some were angry and even bitter. State and federal judges were sharply critical of each other, and their opinions spoke of each other in harsh and discourteous phrases. Communities at large, including Montgomery, were often suspicious of the judiciary or even hostile.

Much has changed in the world about us in my 27 years. We need look to only our own state. Alabama women are no longer second-class citizens, barred from sitting on juries, frozen out of many professions, excluded from government and political life. Litigants, civil and criminal, are now having their legal disputes decided by juries drawn from the more affluent segments of the community.

Our state has eliminated mental health

facilities that you could not walk through without being reduced to tears. It has brought civilized standards to prisons in which an Alabama farmer would not have kept his cattle.

Today each of us is represented in our state and national legislative bodies by persons chosen from districts each roughly equal to other districts in population. Not many years ago Lowndes County, with approximately 18,000 citizens, had two state senators while Birmingham, with over half a million citizens, had one. This kind of breakdown in the democratic process has been ended.

Our schools are fraught with problems that concern us all. But at least we have put behind us the myth of separate but equal school systems. They might have been separate, but they certainly weren't equal. Looking back we see that we accepted as fact what we knew in our hearts was a pretense. We have not solved the problems of schools, but we have stopped hiding from them.

These are only a few of the breathtaking changes in our world. We still have problems today in living together, and working together, and practicing democracy together. But, in truth, no one wants to go back. We will always have problems. They will just be different. The test is whether our society will address them and whether we can hold together as we do so.

As the world about us has changed the relationships I have mentioned have changed. The organized bar, and its members are no longer divorced from us judges. It is the organized bar that has brought about this ceremony today. The Mont-

gomery community at large is represented by many citizens who are present. We do not expect that our fellow citizens will always agree with what judges do. But we appreciate that today most citizens understand the responsibilities that we have and are no longer hostile.

I am especially proud that my fellow judges from the courts of Alabama have joined us here. We are no longer adversaries but joint participants, cooperating together in the administration of justice. Most of the time we agree, but if we do not it is with mutual respect and decent regard for difference of opinions. We go to school together, participate in programs together, and learn from each other. State Circuit Judge Joe Phelps and I have been on so many programs together that at one seminar we were described as the Wrigley Spearmint Twins. At times my court is faced with a question of Alabama law to which we can find no sure answer in the lawbooks. We no longer guess at the answer or argue with the Alabama courts about the answer. Rather, through an agreed-upon procedure we ask the Supreme Court of Alabama to tell us what the Alabama law is. It does so, and we follow its guidance. This is federalism — the appropriate relationship between federal and state institutions — in its highest form.

So, you see, today's ceremony embraces much more than the hanging of a portrait. It demonstrates that through a time of change we have drawn together, and the divisions of a quarter century ago have healed.

Thank you, each of you, for joining in this celebration. ■





# Order Supreme Court of Alabama August 31, 1993

Whereas, the Board of Commissioners of the Alabama State Bar has proposed to this Court the adoption of a set of rules to be entitled "Alabama State Bar Rules of Specialization," and  
Whereas, the Court has considered the proposed rules and deems it appropriate to adopt these rules,  
Now, therefore, it is ordered that the Alabama State Bar Rules of Specialization, attached as an appendix to this order, be, and they hereby are, adopted by this Court, to be effective January 1, 1994.

*Hornsby, C.J., and Maddox, Almon, Shores, Adams, Houston, Kennedy, and Ingram, JJ., concur.*

## Appendix

### Alabama State Bar Rules of Specialization

#### **Rule 1: Alabama State Bar Board of Legal Specialization Established; Purpose of the Board**

There is hereby established the Alabama State Bar Board of Legal Specialization (referred to in these rules as "the board"). The purpose of the board is to regulate the certification of lawyers as specialists by certifying agencies, so as to enhance public access to appropriate legal services.

#### **Rule 2: Membership of the Board; Chairperson; Terms; Expense Reimbursement; Meetings**

2.01. The board shall consist of 12 members appointed by the Board of Bar Commissioners. All members shall be lawyers regularly licensed in this state and they shall be representative of the various fields of legal practice, including general practice.

2.02. One member shall be designated by the Board of Bar Commissioners as chairperson of the board for such a term as the Board of Bar Commissioners shall determine.

2.03. Of the members first appointed, four shall be appointed for a term of one year, four for a term of two years, and four for a term of three years. Thereafter, appointments shall be for three-year terms. No member may serve more than two consecutive three-year terms.

2.04. Members shall not be compensated but shall be reimbursed for their actual direct expenses incurred in travel.

2.05. Meetings of the board shall be held at regular intervals at such times and places and on such notice as the board may prescribe.

#### **Rule 3: Powers and Duties of the Board**

The board itself will not certify lawyers as specialists, but, subject to the supervision of the Board of Bar Commissioners, the board has the following powers and duties regarding certification of specialists:

3.01. To designate areas of legal practice subject to specialty

designation. The board may make a specialty designation either on its own motion or on a petition of an interested party, which shall be based on criteria established by the board.

3.02. To approve and regulate agencies qualified to certify lawyers as specialists in a particular field of law as certifying agencies, and to adopt standards that certifying agencies must meet.

3.03. To adopt standards for certifying lawyers as specialists.

3.04. To review and evaluate the programs of certifying agencies to assure compliance with this specialization program.

3.05. To deny, suspend, or revoke the approval of a certifying agency that has failed to comply with these rules or the regulations and standards of the board.

3.06. To keep appropriate records of lawyers certified as specialists by certifying agencies approved under these rules and to report to the Disciplinary Commission of the Alabama State Bar any attorney who may violate these rules or the board's regulations or standards.

3.07. To cooperate with other organizations, boards and agencies engaged in the field of lawyer specialization.

3.08. To enlist the assistance of committees to advise the board.

3.09. To adopt such regulations, policies, and standards as are reasonably necessary to implement these rules and that are not inconsistent with these rules.

#### **Rule 4. Administrator**

4.01. The Board of Bar Commissioners may provide for an administrator of the Bar's lawyer specialization program and for such other staff as may be necessary.

4.02. The administrator shall be responsible for the proper administration of the specialization program and shall perform the duties assigned by the board.

#### **Rule 5. Standards for Approval of Certifying Agencies**

5.01. To qualify as a certifying agency, an agency must include in its membership lawyers who, in the judgment of the board, are experts in the area of law covered by the specialty as



to which the agency purports to certify, and each of those lawyers must have extensive practice or involvement in the specialty area.

5.02. Standards for agency certification shall include, as a minimum, the regulations and standards adopted by the board from time to time under these rules. Such regulations and standards shall not unlawfully discriminate against any lawyer properly qualified for certification as a specialist, but shall provide a reasonable basis for determining that a lawyer possesses special competence in a particular field of law, as demonstrated by the following means:

5.021. Substantial involvement in the specialty area during the three- (3-) year period immediately preceding application to the certifying agency. "Substantial involvement" is measured by the amount of time spent practicing in the specialty area: A minimum of 25 percent of the lawyer's practice must be spent in the specialty area.

5.022. Peer recommendations from lawyers who are familiar with the competence of the lawyer seeking a specialty designation; none of the peer recommendations shall be from lawyers related to, or engaged in legal practice with, the lawyer.

5.023. Objective evaluation of the lawyer's knowledge of the substantive and procedural law in the specialty area, to be determined by written and/or oral examination. The examination shall include a part devoted to professional responsibility and ethics as it relates to the particular specialty.

5.03. The certifying agency shall be responsible for making appropriate investigations of peer recommendations and for obtaining any other information that may be required to assure that the lawyer is in compliance with all certification requirements.

The files and records of certifying agencies concerning lawyers certified or seeking certification are deemed to be confidential and shall not be disclosed except as directed by the board.

5.04. The certifying agency shall maintain a register of all lawyers it certifies as specialists under these rules and shall report to the board the names of lawyers so certified.

5.05. Each certifying agency shall annually submit to the board a report of its activities during the previous year, including an explanation of the measures employed to ensure compliance with these rules.

5.06. The certifying agency shall cooperate at all times with the board and shall perform such duties as may be required by the board for proper administration of the certification program.

5.07. No section, committee, task force, or other entity created by the Alabama State Bar shall qualify, or be approved, under these rules as a certifying agency.

5.08. Any certifying agency having received prior accreditation from the American Bar Association as a private certifying agency shall be exempt from making application with the board and will be deemed an approved certifying agency in this state upon payment of all fees to the board. Provided, however, any agency whose specialty would involve areas of law particular to the State of Alabama shall be required to submit to the board for its consideration a copy of each written or oral examination question and each model answer relative to that portion of the examination exclusive to Alabama.

## **Rule 6. Minimum Standards for Certification of Specialists**

6.01. In order to be certified as a specialist, a lawyer must be duly licensed in this state, engaged in active practice, and must be in good standing, throughout the period for which the specialty designation is granted. In addition, a lawyer must comply with the other requirements of Rule 6.

6.02. The lawyer must be certified by an agency approved by the board.

6.03. Every year the lawyer must complete a minimum of six (6) hours of continuing legal education course work in the area of the lawyer's specialty. These hours shall constitute a part of the annual requirement under the Alabama State Bar Mandatory Continuing Legal Education Rules and Regulations.

## **Rule 7. Privileges Conferred and Limitations Imposed**

7.01. A lawyer certified as a specialist under these rules may communicate the fact that he or she is certified as a specialist in a particular field of law and the name of the particular certifying agency by which the lawyer is certified. A lawyer shall not represent, either expressly or impliedly, that he or she has specialty status recognized by any entity other than the certifying agency.

7.02. Nothing in these rules shall in any way limit the right of a certified specialist to practice in all fields of law. Any lawyer shall have the right to practice in all fields of law, even though certified as a specialist in a particular field of law.

7.03. No lawyer shall be required to be certified as a specialist in a particular field of law in order to practice in that field of law. A lawyer shall have the right to practice in any field of law, even though not certified as a specialist in that field. Participation in a specialty recognition program under these rules shall be voluntary.

7.04. A lawyer may be certified as a specialist in more than one field of law. The maximum number of fields in which a lawyer may be certified as a specialist shall be determined only by the practical limits imposed by the requirement of substantial involvement and such other standards as may be established by the board pursuant to Rule 6.

## **Rule 8. Minimum Standards for Continued Recognition of Specialists**

8.01. The period of recognition as a specialist shall be five (5) years. During this period the board or appropriate certifying agency may require evidence from the specialist of continued qualification for certification as a specialist.

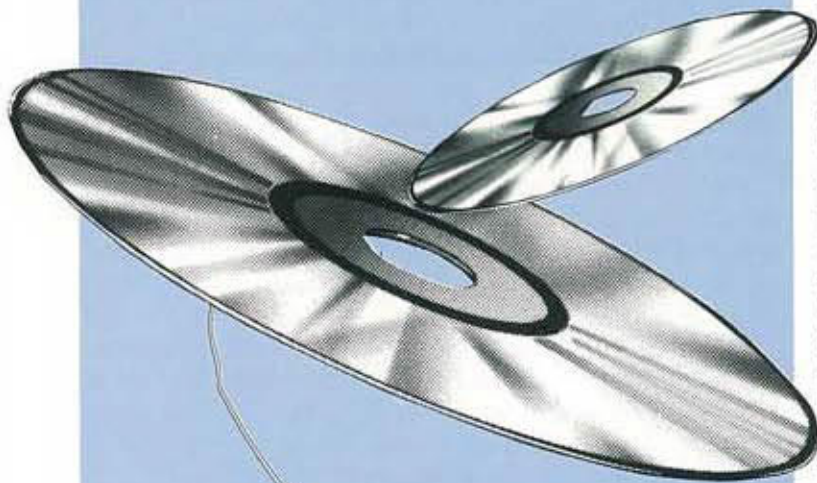
8.02. Application for and approval of continued certification as a specialist shall be required prior to the end of each five- (5-) year period. To qualify for continued certification as a specialist, a lawyer applicant must pay the required fees and meet the requirements for certification renewal established by the board.

## **Rule 9. Fees**

9.01. To defray expenses of the Alabama State Bar Board of Legal Specialization in administering these rules, the board may establish and collect reasonable fees from the certifying agencies and from the lawyers certified as specialists. It is anticipated that this board will be self-sustaining. ■



# 1993: The Year of the ROM CD ROM for Alabama Lawyers

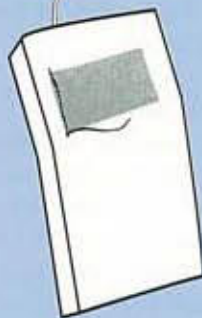


Scope and  
Depth of Material

Search Techniques

Features

Cost



By Lynne B. Kitchens

Two decades after the advent of the first computer-assisted legal research service and nine years after CD ROM technology hit the market, the Alabama legal community now has access to a *choice* of Alabama primary source materials (cases, constitutions, codes, and rules) on CD ROM. According to its proponents, this technology offers many of the advantages of an online database but without the high cost of online services.<sup>1</sup>

Last spring, the State Law Library arranged for demonstrations of three CD ROM legal products dealing with Alabama legal materials for interested researchers. Subsequently, the library acquired these products for public use. They include *Alabama Law on Disc* (Michie Company), *Alabama Reporter on CD ROM* (West Publishing Company), and *MasterLaw*, a local production known for its user-friendliness. As of this writing, the *MasterLaw* disc is no longer available; the *MasterLaw* database, however, may be accessed on Alabama LegalBoard, a computer bulletin board for Alabama's legal community.<sup>2</sup> For the purposes of this article, therefore, only the Michie and West products are reviewed. Although these two products are basically similar, there are enough differences to warrant a general examination of some of the advantages and shortfalls of each. Subscribers to either receive updated replacement discs quarterly; such an arrangement facilitates continuous error correction and product revision. Both Michie and West have indicated that this year will bring many enhancements in their search programs.

Both CD ROM products provide access to primary source materials—case law, constitutions, code, and court rules—yet within this framework there are significant variations. Prospective purchasers should consider these variations in light of their own needs before making a selection. The discussion and chart that follow are not meant to provide an exhaustive comparison; rather, they are intended as guides to some of the notable features of each product.

### Scope and depth of material

The latest version of the Michie Company's *Alabama Law on Disc* consists of a single ROM disc containing Alabama Supreme Court decisions from 1954 (and decisions of the intermediate appellate courts from 1965) through mid-April of 1993. Also included on the disc are the annotated Code of Alabama and the CD ROM version of Michie's *Alabama Rules Annotated*. Citations to the *Southern Reporter* are provided as they become available, and unreported opinions have LEXIS cites. Some of the problems (such as misspellings) on earlier discs are being corrected on the updates.

West Publishing Company's *Alabama Reporter on CD ROM* comes on two discs and contains reported cases dating back to 1945. The cut-off date between the two discs is 1972; the first disc covers vols. 19-270 So.2d, and the second continues from vols. 271. No slip opinions (i.e., manuscript opinions not yet released for publication in the *Southern Reporter*) are included. The published opinions, however, contain West Publishing Company's copyrighted editorial enhancements—the familiar case synopses and headnotes, which are searchable as on WestLaw. West also emphasizes its "unparalleled commitment to accuracy." The December 1993 update includes, in addition to the cases, the Alabama Code, Rules of Court, and Attorney General opinions. Subscribers to the West CD ROM product also receive a subscription to the weekly *Southern Reporter Advance Sheets*.

### Lynne B. Kitchens

Lynne B. Kitchens earned her A.B. from Emory University, her M.A. from Vanderbilt and her law degree from Jones Law School. She is chair of the Alabama State Bar's Task Force on Adult Literacy and has worked for the past ten years as a research attorney in the state law library.



### Search techniques

Search techniques for the two products differ. The search program for Michie's *Alabama Law on Disc* is called "Folios." The basic search unit or "folio" for cases is the paragraph rather than an entire opinion; thus, the number of "hits" in a search is equal to the number of paragraphs retrieved, not to the number of cases. A cite list, consequently, may be deceptively lengthy since cites are repeated for every paragraph in every case in which the search terms occur. Having to limit searches to single paragraphs also causes some difficulty in searching two unrelated concepts in a case.

West's *Alabama Reporter on CD ROM* uses a search program called "Premise," which has many of the capabilities of WestLaw. While there are a few differences, those accustomed to WestLaw commands and search techniques should have no trouble navigating in West's CD ROM environment. Field searches, such as synopsis and digest searches, are easily accomplished.

### Other features

**Chargeable time tracking:** West's *Alabama Reporter on CD ROM* keeps track of the time spent on a research session. It also saves queries for subsequent recall.

**Exact page cites:** The West product supplies the exact page number in the *Southern Reporter* where the material retrieved is located, a useful feature for page cites to quotations within an opinion.

**Hypertext (Linking) feature:** Both the West and Michie products allow the researcher to examine cases and code sections that are cross-referenced in other documents if those items are included on the disc. West will prompt the user to change discs if necessary for case retrieval.

**Printing or saving to a word-processing file:** Both products have this feature. User can block and save or print either a portion of text or an entire document.

The *ideal* Alabama product would have features of both CD ROM offerings—a combination of databases, editorial enhancements, and fine-tuned search techniques. Since such a combination is not currently available, potential CD ROM purchasers would be wise to try each product, consider the features most important to their practice, check each vendor's hardware (e.g., speed and memory) requirements, and decide accordingly.

### Cost

**Alabama Law on Disc** (Michie) - A subscription costs \$150 down plus \$125/month.

		Michie Co. Alabama Law on Disc	West Pub. Co. CD Ala. Reporter
No. of Discs		1	2
Ala. cases (reported)		1965-1993	1945-1993
Slip opinions (not yet released for publication in So.2d)		yes	no
Headnotes		no	yes
Code		yes, w/annotations	yes
Rules of Court		yes, w/annotations	yes
Atty. Gen. ops.		no	yes
Hypertext (linking) feature		yes	yes
Root word and derivations		yes	yes
Time of session noted		no	yes
Save/print opinion		yes	yes
Block and save/print portion of opinion		yes	yes
Networking		yes	yes
<b>More information</b>	<b>1-800-562-1215</b>	<b>1-800-255-2549 x301</b>	
<b>Technical support</b>	<b>1-800-292-3481</b>	<b>1-800-888-9907</b>	

**Alabama Reporter on CD ROM** (West) - \$2250 initial fee plus \$50/month subscription fee. This fee includes weekly advance sheets to the *Southern Reporter* and quarterly update disc. Terms are available.

### NOTES

- See Timothy A. Lewis, "Myth Information: CD ROM and Legal Research," 54 Ala. Lawyer 114 (March 1993).
- For information, call (205) 272-7092.

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# DISCIPLINARY REPORT

## Transfer to Disability Inactive Status

• In an order dated October 5, 1993, the Supreme Court of Alabama transferred Dothan attorney **Cada M. Carter** to Disability Inactive Status, effective August 26, 1993. [ASB No. 91-582, et al.]

## Disbarments

• On October 5, 1993, the Supreme Court of Alabama entered an order disbaring **John A. Courtney** from the practice of law in the State of Alabama, said disbarment effective July 14, 1993. The supreme court's order was based upon an order of disbarment entered by the Disciplinary Commission of the Alabama State Bar. The Disciplinary Commission had ordered disbarment of Courtney based on his conviction for the unauthorized practice of law. [Rule 22(a)(2) No. 93-01] (*John A. Courtney of Mobile is not to be confused with J.P. Courtney, III, who is with the firm of Lyons, Pipes & Cook, also of Mobile.*)

• In an order of the Alabama Supreme Court dated October 5, 1993, **Robert William Graham** was disbarred from the practice of law in the State of Alabama, effective September 28, 1993. Graham, who was under investigation for several formal grievances which had been filed against him, executed a consent to disbarment affidavit thereby voluntarily relinquishing and surrendering his license to practice law in all the courts of the State of Alabama. [ASB No. 90-318, et al.]

## Surrender of License

• On September 17, 1993, **Charles Clifford Carter**, a Columbus, Georgia lawyer, surrendered his Alabama licensed to practice law before the Disciplinary Board of the Alabama State Bar in lieu of further discipline by the board. The board further ordered Carter not be reinstated to the practice of law until restitutions were made to Client A in the amount of \$400 and to Client B in the amount of \$3,240, but in no event should Carter be reinstated to the practice of law earlier than five years from the date of the Disciplinary Board's order.

Client A had retained Carter in February 1992 to represent her in a civil suit in Alabama and had paid a retainer of \$500. No legal services were performed by Carter for Client A. In October 1992, Carter was suspended by order of the Disciplinary Board for a period of three years. Thereafter, in December 1992, Client A demanded the return of her file and a refund of the fee. Carter gave Client A \$100 in cash and a check for \$400, which was refused by the bank. The check was written on an account that was closed the previous June. Carter failed to respond to the investigation by the Alabama State Bar and filed no defensive pleadings in response to formal charges filed in this matter.

In another matter, Carter accepted \$3,000 as a fee to represent a client and \$240 as court costs. Thereafter, Carter was suspended but told his client that he had another lawyer who would take care of the case and for the client not to worry. In 1993, the client received an order dismissing his case. Carter performed no legal services for this client. [ASB Nos. 93-013 and 93-187]

## Public Reprimands

• On November 5, 1993, the Alabama State Bar publicly reprimanded Opelika attorney **Mary Joanne Camp** for willfully neglecting a legal matter entrusted to her, for failing to keep her client reasonably informed about the status of a matter, for charging a clearly excessive fee, and for engaging in conduct that adversely reflects on her fitness to practice law. Camp agreed to undertake a property contest matter on behalf of her client. Even though she was advanced a retainer by the clients, Camp failed to pursue the matter. She failed to return telephone calls, left her law firm without notifying the clients, and failed to respond to written letters and inquiries from the client. The Disciplinary Commission ordered that Camp receive a public reprimand without general publication, and that she make restitution to her clients. [ASB No. 92-437]

• Birmingham attorney **Ernest Cory** was publicly reprimanded by the Alabama State Bar on November 5, 1993. Cory was hired in November 1989 to represent a woman in a personal injury action. However, Cory allowed the statute of limitations to expire without taking legal action on behalf of the client.

In responding to the grievance filed by the client, Cory admitted that he failed to timely file suit on behalf of the client. He subsequently plead guilty to a violation of Disciplinary Rule 6-101(A), Code of Professional Responsibility of the Alabama State Bar, stating that he had willfully neglected the legal matter entrusted to him by the client. [ASB No. 91-877] ■

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# LEGISLATIVE WRAP-UP

By ROBERT L. McCURLEY, JR.

## 1994 Regular Session

Every four years prior to the election for state offices, the Legislature meets from January to April. This year, the regular session begins Tuesday, January 11, 1994 and is expected to stay in session until Monday, April 25, 1994. During this session, the Legislature will be called upon to pass an education reform package of bills to satisfy a circuit judge's order which held Alabama's education system as unconstitutional. Most probably, education reform will require additional taxes or possibly tax reform. Addressing education will be in addition to passing the state's two budgets and considering approximately 1,500 other bills that will be introduced.

## Business Corporation Act

The primary major revision before the Legislature drafted by the Alabama Law Institute will be the Revised Business Corporation Act. Although the present Alabama Business Corporation Act was enacted in 1980, it was based on the Model Business Corporation Act drafted by the Committee on Corporate Laws of the Corporation Banking and Business Law Section of the American Bar Association which actually had been promulgated in 1969. In 1984, the ABA Committee revised the Model Act. It is this latest model with 1993 amendments that will be before the Alabama Legislature. The Alabama Revised Business Corporation Act is a result of four years of study by a committee chaired by Birmingham lawyer George Maynard, with Professor Howard Walthall of Cumberland School of Law and Professor Richard Thigpen of the University of Alabama School of Law serving as reporters. The revision has a number of changes from present Alabama law, both of a substantive and stylistic character. For a more detailed synopsis of this revision, see the May 1993 *Alabama Lawyer*.

## Fair Campaign Practice Act

State officials, candidates and political action committees must file statements with the Secretary of State Elections Division located in the State Capitol, 600 Dexter Avenue, Montgomery, Alabama. Of all contributions and expenditures under the Alabama Fair Campaign Practice Act, Ala. Code §§ 17-22a-1 through 17-22a-23, county



or municipal officials, candidates and political action committees must file their statements with the local probate judge.

Elections will be held this year for governor, lieutenant governor, attorney general, auditor, secretary of state, treasurer, commissioner of agriculture and industries, state senators and representatives, judges of the circuit, and district and probate courts, as well as the clerks of the court, will be elected in 1994. Furthermore, the chief justice and two associate justices will be elected, and all justices on the court of civil appeals and criminal appeals. District attorneys were last elected in 1992 and will not run again until 1998.

Available from the Secretary of State's office is the Alabama Election Handbook, 6th Edition, written jointly by the Alabama Law Institute and the

Secretary of State's Election Division. Anyone desiring a copy may obtain one by writing or contacting the elections division in the office of the Alabama Secretary of State.

For more information, contact Bob McCurley, Director, Alabama Law Institute, P.O. Box 1425, Tuscaloosa, Alabama 35486. Phone (205) 348-7411. ■

## 1994 Administrative Election Calendar

Secretary of State Jim Bennett has published the election calendar for the 1994 election cycle.

### April 8

Last day for candidates to file a Declaration of Candidacy with state parties

### June 7

Primary election

### June 28

Primary runoff

### August 31

Last day for independent and minor party candidates to file petitions to run for office

### November 8

General election



### Robert L. McCurley, Jr.

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.



# NOTICE OF ELECTION

Notice is given herewith pursuant to the *Alabama State Bar Rules Governing Election of President-elect and Commissioner*.

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## PRESIDENT-ELECT

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The Alabama State Bar will elect a president-elect in 1994 to assume the presidency of the bar in July 1995. Any candidate must be a member in good standing on March 1, 1994. Petitions nominating a candidate must bear the signature of 25 members in good standing of the Alabama State Bar and be received by the secretary of the state bar on or before

March 1, 1994. Any candidate for this office also must submit with the nominating petition a black and white photograph and biographical data to be published in the *May Alabama Lawyer*.

Ballots will be mailed between May 15 and June 1 and must be received at state bar headquarters by 5 p.m. on July 14, 1994.

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## COMMISSIONERS

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Bar commissioners will be elected by those lawyers with their principal offices in the following circuits: 2nd; 4th; 6th, place no. 2; 9th; 10th, places no. 1, no. 2, no. 5, no. 8, no. 9; 12th; 13th, place no. 2; 15th, place no. 2; 16th; 20th; 23rd, place no. 2; 24th; 27th; 29th; 38th; and 39th. Additional commissioners will be elected in these circuits for each 300 members of the state bar with principal offices therein. The new commissioner positions will be determined by a census on March 1, 1994 and vacancies certified by the secretary on March 15, 1994.

The terms of any incumbent commissioners are retained.

All subsequent terms will be for three years.

Nominations may be made by petition bearing the signatures of five members in good standing with principal offices in the circuit in which the election will be held or by the candidate's written declaration of candidacy. Either must be received by the secretary no later than 5 p.m. on the last Friday in April (April 30, 1994).

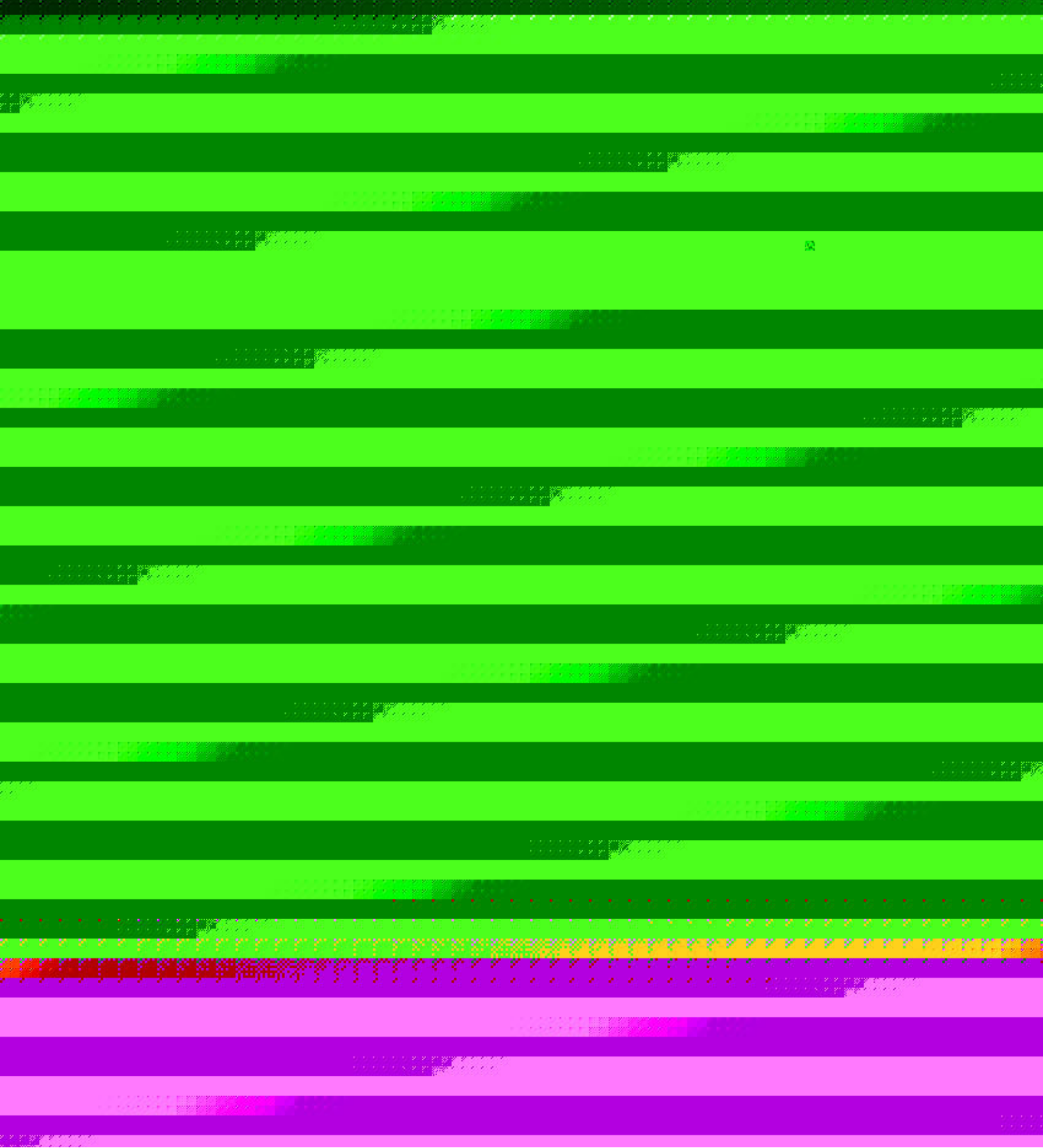
Ballots will be prepared and mailed to members between May 15 and June 1, 1994. Ballots must be voted and returned by 5 p.m. on the second Tuesday in June (June 14, 1994) to state bar headquarters.







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- (2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements\*\*\*\*
- (B) With respect to a class of unsecured claims\*\*\*\*
- (ii) the holder of any claims or interest that is *junior* to the claims of such will not receive or retain under the plan *on account* of such junior claim or inter-

Circuit Court of Appeals held that a Chapter 7 debtor who was current on consumer loans secured by vehicles could not "retain" collateral without either redeeming the property under 11 U.S.C. §722 or reaffirming the debt pursuant to 11 U.S.C. §524. The court looked to the "plain language" of 11 U.S.C. §521 to hold that a Chapter 7 debtor must either redeem the property or reaffirm the debt if he intends to keep it.

agents to promptly account for and remit collected premiums and precluding corporations from holding an insurance license imposed a fiduciary duty upon the debtor, the violation of which caused the debt to be nondischargeable.

**Bankruptcy Court's equitable powers limited**

*In re Empire for Him, Inc.*, 1 F.3d 1156



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- "ADAP's Rural/Minority Outreach and



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# OPENING OF COURT

OCTOBER

conduct admonishing a lawyer to render legal service in the public interest. Lawyers, not our critics, espoused the principle that the basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer. We called attention to the fact that the personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of the lawyer.

Are these principles and admonitions given only lip service? The answer is a resounding no! For years, we have heard anecdotal accounts of the lawyer's helping hand

vice is not the only good thing that lawyers do. IOLTA funds generated by Alabama lawyers' trust accounts have poured more than one and a half million dollars into legal aid for the poor. Members of the Alabama State Bar, through disaster teams, have volunteered legal assistance to victims of natural or manmade disaster on a non-discriminatory, no-fee basis. Witness the service performed by the members of our bar in connection with the tragic passenger train accident in Mobile two weeks ago. And there is one other thing that I really don't



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**Walter L. Mims**

principle, but he always fought fairly.

the receipt of his law degree in 1934

He and his beloved Ruth were a from the University of Alabama.

THE ALABAMA LAWYER

JANUARY 1994

# ♦ M · E · M · O · R · I · A · L · S ♦

## Joseph Jerome Masters, Jr.

Joseph Jerome Masters' life began and ended in Dothan, Alabama. After completing his preparatory education at University Military School in Mobile, he matriculated at the College in

Madeleine and Buck Masters; his father, the late Joe Tom Masters; and his mother, Mary Lynn Buckner Masters. Anyone who spent more than five minutes in private conversation with Judge Masters quickly found out the central place his wife, Madeleine, occupied in his life.

the University of Alabama in 1931, and a law degree from the University of Alabama School of Law in 1934. That year he began the practice of law in Dothan with the firm of Farmer, Merrill & Farmer, which later became Merrill & Harrison. He



# ♦ M · E · M · O · R · I · A · L · S ♦

## Louis Salmon

Whereas, the Huntsville-Madison County Bar Association comes together to collectively pay tribute to and to memorialize our thoughts of Louis Salmon following his untimely passing on September 26, 1993; and

Whereas, Louis Salmon was born in Mobile, Alabama on August 30,

Whereas, Louis Salmon was well known throughout the legal and civic community for his many and varied honors and contributions, yet, his reputation as a man of integrity and dignity distinguished him as a faithful and acknowledged leader in all aspects of community life and created an admiration and respect of his fellow lawyers and fellow citizens; and

## Frank Marion Keeling, Jr.



Whereas, the Mobile Bar Association notes with regret the unexpected and untimely death in Birm-

ingham, Alabama on June 16,

◆ M · E · M · O · R · I · A · L · S ◆

David R. Archer

*Huntsville*

*Admitted: 1950*

*Died: September 26, 1993*

Charles Edward McCutchen

*Sheffield*

*Admitted: 1950*

Philander Joiner



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(vols. 1-57). Contact Ian F. Gaston, P.O. Box 1253, Mobile, Alabama 36633. Phone (205) 433-5585.

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