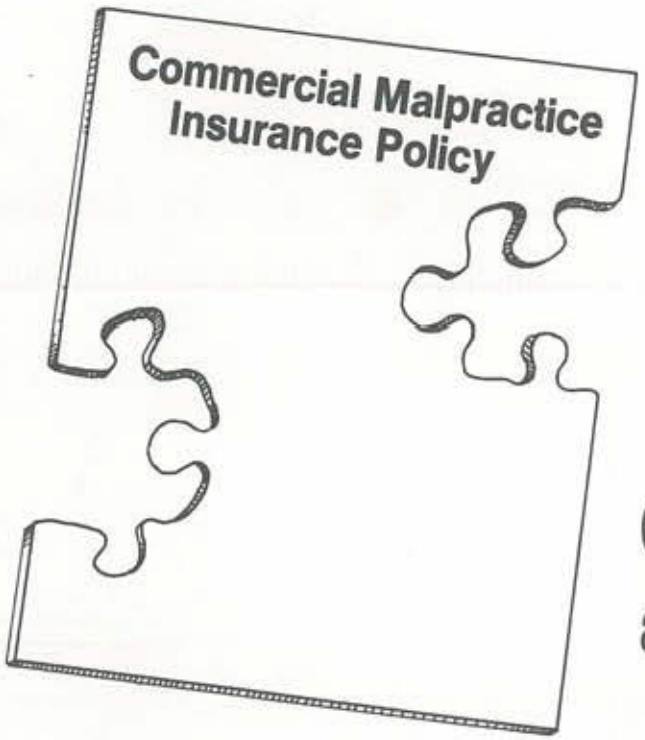
The Alabama Lawyer

Vol. 57, No. 1 January 1996



While some malpractice insurance policies can be an incomplete puzzle...

One company puts together all the pieces.

Alabama attorneys want coverage where it counts! Many commercial malpractice policies contain a penalty-for-refusal-to-settle clause. This clause can be used to force an insured to accept an offer of settlement or, if rejected, pay the difference between the offer and the ultimate verdict. By contrast, AIM's policy gives its insureds protection and peace of mind. AIM will not settle a case without an insured's consent and will ***not*** penalize an insured for refusing settlement and going to trial. AIM's policy even guarantees its insureds a voice in selecting defense counsel. AIM does what most commercial insurers refuse to do:

Serve the best interest of Alabama attorneys.

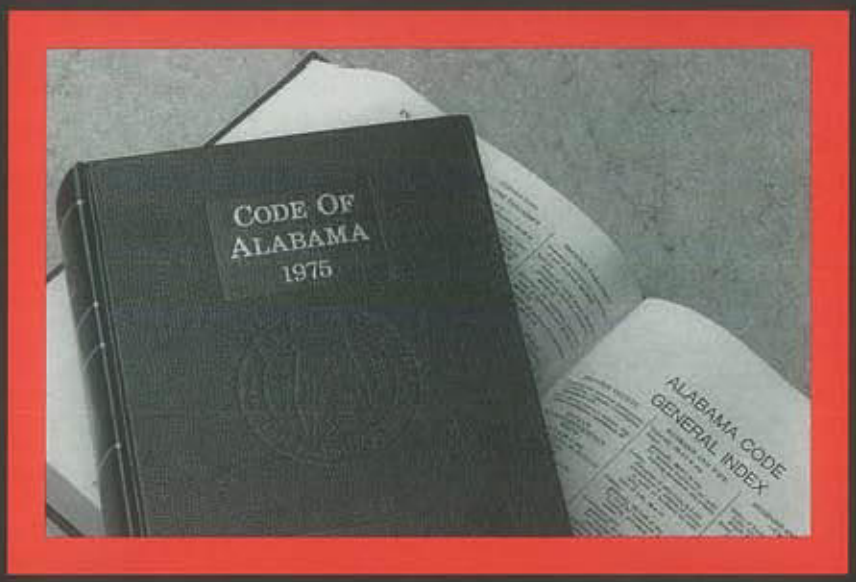
AIM: For the Difference!

Attorneys Insurance Mutual of Alabama, Inc.*
22 Inverness Center Parkway
Suite 525
Birmingham, Alabama 35242-4889

Telephone (205) 980-0009
Toll Free (800) 526-1246
FAX (205) 980-9009

*MEMBER: NATIONAL ASSOCIATION OF BAR-RELATED INSURANCE COMPANIES.

There's Been an Important Change in the Alabama Code.



The Publisher.

And a free offer for you.

It's official. Lawyers Cooperative Publishing is the new publisher of the official *Code of Alabama 1975*. And the only source for the official code. But there's more here for Alabama attorneys than just a new name on the code volumes. There's a new, dramatically improved index to go with them. You see, we created our new General Index with guidance from Alabama attorneys across the state.

So now, you'll have complete, up-to-date coverage of Alabama law. And you'll have an index you can really work with.

If you've been a code subscriber, keep your official *Code of Alabama 1975* current and uninterrupted by registering your LCP subscription now. But even if you don't, we'll send you a copy of our new General Index FREE. Just ask your Lawyers Cooperative Publishing representative to reserve your copy or call us at **1-800-762-5272.**

Lawyers Cooperative Publishing™

http://www.lcp.com

IN BRIEF

January 1996 Volume 57, Number 1

ON THE COVER:

Early morning sunlight on the Alabama Governor's Mansion. The mansion was built in 1907 as a private residence. In 1950, the state purchased the mansion for $100,000 (renovations cost $132,000). Although Jim Folsom, Sr. was governor at the time of purchase, Governor Gordon Persons was the first governor to live there (1951). The mansion includes 22 rooms, a chandelier featuring 1,368 Czechoslovakian crystal prisms, large gold-leaf mirrors, and a grand southern staircase. See additional photo, page 6
— Photo by Paul Crawford, JD, CLU

INSIDE THIS ISSUE:

ALABAMA STATE BAR HEADQUARTERS STAFF
415 Dexter Avenue, Montgomery, AL 36104 (334) 269-1515 • FAX (334) 261-6310

Executive Director ..... Keith B. Norman
Executive Assistant ..... Margaret Boone
Director of Programs ..... Edward M. Patterson
Administrative Assistant for Programs ..... Diane Weldon
Programs Secretary ..... Heidi Alves
Director of Communications & Public Information ..... Susan H. Andres
Publications Director ..... Margaret L. Murphy
Publications/Communications Secretary ..... Rita Gray
Membership Services Director ..... Christie T. Freeman
Membership Assistant ..... Kelly Carden
Director of Admissions ..... Dorothy D. Johnson
Admissions Assistant ..... Elizabeth Shwarts
Alabama Law Foundation, Inc. Director ..... Tracy Daniel
ALF Assistant ..... Dawn Howard
Volunteer Lawyers Program Director ..... Kim Oliver
VLP Paralegal ..... Greta Chambless
Bookkeeper ..... Gale Skinner
Graphics Arts Director ..... Maggie Stuller
Graphics Arts Assistant ..... Roderick Palmer
Lawyer Referral Secretary ..... Katherine C. Creamer
Receptionist ..... Angie Crowe
Alabama Center for Dispute Resolution Director ..... Judy Keegan (269-0409)

ALABAMA STATE BAR CENTER FOR PROFESSIONAL RESPONSIBILITY STAFF
415 Dexter Avenue, Montgomery, AL 36104 (334) 269-1515 • FAX (334) 261-6311

General Counsel ..... J. Anthony McLain
Assistant General Counsel ..... L. Gilbert Kendrick
Assistant General Counsel ..... Milton L. Moss
Assistant General Counsel ..... Robert E. Lusk, Jr.
Secretary to General Counsel ..... Vivian Freeman
Complaints Intake & Advertising Coordinator ..... Kim Ellis
Client Security Fund, CSF & CLE Coordinator ..... Bonnie Mainor
Paralegals/Investigators ..... Vicki Glassroth, Peggy Garrett
Investigator ..... Cheryl Rankin
Unauthorized Practice of Law, Paralegal ..... Robin Key

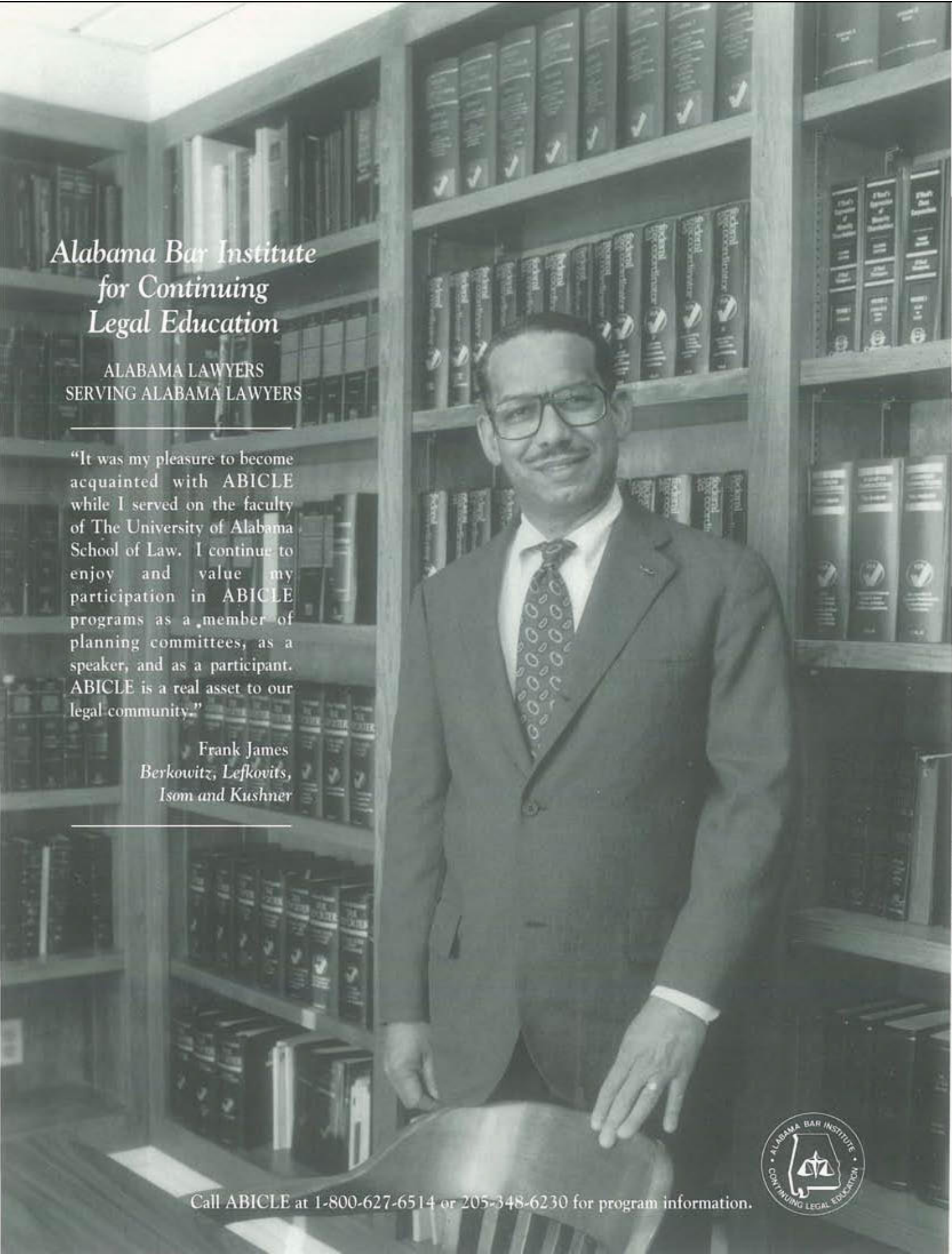
The Alabama Lawyer, (ISSN 0002-4287), the official publication of the Alabama State Bar, is published seven times a year in the months of January, March, May, June (bar directory edition), July, September, November. Views and conclusions expressed in articles herein are those of the authors, not necessarily those of the board of editors, officers or board of commissioners of the Alabama State Bar. Subscriptions: Alabama State Bar members receive *The Alabama Lawyer* as part of their annual dues payment; $15 of this goes toward subscriptions for *The Alabama Lawyer*. Other subscribers do not receive the directory edition of the *Lawyer* as part of their subscription. Advertising rates will be furnished upon request. Advertising copy is carefully reviewed and must receive approval from the Office of General Counsel, but publication herein does not necessarily imply endorsement of any product or service offered. *The Alabama Lawyer* reserves the right to reject any advertisement.

The Alabama Lawyer

Published seven times a year (the June issue is a bar directory edition) by the Alabama State Bar, P.O. Box 4156, Montgomery, Alabama 36101-4156
Phone (334) 269-1515

The Alabama Lawyer is published seven times a year for $20 per year in the United States and $25 per year outside the United States by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Single issues are $5.00, for the journal and $25/$40 for the directory. Second-class postage paid at Montgomery, Alabama.

Postmaster: Send address changes to *The Alabama Lawyer*, P.O. Box 4156, Montgomery, AL 36101-4156.


Alabama Bar Institute
for Continuing
Legal Education
ALABAMA LAWYERS
SERVING ALABAMA LAWYERS
"It was my pleasure to become acquainted with ABICLE while I served on the faculty of The University of Alabama School of Law. I continue to enjoy and value my participation in ABICLE programs as a member of planning committees, as a speaker, and as a participant. ABICLE is a real asset to our legal community."
Frank James
Berkowitz, Lefkovits, Isom and Kushner
Call ABICLE at 1-800-627-6514 or 205-348-6230 for program information.
ALABAMA BAR INSTITUTE
CONTINUING LEGAL EDUCATION

PRESIDENT'S PAGE

"The Alabama State Bar strongly supports an independent judiciary, the adherence to the doctrine of separation of powers and an adequately funded court system. The Motion was approved by unanimous voice vote of the commission."

This is from the minutes of the board of bar commissioners' meeting held May 12, 1995. It has been, and continues to be, the strongly held position of the Alabama State Bar. Therefore, it is troubling to me and to most of our profession that our judiciary has received so much unwarranted criticism and has been cast in such poor light by the media, some politicians and others. Unthinking criticism of the court can undermine the very institution whose purpose it is to assure equal justice under the law for all because, as Justice Thurgood Marshall once stated, "We must never forget that the only real source of power that we as judges can tap is the respect of the people."

John A. Owens

We, as lawyers are, of course, bound by the Rules of Professional Conduct from disparaging our judges (Rule 8.2(a) of the *Alabama Rules of Professional Conduct*). However, the media, the general public and politicians who are not lawyers have no such bounds. I believe that it is up to us as lawyers to not only uphold the letter and the spirit of Rule 8.2 in our own statements and conduct concerning the judiciary; I believe that it is incumbent upon us as lawyers to dissuade others from improper, angry or destructive rhetoric concerning our judges and our courts.

I do not mean that constructive criticism is inappropriate or that we should not freely discuss the issues concerning the court, even positively taking sides in judicial elections if we wish or that we should not propose and advocate improvements in the system. In fact, rule 8.3 appropriately requires lawyers to report improper conduct of judges under certain circumstances. However, rhetoric which questions the very fabric and integrity of judges or the judicial process must necessarily destroy, or at least damage, the "only real source of power" referred to by Justice Marshall — the respect of the people.

Why should we expect people to obey the orders of our courts or even show up for jury duty if they are reading daily in their newspapers or hearing over their television that the system is broken, the judges are bought and the like?

Our judiciary with its jury system has worked well to protect the rights of our citizens and to enforce their legal obligations in criminal and civil cases throughout the history of the United States. It works well today. Literally hundreds of cases of one type or another are tried throughout this state every week. We are blessed with one of the finest judicial systems in the country. Almost without exception, our judges are honest, decent, hardworking, learned men and women who are proud of their positions and who are proud to serve the public. Each judge, whether district, circuit, court of appeals or supreme court holds an important, responsible position worthy of high public esteem.

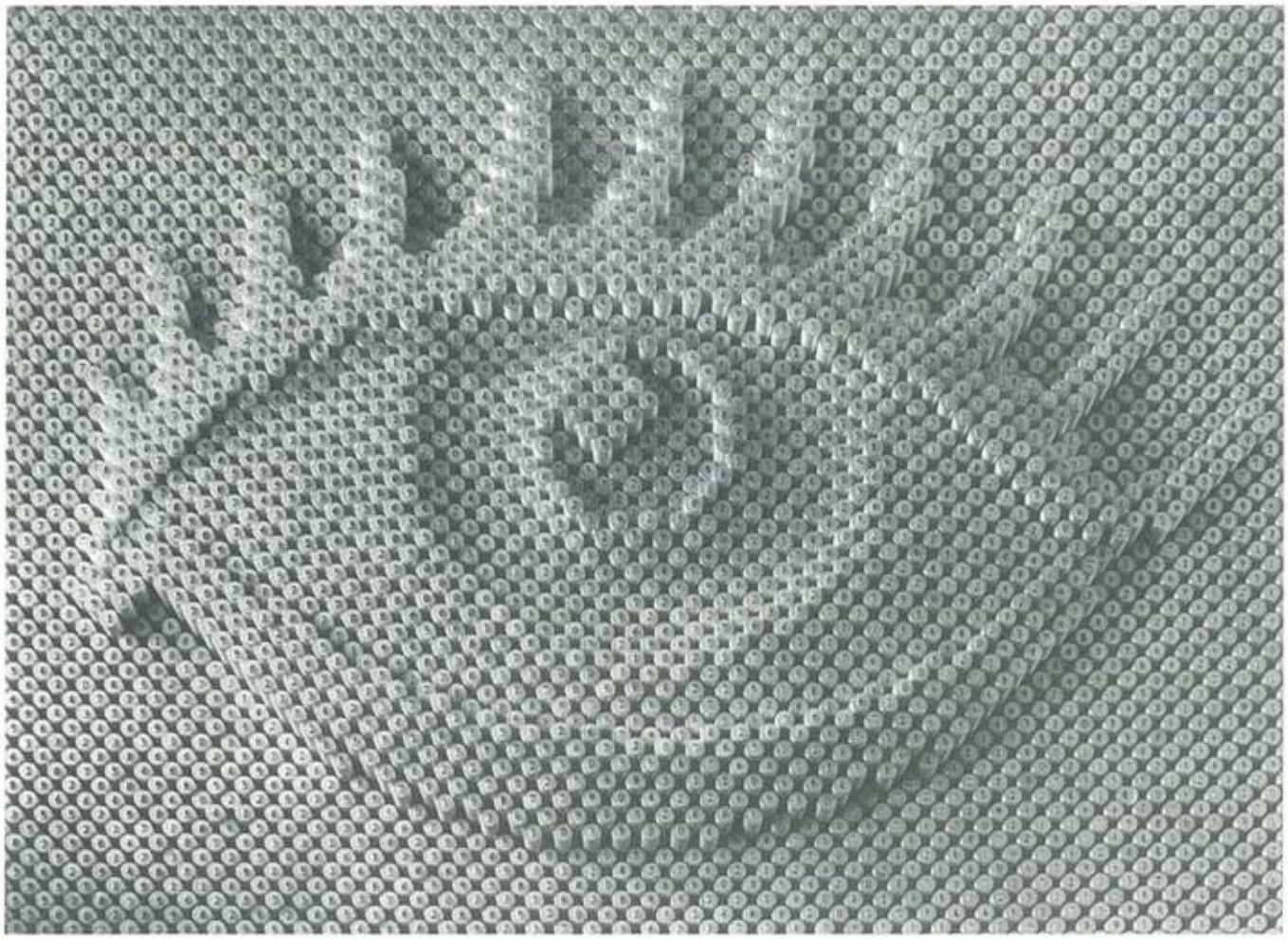
We are coming through a troubled period for our court caused by the election controversy concerning the office of chief justice. That is over. It is time to put it behind us and mend fences. The O. J. Simpson trial did not help and, unfortunately, I fear that the upcoming "tort reform" battle may also be waged in a manner that further disparages our judiciary.

I am writing this article for a November 15, 1995 deadline, so I have no idea what will be happening in the area of "tort reform" legislation when this article goes to press. However, I urge every lawyer—whichever side of the "tort reform" controversy they may take (or even if they remain neutral)—to remember the great importance of the integrity of the judicial branch of our government to every citizen and to do what they can to steer the debate to the merits, or lack thereof, of whatever is proposed and away from an attack on our judiciary.

Our judges are somewhat defenseless when criticized by the media whether fairly or unfairly. They can't come out and defend their decisions publicly or otherwise defend themselves. I am not certain what the bar can do in this regard either but I have requested that Ann McMahan, chair of the Task Force on Bench and Bar Relations, ask her task force to study the matter to be able to assist the bar in responding in some systematic and appropriate manner whenever judges or lawyers are subjected to unjustified criticism in the media. I have also written letters urging various public officials to be mindful of the detrimental effect unbridled rhetoric toward the court can have upon public confidence in our judicial system. Perhaps you can think of other ways that the Alabama State Bar can assist. We welcome your suggestions.

You can certainly assist by being positive in your statements about our courts which you make to your clients, friends, family and acquaintances and in your own actions toward the court. I think that by a positive campaign, undertaken by each lawyer, focusing upon the significant role our courts play and the high integrity of the vast majority of the men and women who serve as judges we will keep "the respect of the people" in the judiciary. Won't you help? ■

A CPA CAN SEE MORE IN NUMBERS THAN JUST NUMBERS. (APPARENTLY, THE EYE IS THE WINDOW TO MORE THAN JUST THE SOUL.)



In every number, there is a question. Is your retirement plan the best it could be? What will be the impact of your company's merger with another? Where will you find the capital you need? But without the vision to see the true meaning within the numbers, the answers can remain frustratingly obscured. A CPA can provide the financial insights so crucial to everything from retirement planning to evaluating prospective mergers and ferreting out re-engineering opportunities.

You see numbers. We see opportunities.

CPA

THE CPA. NEVER UNDERESTIMATE THE VALUE.

American Institute of Certified Public Accountants

Alabama Society of Certified Public Accountants

EXECUTIVE DIRECTOR'S REPORT

The nursery rhyme "Humpty Dumpty" is familiar to all. As you recall, Humpty Dumpty was perched precariously high atop a wall when he fell and broke into many pieces. Neither the king's horses nor the king's men were able to put Humpty Dumpty back together again.

I have thought about this nursery rhyme often over the last several months as Congress has attempted to dismantle the Legal Services Corporation (LSC) and remove funding for post-conviction defender organizations (PCDO's) including Alabama's own Capital Representation Resource Center. If this happens, who will fill this void—who will pick up the pieces and carry on the work of these organizations, both in Alabama and across America?

Keith B. Norman

Unfortunately, there are too many in Congress who believe this is a *pro bono* responsibility of the private bar. As one member of Alabama's own congressional delegation expressed: "I believe that all Americans ought to have access to legal representation, but many of the routine legal cases could be effectively handled through programs organized by interested bar associations." This expectation is unrealistic because the legal profession is already doing a great deal to help meet the civil legal needs of the poor. Likewise, when lawyers are paid to represent indigents in criminal cases, the hourly pay is so low it does not cover a lawyer's overhead. Those lawyers who represent indigents are essentially subsidizing the state for these constitutionally mandated protections.

As you know, the Volunteer Lawyers Program was created by the Alabama State Bar to encourage lawyers from across Alabama to contribute up to 20 hours of civil *pro bono* legal services. Despite this program's having one of the highest participation rates of any *pro bono* program in the country, there are many unmet legal needs of citizens throughout this state. The private bar's work through the Volunteer Lawyers Program in cooperation with the Legal Services Corporation meets only a portion of our citizens' total civil legal needs. Alone, the private bar is unable to meet these enormous needs. Our justice system, both in Alabama and elsewhere, depends on well-staffed Legal Services' offices.

Similarly, the effective administration of justice in capital cases will be adversely affected if the Alabama Capital Representation Resource Center ceases to operate. The House Appropriations Subcommittee on Commerce, Justice, State Judiciary and Related Agencies voted on June 28 to include no funding for PCDOs in its draft bill for fiscal year 1996. As Alabama's PCDO, the Resource Center depends on these funds for the greatest portion of its operating budget. The Resource Center was established in 1988 through the efforts of the Alabama State Bar to address

Continued on page 8

Sunrise on the Alabama Governor's Mansion

— Photo by Paul Crawford, JD, CLU

Executive Director's Report

Continued from page 6

the critical need of post-conviction representation of Alabama's extremely large death row population. Then-state bar President Ben H. Harris, Jr. of Mobile appointed a committee chaired by former Governor Albert P. Brewer to study this problem. After intensive study, the committee recommended to the bar commission the creation of the Resource Center. This recommendation was unanimously accepted by the commission.

Although the Resource Center provides some direct representation of death row prisoners, its principal mission is to furnish expert advice and assistance to appointed counsel in capital cases as well as to appointed counsel in federal habeas corpus litigation. The private bar's commitment to the Resource Center has continued each year since its inception with significant grants from the Alabama Law Foundation. Despite these funds, which last year totaled approximately $100,000, the Resource Center depends mainly on federal grants to carry out its mission.

As I write this column, the budget process is stalled and the federal government has shut down. While the future for the Resource Center is extremely bleak, LSC and its funding appear to be safe for at least one more year. Congressional foes have attempted to dismantle the entire Legal Services operation and institute block grant funding for delivery of civil legal services nationally. In spite of the reprieve, LSC's funding was slashed by over 30 percent and severe limitations placed on the use of its funds. Few in Congress apparently realize the disruption dismantling LSC would have on the delivery of civil legal services to the poor in Alabama and across the nation. While I am sure there is room for improving the means by which those services are currently delivered, I am not convinced that the block grant program will result in a better delivery mechanism.

I am sure that the efforts to terminate LSC this year will not end the efforts to abolish it. Apparently, LSC opponents hope to kill it by providing no funds for the program in the FY '97 budget. Or, they may move ahead with the block grant bill, which stalled in this session, that would eliminate LSC and provide minimal funding to states for only two years.

The private bar's voluntary *pro bono* representation of parties in civil and criminal matters indicates its support for our nation's commitment to "equal justice under the law." Despite significant *pro bono* services provided by the bar, there are still thousands of citizens in Alabama who are unrepresented and therefore denied access to our system of justice. Adequate funding for LSC and the Resource Center to retain full-time poverty lawyers ought to be a high priority. I hope you will take time to contact members of Alabama's Congressional delegation letting them know of your support for restoring LSC's funding to at least 1995 levels and, further, your support for full funding of PCDOs so that the Resource Center will continue to operate. ■

Judicial Award of Merit Nominations Due

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the state bar's Judicial Award of Merit through May 15, 1996. Nominations should be prepared and mailed to **Keith B. Norman, 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 then makes a recommendation to the board of bar 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.

Alabama State Bar Fall 1995 Admittees

Alabama State Bar Fall 1995 Admittees

Michael Kevin Abernathy
Robert Brett Adair
Vicki Dianne Poole Adkison
Gregory Lamar Albritton
Geoffrey DeWitt Lavies Alexander
Angelia Sheets Anderson
James Eric Anderson
James Quinlivan Baker
Ronald Steven Baker
Bryan Oxford Balogh
Jonathan Daniel Barganier
Elizabeth Jean Barger
Donna Jo Barnes
Barbara Lee Barnett
Ricky Battaglia
Robert Eugene Battle
Nancy Louise Le Bey Baxley
Cecilee Russell Beasley
George William Beasley, Jr.
Elizabeth Anne Beason
John William Beck
Robert Lee Beeman, II
Gregory Martin Beil
Stephen Davis Benson
Michael Earl Bevers
David Crawford Bibb
Jeffrey Glenn Blackwell
Donna Marie Armstrong Bland
John Arnold Blanton, III
Ronald Edward Boackle
Kimberly Crawford Keefer Boone
La Barron Nelson Boone
Christine Roswita Bosau
Hugh Chester Boston, III
Ellen Maureen Bowden
Wendel Lawrence Bowie
Jeffrey Joseph Bradwell
James Cain Brakefield
Lara Christine Brannon
Carol Anne Gibbs Braswell
Michael Franklin Braun
Emily Kaye Briscoe
Laurie Michelle Brock
Kenyen Ray Brown
Robert O'Neal Bryan
Robert Edward Buccarelli
Robyn Dawn Graham Bufford
Marcia Kay Bull
Charles Gregory Burgess
Thomas Wayne Burgett
Martin Emmett Burke
Jeffrey Preston Burks
James Brent Burney
Sherry Lynn Cupps Burns
Cynthia Grace Burnside
Jimmy Daryl Burt, Jr.
Kenneth Mitchell Bush
James Robert Bussian
James Dwight Butler
Leah Ann Butler
James William Cameron
John Robert Campbell
Keith Arden Canterbury
Bradford White Caraway
Kristin Amanda Cleveland Carter
Patrick Pounds Casey
Michael Chamlee, Jr.
Christopher Mark Champion
Leslie Mitchell Chapman
Holly Elizabeth Chastain
Willis Howard Clay
Lisa Gaye Clayton
Dena Kaye Metcalf Coffman
Carla Rae Cole
Meteasa Lenae Collins
Philip Russell Collins
Sean Dewayne Colston
Gerald DeWitt Colvin, III
Theodore Jerome Cook
Bradley Williams Cornett
Donnis Cowart
Jerry Jackson Crook, II
Thomas Edgar Dasinger
David Brent Davidson
Thomas Whitfield Davis, V
Yvonne Green Davis
Gregory Brown Dawkins
Alford Jerome Dees
Ethan Richard Dettling
Jennifer Collins Devereaux
Paul Joseph Dezenberg
Laura Anne Dickey
Rodney Dale Dickinson
Kristie Ann Dixon
Norman Ronald Downey, III
Brenda Lynn Drendel
Alexandra Marie Duca
Stephen Mark Dukes
Lori Lynne Mesger Duwve
Jeffrey Darren Dyess
John Vincent Edge
Nanette Solveig Edwards
Suzanne Lindley Dye Edwards
Mark Pickett Eiland
William Thomas Eiland
Stephanie Paige Wheeler Elliott
Shannon Marie Emory
William Inge Eskridge
Kelly Lynn Hubbard Estes
Rita Faye Peterson Farris
Thomas Christian Fernekes
Leslie Taylor Fields
James Benjamin Finley
Michael Ian Fish
Linda Ann Munson Fiveash
James Jerome Foster
David Seth Furman
Dana Reneé Rister Gaché
Russell Carter Gaché
Harry Whitehead Gamble, III
Paul Carlton Garrison
Barbara Jean Gilbert
James Randolph Gillum
Dennis Eugene Goldasich, Jr.
Carole Anne Golinski
Robbyn Anice Gourdouze
Charles Anthony Graffeo
Mary Catherine Graham
Robin Hansen Graves
Christopher Brooks Greene
Janice Yvonne Pierce Groce
Steven Michael Gruber
Juan-Carlos Guerrero
Stacey Alison Haire
Patricia Mae Haisten
Joel Roger Hamner
Jolee Ann Hancock
Ronald Windell Hanson
Don Bradford Hardin
Cynthia Sue Harrell
Sidney Moxey Harrell, Jr.
Yolanda Beth Harris
Michelle Marie Manley Hart
Michael Scott Harwell
Frances Jane Majors Hauth
Frederica White Hecker
Tracy Lynn Nevels Hendrix
Thomas John Herthel
Gregory Miles Hess
Laura Michelle Hitt
Eric Daniel Hoaglund
Edward Andrew Hosp
Byron Edwin House
Rachel Maria Self Howard
Nancy Howell
Brian Ted Huddleston
Johnetta L. C. Dolphin Hume
Mark Rogers Hunter
Robert Eugene Hurlbut, Jr.
Thomas Jeffrey Huseman
John Whetstone Hutton
Lynn Farley Ives
Christopher Paul Janes
Phillip Leo Jauregui, Jr.
Amye Faye Rice Jefferson
Richard Douglas Jenson
James Allen Johnson
Jeffrey Alan Johnson
Kelvin Dominic Jones, III
Kent Davis Jones
Julie Anne Wilson Jordan
Laura Durant Joyner
Michael Rene Kaoui
William Michael Keever
Anne Middleton King
Steven Austin King
Thomas Gerard Kirkland
Larry David Lackey
Anne Dahlene Lamkin
Judy Brogdon Lange
Marcie Anne Lanier
Tia Marie Lasini
Carol Lynn Latham
Norma Genell Lee
Robert Winston Lee

William Lovard Lee, IV
Alan Daniel Leeth
Tracy Ann Davis Leeth
William Aull Leitner, III
Mary Lauren Lemmon
Vanessa Leonard
Tracey Lynn Lewis
La Ronica King Lightfoot
Jeffrey Patton Lisenby
Lee Wendell Loder
Richard Chapman London
David Wayne Long
Steven Francis Long
Melanie Lela Looney
Wendy Leigh Love
Catherine Ann Loveless
Michael Robert Lunsford
Louis Buisch Lusk, Jr.
Francis Xavier Lynch
Paul Frederich Malek
Kimberlyn Patrice Malone
Memory Clair Maloney
Lorrie Ann Maples
Marshall Clay Martin
Robert Lay Martin
Shannon Gail Marty
Elise Beth May
Nancy Ellen McCarthy
Tracey Michele McCartney
Mitchell Allen McCoy
Tracy Akiba Ali McCracken
Brian Allen McDaniel
David Whittington McDowell
Laurence Jones McDuff
Stacey Lynn McDuffa
Robert Sean McEvoy
Stephanie Noel McGee
Russel Allan McGill
Donald Patrick McKenna, Jr.
John Murphy McMillan, III
Andrea Dawn Jones McNeil
Douglas Alan McSwain
Jonathan Brock Medlock, II
Matthew John Meloun
Thomas Plowden Melton, IV
Peggy Jo Pentecost Miller
Barney Andrew Monaghan
Joe Wilson Morgan, III
Oscar Morgan, III
Craig Bryant Morris
Christina Carolyn Mosca
Brian Taggart Mosholder
Stephen Wright Mullins
Paul Bradley Murray
Joseph Vincent Musso
Keith Anderson Nelms
Deborah Moore Nickson
Hugh Clare Nickson, III
Charles Barton North
Ashley Parker Norton
Eberechukwu Nkechinyere Nwakudu
Brennan Collins Ohme
Jerry Clyde Oldshue, Jr.
Jobe Thomas Ott
Donald Ray Oulsnam
Barry Curtis Page
Frank Leon Parker, Jr.
John Robert Parker
Michael Edward Parrish
Bruce Allen Parsons
Melody Kay Pate
Bentley Hines Patrick
Jessica Dianne Kirk Patterson
Kevin Ward Patton
Kellie Renee Payne
Albert Dashiell Perkins, IV
James Bruce Perrine
Thomas Harry Perrine
Richard Roy Pettit
Ginger Lynn Pierce
James Hillary Pike
Samuel Wesley Pipes, V
John McGavock Porter
Carrie Allison Powell
Raymond Eric Powers, III
Mark David Pratt
Darryl Mark Price
Ronnie Maxwell Prine
Richard Joe Rupert Raleigh, Jr.
Carlos Stanford Randall
Hazel Carla Carden Ray
Susan Rachel Redmond
Charles Leroy Rice, Jr.
Richard Lionel Rice, Jr.
Thomas Edmund Rimmer
Christi Ann Roberts
Tracy Lane Roberts
Alyce Street Robertson
Audrey Denise Robinson
Richard Whitney Rockenbach, II
Christopher Eric Roper
Tom Steven Roper
Brett Alan Ross
Richard Wayne Rowell
Kristin Lee Rueckert
William Joseph S. Rushing, III
Manning Todd Russell, Sr.
Mark Daniel Ryan
Kimberly Ann Ryberg
Leon Yelvington Sadler, IV
John Wallace Savage
David Dawson Schoel
Stephen Lee Scott
Donald Mark Seib
David Edward Sewell
James Kimbrough Sheek, IV
Patrick Michael Shegon
Allison Shelley
Michael David Sherman
David Walter Shipper
Laura Anne Simmons
Derek Woodly Simpson
Spence Arthur Singleton
Amy Renee Walker Sinnott
James Paul Sizemore
Kendra Babette Sexton Slagle
James Brian Slaughter
Richard Wayne Sliman
Stephen Hugh Smalley
Jeffrey Carl Smith
Joseph Earl Smith
Kyle Thomas Smith
Shannon Michelle Smith
Stephen Bruce Smith
Stephen Gilbert Smith
William David Smith, Jr.
Anna Laura Spencer
Mary Claire St. John
Amy Elizabeth Staats
Louis James Stein, III
David Patrick Stevens
William Wayne Stewart
Edward Simpson Stoffregen, III
Gary Wyatt Stout
Charlene Irvette Stovall
Jay Elton Stover
Brian Keith Strange
Michael David Strasavich
Joseph Frank Strength
Debra Ann Tranel Sutton
Jacob Calvin Swygert, Jr.
William Ken Tapscott, Jr.
Mark Hugh Taupeka
Mary Allison Taylor
Bryan Anthony Thames
Jessica Marie Wilson Thompson
Frederick Martin Thurman, Jr.
Johnny Lee Tidmore
Michael Kenan Timberlake
Marie Michele Treubig
Laura Lynne Trimble
Joseph Karl Trucks
Brian Dennis Turner, Jr.
Wells Rutland Turner, III
Jeff George Underwood
John Jefferson Utsey
Virginia Christine Green Van Horn
Lisa Dawn Van Wagner
Michael J. Velezis
Nancy Pickens Vernon
Joseph Holt Vinson
Caroline Elizabeth Walker
Mary Kristi Wallace
Gary Thomas Ward, Jr.
John Andrew Watson, III
Russell Jackson Watson
John Griffin Watts
Dennis Russell Weaver
John Cox Webb, V
Rebecca Garity Webb
Clyde O'Neal Westbrook, III
Darrell Zane Westmoreland
Sharon Elizabeth Wheeler
Mary Carol White
Cyler Benton Williams
Michaelle Chere Williams
Pamela Williams
Dennis Owen Williamson
Julie Louise Wills
Joe Keith Windle
Michael Anthony Wing
William Christopher Wise
James Stanley Witcher, III
Deanna Lynn Plummer Wood
John MacAlpine Wood
Paul Oliver Woodall, Jr.
Nicholas Wyckoff Woodfield
Gregory Blake Wormuth
Chandra Carol Wright
Christine Wyatt Wright
Josephine Rose Wright
Peter McKeever Wright
Harry Oswald Yates, Jr.
Cinda Ruth York
Christopher John Zulanas

LAWYERS IN THE FAMILY

David Schoel (1995) and Jerry Schoel (1968) (admittee and father)

James S. Witcher, III (1995) and James S. Witcher, II (1966) (admittee and father)

J. Brent Burney (1995), Billy C. Burney (1966) and Billy C. Burney, II (1992) (admittee, father and brother)

Stephen G. Smith (1995), Jack W. Smith (1953), Deborah Smith Seagle (1987) and J. Earl Smith (1964) (admittee, father, cousin and uncle)

David Seth Furman (1995), Naomi Furman Kipp (1991) and Howard Furman (1985) (admittee, sister and father)

C. Anthony Graffeo (1995) and Nick Graffeo, Jr. (1964) (admittee and father)

Harry W. Gamble, III (1995) and Harry W. Gamble, Jr. (1960) (admittee and father)

Thomas E. Dasinger (1995), Sharon R. Hoiles (1984) and Michael A. Dasinger, III (1991) (admittee, mother and brother)

John R. Parker (1995) and John W. Parker (1971) (admittee and father)

LAWYERS IN THE FAMILY

Derek Woodly Simpson (1995) and Fred Bryan Simpson (1965) (admittee and father)

J. Jefferson Utsey (1995) and William L. Utsey (1965) (admittee and father)

Elizabeth A. Beason (1995) and George M. Beason, Jr. (1969) (admittee and father)

Robert Winston Lee (1995) and Robert Edward Lee (1989) (admittee and father)

Patrick P. Casey (1995), John S. Casey (1957), Carolyn P. Casey (1984) and Frank W. Hanvey (1952) (admittee, father, mother and uncle)

William Lovard Lee, IV (1995) and William Lovard Lee, III (1968) (admittee and father)

Geoffrey DeWitt Alexander (1995) and Judi Mitchell Alexander (1991) (admittee and mother)

Rachel Maria Howard (1995) and Norma Harwood (1963) (admittee and mother)

Jeff J. Bradwell (1995) and John R. Bradwell (1988) (admittee and brother)

LAWYERS IN THE FAMILY

Dana Rister Gaché (1995) and Russ Gaché (1995) (wife and husband admittees)

Bob Battle (1995) and Joe Battle (1967) (admittee and father)

Alyce Street Robertson (1995) and Judge William H. Robertson (1969) (admittee and father)

Joe W. Morgan, III (1995) and Joe W. Morgan, Jr. (1982) (admittee and father)

Meteasa Collins (1995) and Yolanda Harris (1995) [co-admittees (cousins)]

Gerald DeWitt Colvin, III (1995) and Gerald D. Colvin, Jr. (1972) (admittee and father)

Sidney M. Harrell, Jr. (1995) and Sidney M. Harrell (1954) (admittee and father)

Tracy D. Leeth (1995) and Alan D. Leeth (1995) (wife and husband admittees)

Jennifer C. Devereaux (1995) and Wanda D. Devereaux (1978) (admittee and mother)

LAWYERS IN THE FAMILY

Charles Gregory Burgess (1995) and William P. Burgess (1973) (admittee and father)

STATISTICS OF INTEREST

Number sitting for exam	542
Number certified to Supreme Court of Alabama	376
Certification rate	69 percent

CERTIFICATION PERCENTAGES:

University of Alabama School of Law	94 percent
Cumberland School of Law	89 percent
Birmingham School of Law	39 percent
Jones School of Law	40 percent
Miles College of Law	3 percent

1996 Judicial Conference of the Eleventh Circuit

The meeting of the Judicial Conference of the Eleventh Circuit will take place April 25-27, 1996 at Marriott's Bay Point Resort in Panama City Beach, Florida. The conference is being convened by the judges of the Eleventh Circuit to consider the business of their respective courts (the court of appeals, and the district and bankruptcy courts in Alabama, Florida and Georgia) and to devise means of improving the administration of justice in those courts.

A limited number of spaces are available to any attorney admitted to practice before the court of appeals or any of the district courts of the Eleventh Circuit who wishes to attend the meeting. If an attorney is interested in attending this conference, he or she should write to the **Circuit Executive, Norman E. Zoller, at 56 Forsyth Street, NW, Atlanta, Georgia 30303.** By return mail, he will forward a conference registration form, describing the conference's hotel accommodations, room charges and the substantive and social programs of the meetings.

About Members, Among Firms

ABOUT MEMBERS

R. Stan Morris announces the relocation of his office to 1232 Blue Ridge Boulevard, P.O. Box 59767, Birmingham, Alabama 35259. Phone (205) 823-8916.

Deborah W. Hicks announces the relocation of her office to 1132 N. Eufaula Avenue, (Highway 431 North), Eufaula, Alabama 36027. Phone (334) 687-8369.

Andy Nelms announces the opening of his office at the Bell Building, 207 Montgomery Street, Suite 720, Montgomery, Alabama 36104. The mailing address is P.O. Box 70508, Montgomery 36107. Phone (334) 265-2639.

S. Shawn Sibley announces the opening of his office at 635 Madison Avenue, Montgomery, Alabama 36104. Phone (334) 834-7574.

Richard D. Jenson announces the opening of his office at 1538 Gulf Shores Parkway, Gulf Shores, Alabama 36547. Phone (334) 968-4529. The mailing address is P.O. Box 3531, Gulf Shores 36547.

Edward C. Hixon announces the opening of his office at 472 S. Lawrence Street, Suite 201, Montgomery, Alabama 36104. The mailing address is P.O. Box 2386, Montgomery 36102-2386. Phone (334) 834-8230.

Bill C. Messick announces the opening of his office at One Office Park, Suite 210, Mobile, Alabama. His mailing address is P.O. Box 91357, Mobile 36691. Phone (334) 380-0533.

Robert G. Methvin, Jr. announces the relocation of his office to the Highland Building, 2201 Arlington Avenue, South, Birmingham, Alabama 35205. Phone (205) 939-3006.

D. Carlton Enfinger announces the relocation of his office to 822 N. Monroe Street, Tallahassee, Florida 32303. Phone (904) 425-2828.

H.S. Bagga announces the relocation of his office to 2000 First Avenue, North, Suite 210, Brown Marx Tower, Birmingham, Alabama 35203. Phone (205) 323-0123.

Earl L. Dansby announces the opening of his office at 418 Scott Street, Montgomery, Alabama 36104. The mailing address is P.O. Box 4807, Montgomery 36103. Phone (334) 265-3493.

Michael L. Jones, Jr. announces the opening of his office at One East Court Square, Andalusia, Alabama 36420. The mailing address is P.O. Box 957, Andalusia 36420. Phone (334) 222-0111.

Rick Battaglia announces the opening of his office at 5950 Carmichael Place, Suite 102, Montgomery, Alabama 36117. Phone (334) 244-2983.

M. Scott Harwell announces the opening of his offices at 1009 E. Church Street, Atmore, Alabama and 633 Palafox Street, Flomaton, Alabama. The mailing address is P.O. Box 26, Atmore 36504 and P.O. Drawer 764, Flomaton 36441. Phone, Atmore office, (334) 446-1000. Phone, Flomaton office, (334) 296-2000.

William H. Lindsey announces the opening of his office at 103 S. College Avenue, Salem, Virginia 24153. Phone (540) 375-3833.

Kelby E. Strickland, Jr. announces the relocation of his office to 608 38th Street, South, Birmingham, Alabama 35222. Phone (205) 250-0900.

Karen Scent announces a name change to **Karen Tosh** and that she has opened a mediation practice. Offices are located at 830 Jefferson Street, Paducah, Kentucky. The mailing address is P.O. Box 1095, Paducah 42002-1095. Phone (502) 443-9600.

AMONG FIRMS

Haygood, Cleveland & Pierce announces that **Michael Sharp Speakman** has become a partner. The new name is **Haygood, Cleveland, Pierce & Speakman**. Offices are located at 120 S. Ross Street, Auburn, Alabama. The mailing address is P.O. Box 3310, Auburn 36831-3310. Phone (334) 821-3892.

London & Yancey announces that **F. Daniel Wood Jr.**, former law clerk for Justice Reneau P. Almon, Supreme Court of Alabama, has become associated with the firm and that **Robert W. Norris,** Major General, USAF (Ret.), former USAF Judge Advocate General and former general counsel, Alabama State Bar, has joined the firm *of counsel*. Offices are located at 1000 Park Place Tower, 2001 Park Place, North, Birmingham, Alabama 35203. Phone (205) 251-2531.

Cabaniss, Johnston, Gardner, Dumas & O'Neal announces that **Diane H. Crawley** has joined the firm. Offices are located at 700 Park Place Tower, Birmingham, Alabama 35203 and 700 AmSouth Center, Mobile, Alabama 36602. Phone (205) 716-5200, Birmingham. Phone (334) 433-6961, Mobile.

G. John Dezenberg, Jr. and **Paul J. Dezenberg** announce the formation of **Dezenberg & Dezenberg.** Offices are located at 908-C N. Memorial Parkway, Huntsville, Alabama 35801. Phone (205) 553-5097.

Lightfood, Franklin & White announces that **James R. Sturdivant, Robin Hansen Graves** and **Charles L. Rice, Jr.** have joined the firm. Offices are located at 300 Financial Center, 505 N. 20th Street, Birmingham, Alabama 35203. Phone (205) 581-0700.

Janecky, Newell, Potts, Hare & Wells announces that **Benjamin H. Albritton** and **Karen S. Whatley** have joined the firm in the Mobile office, located at 3300 First National Bank Building, Mobile, Alabama 36652, and that **Stephanie R. White, Kori L. Clement, Michael J. Cohan** and **Celeste L. Patton** have joined the Birmingham office, located at 1901 Sixth Avenue, North, Suite 2130, AmSouth-Harbert Plaza, Birmingham, Alabama 35203.

Berkowitz, Lefkovits, Isom & Kushner announces that **Hewes T. Hull, Lori L. Duwve, Elise B. May** and **Frederick M. Thurman** have joined the firm, locat-

ed at 420 N. 20th Street, 1600 SouthTrust Tower, Birmingham, Alabama 35203-3204. Phone (205) 328-0480.

Kilpatrick & Cody announces that **Martin R. Tilson, Jr.**, formerly counsel at Long, Aldridge & Norman, has joined the partnership in the Atlanta office, located at 1100 Peachtree Street, Atlanta, Georgia 30309. Phone (404) 815-6500.

Rushton, Stakely, Johnston & Garrett announces that **Patrick M. Shegon** and **Alyce S. Robertson** have become associates. Offices are located at 184 Commerce Street, Montgomery, Alabama 36101. Phone (334) 206-3100.

Harris & Brown announces that **Elizabeth J. Hubertz** and **Clyde O. Westbrook, III** have become associates. Offices are located at 2000-A SouthBridge Parkway, Suite 520, Birmingham, Alabama 35209. Phone (205) 879-1200.

Berry, Ables, Tatum, Baxter, Parker & Hall announces that **James K. Brabston** and **Mark R. Hunter** have joined the firm as associates. Offices are located at 315 Franklin Street, S.E., Huntsville, Alabama 35801. Phone (205) 533-3740.

Webb & Eley announces that **Shawn Junkins** has joined the firm. Offices are located at 166 Commerce Street, Suite 300, Montgomery, Alabama. Phone (334) 262-1850.

Stone, Granade & Crosby announces that **Russell J. Watson** has become associated with the firm. Offices are located in Bay Minette, Daphne and Foley, Alabama. The mailing address is P.O. Drawer 1509, Bay Minette, Alabama 36507. Phone (334) 937-2417.

Pierce, Carr, Alford, Ledyard & Latta announces that **Annette M. Carwie, Frank L. Parker, Jr.** and **Robert E. Hurlbut, Jr.** have joined the firm. Offices are located at 1110 Montlimar Drive, Suite 900, Mobile, Alabama 36609. Phone (334) 344-5151.

Kaufman & Rothfeder of Montgomery announces that **Carla Cole** and **David Ashley Jones** have joined the firm.

Higgs & Emerson announces that **John R. Campbell** has joined the firm. Offices are located at 405 Franklin Street, Huntsville, Alabama 35801-4257. Phone (205) 533-3251.

Sherrill, Batts & Mathews announces that **Anne Gresham Sargent** has joined the firm. Offices are located at 102 S. Jefferson Street, Athens, Alabama 35611. Phone (205) 232-0202.

Smith & NeSmith announces that **G. Thomas Ward, Jr.** has joined the firm. The **Honorable Carl D. NeSmith, Sr.**, retired circuit judge, remains with the firm *of counsel*. Offices are located at 204 3rd Street, North, Oneonta, Alabama 35121. The mailing address is P.O. Box 8, Oneonta 35121 Phone (205) 625-5505.

Lewis, King, Krieg, Waldrop & Catron announces that **James D. Harris Jr.**, formerly with Harlin & Parker, has joined the firm, located at 918 State Street, Bowling Green, Kentucky. The mailing address is P.O. Box 1220, Bowling Green 42102-1220. Phone (502) 842-1050.

McCleave, Roberts & Shields announces that **Jon A. Green** has joined the firm and the new name is **McCleave, Roberts, Shields & Green**. Offices are located at Suite 1104, AmSouth Center, Riverview Plaza, Mobile, Alabama 36652. Phone (334) 432-1656.

Richard A. Thompson announces that **Ted Strickland**, formerly of the National Council on Compensation Insurance, has become an associate. Offices are located at 2903 7th Street, Tuscaloosa, Alabama 35401. Phone (205) 759-1512.

Hubbard, Smith, McIlwain, Brakefield & Shattuck announces that **Jerry C. Oldshue, Jr.** has become an associate. Offices are located at 808 Lurleen Wallace Boulevard, North, Tuscaloosa, Alabama 35403. The mailing address is P.O. Box 2427, Tuscaloosa 35403-2427. Phone (205) 345-6789.

Watson, Fees & Jimmerson announces that **M. Clay Martin** has become an associate. Offices are located at AmSouth Center, 200 Clinton Avenue, West, Suite 800, Huntsville, Alabama 35801. Phone (205) 536-7423.

McDaniel, Hall, Conerly & Lusk announces that **K. Donald Simms** and **Kenneth A. Dowdy** have joined the firm. Offices are located at 1400 Financial Center, 505 N. 20th Street, Birmingham, Alabama. Phone (205) 251-8143.

Douglas J. Fees announces association with the firm of **Valerie L. Acoff**, a former law clerk for Justice Charles A. Thigpen in the Alabama Court of Civil Appeals, and **Kimberlyn P. Malone**. Offices are

located at 401-403 Madison Street, Huntsville, Alabama 35801. Phone (205) 536-1199.

Brian W. Moore announces the relocation of his office to Carmichael Center, 4001 Carmichael Road, Suite 115, Montgomery, Alabama 36106, and that **Scott Roman** has joined as *of counsel*. Phone (334) 277-8777.

Gordon, Silberman, Wiggins & Childs announces that **Amy W. Sinnott, Kyle T. Smith, Laura M. Hitt, Paul O. Woodall,** and **Ronald Downey, III** have become associated with the firm. Offices are located at 1400 SouthTrust Tower, Birmingham, Alabama 35203-3204. Phone (205) 328-0640.

Miller, Hamilton, Snider & Odom announces that **Hugh C. Nickson, III** has become an associate. Offices are located at 254 State Street, Mobile, Alabama; Suite 802, Colonial Financial Center, One Commerce Street, Montgomery, Alabama; and 1925 K Street, NW, Suite 200, Washington, D.C. Phone (334) 432-1414, Mobile. Phone (334) 834-5550, Montgomery. Phone (202) 429-9223, Washington.

Taylor & Smith announces that **Scott P. Hooker** has joined the firm. Offices are located at 300 N. 21st Street, 600 Title Building, Birmingham, Alabama 35203. Phone (205) 252-3300.

Harris & Brown announces that **Elizabeth J. Hubertz** and **Clyde O. Westbrook, III** have become associates. Offices are located at 2000-A SouthBridge Parkway, Suite 520, Birmingham, Alabama 35209. Phone (205) 879-1200.

Johnston, Barton, Proctor & Powell announces that **J. Vincent Edge** and **C. Allison Powell** have joined the firm. Offices are located at 2900 AmSouth/Harbert Plaza, Birmingham, Alabama 35203-2618, and Landmark Center, 2100 First Avenue, North, Suite 700, Birmingham 35203. Phone (205) 458-9400 and 324-4996.

Dominick, Fletcher, Yeilding, Wood & Lloyd announces that **Peter McKeever Wright** has joined the firm. Offices are located at 2121 Highland Avenue, Birmingham, Alabama 35205. Phone (205) 939-0033.

Porterfield, Harper & Mills announces that **Eric D. Hoaglund** and **Michael R. Lunsford** have joined the firm. Offices are located at 22 Inverness Center Parkway, Suite 600, Birmingham, Alabama 35242. Phone (205) 980-5000.

Lehr, Middlebrooks & Proctor announces that **Robert L. Beeman, II** has joined the firm. Offices are located at 2021 Third Avenue, North, Suite 300, Birmingham, Alabama 35203. Phone (205) 326-3002.

Rosemary Clark announces a change of address to **Union Planters National Bank Corporate Trust Department**, 6200 Poplar Avenue, 3rd Floor, Memphis, Tennessee 38119. The mailing address is P.O. Box 387, Memphis 38147. Phone (901) 383-6980.

Robert P. Reynolds announces that **D. Mark Seib** has joined the firm. Offices are located at 303 Williams Avenue, Suite 117, Huntsville, Alabama 35801. The mailing address is P.O. Box 18605, Huntsville 35804. Offices are also located at 2209 9th Street, Suite 204, Tuscaloosa, Alabama 35401. Phone (205) 534-6789, Huntsville. Phone (205) 391-0073, Tuscaloosa.

McPhillips, Shinbaum & Gill announces that **Allen R. Stoner** has joined the firm, and the new name is **McPhillips, Shinbaum, Gill & Stoner.** Offices are located at 516 S. Perry Street, Montgomery, Alabama 36104. The firm also announces that **George E. Jones, III** has joined the firm and **Gary Atchison** has become *of counsel*. Phone (334) 262-1911.

Hill, Hill, Carter, Franco, Cole & Black announces that **Elizabeth K. Brannen**, former law clerk to the Honorable Sonny Hornsby, and **Jeffrey J. Bradwell** have joined the firm. Offices are located at 425 S. Perry Street, Montgomery, Alabama. The mailing address is P.O. Box 116, Montgomery 36101-0116. Phone (334) 834-7600.

Tanner & Guin announces that **Keith A. Canterbury** and **Michael J. Velezis** have joined the firm. Offices are located at 2711 University Boulevard, Tuscaloosa, Alabama 35401. Phone (205) 349-4300.

Gorham & Waldrep announces that **Brian D. Turner, Jr.** has become an associate. Offices are located at 2101 6th Avenue, North, Suite 700, Birmingham, Alabama 35203. Phone (205) 254-3216.

Wolfe, Jones & Boswell announces that **Stan H. McDonald** and **Shannon M. Smith** have joined the firm. Offices are

located at 905 Bob Wallace Avenue, Suite 100, Huntsville, Alabama 35801. Phone (205) 534-2205.

Hand, Arendall, Bedsole, Greaves & Johnston and **Tingle, Watson & Bates** announce that they will merge the two firms, and the name of the firm will be **Hand Arendall, L.L.C.** In addition to the Mobile and Birmingham locations, the firm will maintain offices in Montgomery and Washington, D.C.

McLeave, Roberts, Shields & Green announces that **Jon A. Green** has joined the firm. The firm also announces a relocation of its offices to Suite 1104, Riverview/ AmSouth Center, Mobile, Alabama 36602. The mailing address is P.O. Box 2353, Mobile 36652. Phone (334) 432-1656.

Lange, Simpson, Robinson & Somerville announces that **Laurence J. McDuff** and **Ginger L. Pierce** have joined the firm. Phone (205) 250-5000. The firm has offices in Birmingham and Huntsville.

Johnston, Johnston & Moore announces that **Robert J. Landry, III,** formerly law clerk to United States Bankruptcy Judge James S. Sledge, has joined the firm. Offices are located at Regency Center, 400 Meridian Street, Suite 301, Huntsville, Alabama 35801. Phone (205) 533-5770.

Martinson & Beason announces the association of **Elizabeth A. Beason.** Offices are located at 115 North Side Square, Huntsville, Alabama. Phone (205) 533-1667.

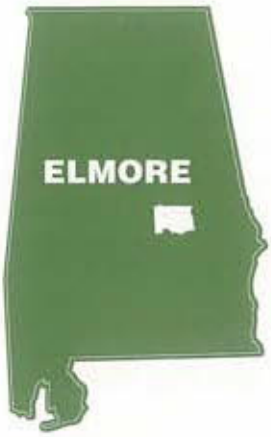
J. Todd Caldwell announces that **Peggy Pentecost Miller** has joined the firm. Offices are located at Suite 307, SouthTrust Bank Building, Anniston, Alabama 36202. Phone (205) 237-6671.

Katherine L. Reynolds, newly appointed with the Federal Bureau of Investigation, has relocated to Colorado Springs, Colorado. Her mailing address is 212 N. Wahsatch, Suite 305, Colorado Springs 80903. Phone (719) 633-3852.

Edward E. Blair and **David B. Blankenship** announce the merger of their firms and that they will now operate under the name of **Blankenship & Blair.** Offices are located at 229 East Side Square, Huntsville, Alabama 35801. Phone (205) 517-1550.

Hardin & Hawkins announces that **Bernard D. Nomberg** and **Jeffrey G. Blackwell** have joined the firm. Offices are located at 2201 Arlington Avenue, Birmingham, Alabama 35205. The mailing address is P.O. Box 55705, Birmingham 35255-5705. Phone (205) 930-6900.

J. Edgar Akridge, Jr. announces that **Russell C. Balch** has joined the firm, and the firm name is now **Akridge & Balch.** Offices are located at 1702 Catherine Court, Suite 1-D, P.O. Drawer 3738, Auburn, Alabama 36831. Phone (334) 887-0884. ■



BUILDING ALABAMA'S COURTHOUSES

ELMORE 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.*

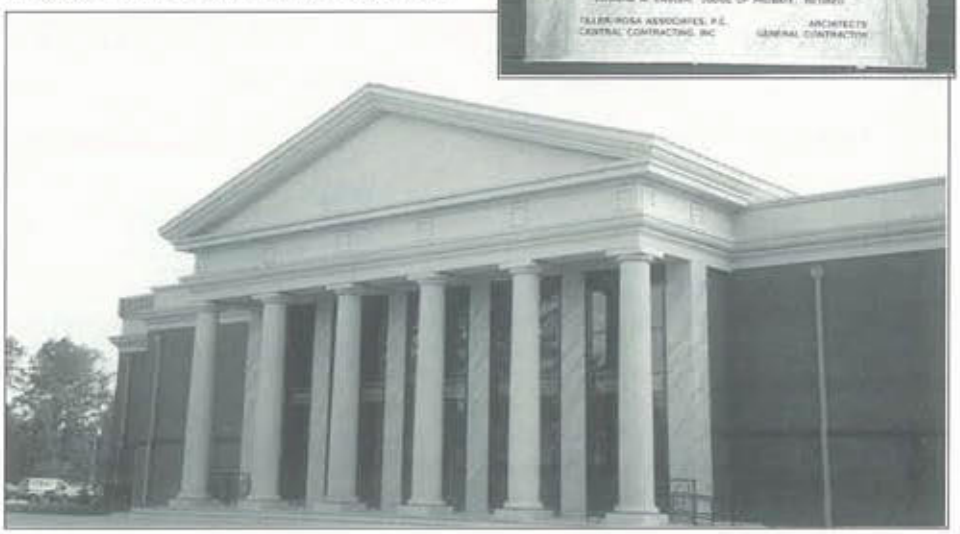
ELMORE COUNTY REVISITED

The Elmore County Courthouse was featured in the May 1995 issue of *The Alabama Lawyer*. Since that date Elmore County has completed a new judicial complex, dedicated on September 17, 1995.

The courthouse which this new complex replaced is located in downtown Wetumpka and dates back to 1932. Over the years, the growth of the county and the increase in the number of judges in the 19th Judicial Circuit created internal space limitations and crowding in the building. Further, parking around the courthouse was always at a premium whenever courts were in session.

The County Commission sought to solve these problems and to provide for future growth and expansion by choosing a site outside the downtown area for the new building. It also wisely planned to refurbish the old building for continued use by the county to house several county offices, the County Commission, and the probate court.

The new site is due north of Wetumpka on Highway 231 across the road from the Julia Tutwiler Prison for Women, one of a number of state prison facilities located in the county. (As a matter of fact, more prisons and detention facilities are located today in Elmore County than in any other county in the state.) This large tract of land provides plenty of space for the judicial complex, which includes not only the new Elmore County judicial building but also a new jail and expansive parking lots for all the facilities.



The new Elmore County Courthouse

County officials at dedication ceremony September 17, 1995

The County Commission planned the building of the complex in two stages, using a one-cent sales tax to fund the project. The first structure built was the jail; the second stage included all the judicial facilities. Mark Tiller and Frank Rosa of Tiller-Rosa Associates, P.C., Architects of Montgomery served as architects for the total project. The Hutcheson Construction Company of Montgomery built the jail, while Central Contracting, Inc. of Montgomery, owned by Earl Ryser, a resident of Elmore County, built the judicial building.

The placement of the jail in close proximity to the courthouse reflects a long-standing tradition in Alabama counties. The Elmore County jail can accommodate 192 inmates, male, female, and

Circuit Clerk's Office

Courtroom scene

(Left to Right) Mark Tiller, Frank Rosa, architects of the Judicial Complex

View of Tutwiler Prison directly across from the courthouse

juvenile, and has administrative and training offices as well as lock-up facilities. The building has approximately 50,000 square feet of space and cost $5,094,194 to build. The jail is connected to the court building by an underground passageway that provides security for the transporting of prisoners and prevents the public viewing of prisoners in handcuffs or other restraints prior to trial.

In addition to four courtrooms, the judicial building has offices for all of the judges, the district attorney, the probation department, 911 emergency response, and the circuit clerk. It also contains conference rooms and a law library. It has approximately 48,000 square feet and cost $4,071,000 to build.

A large crowd gathered on Sunday, September 17, 1995 to dedicate the new facility. The dedication included a ribbon-cutting ceremony and an open house. Several county officials, as well as the architects, praised the new facility.

District Attorney Janice Clardy commented that the facility would create public respect for the judicial system and provide a better working environment for her staff in the years to come. Circuit Judge John B. Bush, the resident circuit judge for the 19th Judicial Circuit, which also includes Chilton and Autauga counties, was quite happy that all of the judges can now work comfortably in their own offices and also conduct trials at the same time in Wetumpka. He also noted that each courtroom has witness rooms, conference rooms, a press observation room, modern lighting, and excellent acoustics. He observed that a final beneficial feature of the new facility is the holding cells for prisoners outside the view of the public.

Circuit Clerk Larry Dozier was one of the most pleased participants at the dedication ceremony. He had served on the Elmore County Commission during the planning phases of the project. He described the research that went into the design of the facility, including inspections of new courthouses in Montgomery and Opelika and interviews with personnel from the National Center for State Courts. He also noted the contribution of the Alabama Administrative Office of Courts, which was represented at the dedication by its Administrative Director of Courts, Oliver Gilmore.

Architects Mark Tiller and Frank Rosa, rightly proud of their creation, described the architectural features of the building. It is a modified classic revival design. The front has six Doric columns supporting a classic pediment. The external building material is utility size grey-brown brick. The roof is aluminum with a green baked finish. The building is completely handicapped accessible.

Circuit Clerk Larry Dozier summed up the sentiments of those attending the dedication ceremony when he stated, "We are very proud of our new building. We have room for 20 to 30 years of expansion. It will serve the people of Elmore County well."

Elmore County citizens should be commended for building a facility which will carry them into the 21st Century in style. They should also be commended for saving the old courthouse for its historical significance, its beauty and its functional use. ■

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.

Cumulative Index

January 1995 - December 1995

The Cloudy Future of Affirmative Action

by John Richard Carrigan and John J. Coleman, III

Affirmative action has been controversial from its inception, and the recent decision of the U.S. Supreme Court in *Adarand Constructors v. Federico Pena, Secretary of Transportation, et al,* _____ U.S. _____ (June 12, 1995), stimulated debate by subjecting racial preferences under a federal subcontracting program to "strict scrutiny," which changed the standard by which some federal affirmative action programs will be evaluated. Five members of the Court overturned a U.S. Court of Appeals decision that had permitted a race-based preference in awarding a subcontract for federally-funded highway work. The Supreme Court did *not* hold that the program in question was invalid; rather, the Court held that the Court of Appeals had been too lenient in accepting the federal government's justification for race-based preferences. The Supreme Court sent the case back to lower courts for consideration of the constitutionality of race-based preferences in subcontract awards.[1]

Wide publicity was given to the *Adarand* decision as a signal of the Court's likely treatment of affirmative action programs affecting employment. The impact of the *Adarand* decision should, however, be placed in context by distinguishing among the various concepts that are referred to as "affirmative action," some of which are not likely to be affected.

"Wider Search" Affirmative Action.[2] One such concept is the idea of expanding participation opportunities. This often entails improved communication (such as a college recruiting at additional high schools, or an employer advertising job openings more widely, or improved advertising of a product or service). This "wider search" affirmative action is seldom controversial, and is not affected by the *Adarand* decision.

"Barrier Removal" Affirmative Action. A second affirmative action concept is the removal of barriers to participation in an opportunity. Such barriers can be physical (*e.g.*, steps rather than ramps leading to a facility) or conceptual (unnecessary job qualification requirements). "Barrier removal" affirmative action is sometimes controversial, as when changes in eligibility criteria are criticized as "watering down" standards. The *Adarand* decision does not directly affect "barrier removal" affirmative action.

"Goal/Quota" Affirmative Action. More pervasive, and more controversial, is federally encouraged affirmative action in employment. Many employers are obligated by federal contracts or subcontracts to develop Affirmative Action Plans, which require statistical analysis of "underutilization" of women and minorities, and development of "goals" to address such underutilization. Although goals are said to be flexible, there is widespread suspicion that the goals are implemented as quotas, often by the use of preferences based on race or gender. The *Adarand* decision did not, however, directly address employment issues, nor did it discuss prior Court decisions that appear to uphold affirmative action in employment to meet statistically defined goals.

"Set-Aside" Affirmative Action. Many federal programs have encouraged the use of minority contractors or subcontractors by requiring a target percentage of minority participation, said to be "set aside" for minorities. Such a federal "set-aside" program had been explicitly approved by the Supreme Court in an earlier decision, *Fullilove v. Klutznick,* 448 U.S. 448 (1980) which had upheld inclusion of a 10 percent set aside for minority-owned businesses in the Public Works Employment Act of 1977.

THE ADARAND DECISION

Background

Adarand Constructors, Inc. challenged a specific program that provides financial incentives to general contractors on government projects so that they would hire subcontractors certified as *small businesses controlled by "socially and economically disadvantaged individuals."* Federal law requires that similar subcontracting clauses must appear in most federal contracts, and the clause typically provides that "[t]he contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and other minorities, or any individual found to be disadvantaged by the [Small Business] Administration pursuant to section 8(a) of the Small Business Act."

Adarand, the low bidder, lost to Gonzales Construction Company (which had submitted a slightly higher bid) because the prime contractor would receive a bonus for using Gonzales that exceeded the difference in the bids. Adarand challenged the use of race (that is, the Hispanic ancestry of the owner of Gonzales Construction Company) as a basis for preference by the government and its prime contractor.

The Court's prior decisions in *City of Richmond v. J.A. Croson Co., ("Croson")* 488 U.S. 469, 102 L.Ed.2d 854 (1989), and *Metro Broadcasting, Inc. v. FCC,* 497 U.S. 547 (1990), (*"Metro Broadcasting"*) define the beginning point for the Court's consideration of "set-aside" affirmative action in *Adarand.*

Croson struck down a 30 percent minority subcontractor set-aside provision established by the City of Richmond, on the basis that it violated the Fourteenth Amendment's equal protection clause. The Court interpreted the Fourteenth Amendment as requiring "strict scrutiny" of the city's use of race-based classifications to award city contracts, and rejected the argument that a remedial purpose excused the use of race, noting at 102 L.Ed.2d 885, "an amorphous claim that there has been past discrimination in a particular industry cannot justify the use of an unyielding racial quota." Reliance on the disparity between the number of prime contracts awarded minority firms and the city's minority population did not satisfy the requirement of a compelling remedial purpose; the nature of subcontract work is sufficiently specialized that the city needed to show comparisons between the percentage of minority contractors and the total contracts put out for bid rather than mere population statistics. *Id.* at 887. Furthermore, the Court found that the means chosen (a 30 percent set-aside) was not narrowly drawn because it did not consider less discriminatory alternatives. *Id.* at 890-91.

While the opinions are difficult to follow, the Court's opinion (set forth in I, IIIB, and IV of Justice O'Connor's opinion), solidifies a majority of the Court behind four propositions. First, race always is a suspect class. Second, a public entity may not show a compelling state interest of remedying past discrimination based only on evidence that blacks are historically disadvantaged or of societal discrimination.

Third, a public entity may only show a compelling state interest in remedying past discrimination by offering statistics making out a *prima facie* Title VII disparate impact violation (including a comparison of the work force with blacks in the qualified work force for skilled jobs). Finally, establishing that a particular form of affirmative action is narrowly drawn to protect a compelling governmental interest requires at least a consideration of less discriminatory alternatives and a mechanism for determining whether a particular beneficiary was at least likely to have been the victim of past discrimination.[3]

From the foregoing, four principles emerged from *Croson* for state and local action. First, (at least at the state and local level) use of racial preferences must satisfy "strict scrutiny" under equal protection clause principles, necessitating a showing that a plan is narrowly tailored to serve a compelling state interest. Second, strict scrutiny's "compelling state interest" requires a prima facie disparate impact showing (not merely a general showing of discrimination historically against a protected group). Third, strict scrutiny's requirement that the policy be "narrowly tailored" demands a demonstration that less discriminatory alternatives were considered and found defective; and that a particular beneficiary was at least likely to have been a victim of past discrimination, and that the affirmative action would not unduly trammel rights of others. Finally, in *Croson,* affirmative action initiated by Congress appeared to receive more deference than the strict scrutiny standard then applied to state or local action.

Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990), held that affirmative action (specifically preferences for minority ownership of broadcast facilities) "substantially related" to an "important governmental objective" (rather than "narrowly tailored" to accomplish a "compelling" governmental interest) did not violate the Equal Protection Clause when undertaken by Congress. Further, FCC regulations preferring minority broadcasters in "distress sales" and providing enhancement for minority ownership and participation in management were considered substantially related to the important governmental interest of maintaining diversity in broadcasting because both Congress and a federal agency had meticulously considered and rejected less discriminatory alternatives. Justice O'Connor observed that the "Constitution's guarantee of equal protection binds the Federal government as it does the states" without imposing a lower level of scrutiny. Nonetheless, the practice of affording greater leeway to Congress than to state and local governments had support from a majority of the Court in *Fullilove* and in dicta in *Croson.*

THE LEGAL ISSUE IN ADARAND

The primary legal issue faced in *Adarand* was whether a racial preference for Gonzales was a violation of the Constitution. Five members of the Court agreed that the case should be sent back to the Court of Appeals to determine whether the racial preference was constitutional under the same "strict scrutiny" required for evaluation of race-based[4] programs by state or local governments. Four members of the U.S. Supreme Court disagreed, and would have accepted the decision of the lower court that the preference given in this case was appropriate.

Justice O'Connor explained "strict scrutiny" as follows:

> When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test this Court has set out in previous cases.

Based on Justice O'Connor's statement, it appears that the federal highway subcontracting program involved in the *Adarand* case may be permissible if the lower courts find that the racial preference is *necessary to further a compelling interest* and that the preference is *narrowly tailored* to avoid unnecessary interference with the rights of others.

Whether or not the specific subcontracting program involved in the *Adarand* case is upheld, the decision of the Supreme Court is important because it indicates that all government action based on racial classifications will be subject to "strict scrutiny" and that federal programs approved under at least two prior Supreme Court decisions likely would not be approved at present. *Metro Broadcasting* dealt with race-based policies of the Federal Communications Commission, and a majority of the Court had upheld so-called "benign" federal racial classifications, provided they satisfied only a "intermediate" level of scrutiny rather than the "strict scrutiny" then required under *Croson* for race-based preferences by state and local governments. *Metro Broadcasting* has been effectively reversed by *Adarand.*

The earlier *Fullilove v. Klutznick* decision[5] had upheld the action of Congress in including a 10 percent set aside for minority-owned businesses in the Public Works Employment Act of 1977, based on relaxed scrutiny of the racial preference. A divided court permitted the racial preference in *Fullilove* because it was considered to satisfy "intermediate scrutiny," and such intermediate scrutiny was held to permit Congress to use race in a remedial fashion. The deference to the "benign" use of racial preferences by Congress in *Fullilove* was not subsequently extended to similar use of racial preferences for contracting by state or local governments. In light of the *Adarand* decision, it is not likely that a similar federal set-aside program would be upheld today.

Implications For Other Subcontracting Programs

In the short run, the *Adarand* decision does not necessarily invalidate any current subcontracting program. Depending on the decision of lower courts, the specific federal highway construction program that affected Adarand Constructors, Inc. is likely to be modified to eliminate an explicit presumption that minority-owned small businesses are controlled by "socially and economically disadvantaged individuals." The *Adarand* decision implies that set asides or financial incentives for use of businesses controlled by "socially and economically disadvantaged individuals" could be constitutional if the group of "socially and economically disadvantaged individuals" is defined without reference to race.

The Effect On Other Affirmative Action Programs

Federal affirmative action initiatives are not confined to subcontracting programs. Most entities that do business with the federal government (including almost all large employers) are required to develop Affirmative Action Plans affecting employment practices under Executive Order 11246. Executive Order 11246 establishes equal employment opportunity obligations and affirmative action obligations affecting employment practices of most government contractors and sub-contractors.[6] The *Adarand* decision did not directly deal with affirmative action obligations in employment imposed by Executive Order 11246. However, the use of a "strict scrutiny" standard to evaluate racial preferences imposed by the federal government raises substantial questions as to Executive Order 11246.

Affirmative action plans required under Executive Order 11246 allow more flexibility than the financial incentives based on race in the *Adarand* case. Affirmative Action Plans theoretically use "flexible goals" rather than "inflexible quotas" and would presumably be more likely to survive "strict scrutiny" as to whether they are "narrowly tailored" to serve a "compelling interest."

The reality of many affirmative action plans, however, is that statistical techniques are used to identify "underutilization" of employees in particular job groups by race or gender. Contractors who do not take effective action to address "underutilization" face possible compliance actions by the Office of Federal Contract Compliance Programs within the U.S. Department of Labor, including the ultimate sanction of disqualification from federal contracts. Many employers routinely take race into consideration in hiring and promotion decisions in order to satisfy affirmative action plan obligations.

The U.S. Supreme Court has, in previous decisions, implicitly approved racial preferences in affirmative action plans. See *United Steelworkers of America v. Weber,* 443 U.S. 193, 209 (1979) and *Johnson v. Transportation Agency, Santa Clara County, California,* 480 U.S. 616 (1987). In each of those cases, an affirmative action plan described as "voluntary" was recognized as justification under Title VII of the Civil Rights Act of 1964 for an explicit racial preference (in *Weber*) or preference for female candidate over a male candidate (in *Johnson*).[7]

Describing such affirmative action plans as "voluntary" is somewhat misleading, because employers who do business with the government (as in *Weber*) or receive federal funds (as in *Johnson*) must adopt affirmative action plans if they wish to receive money from the federal government. The recent highly publicized decision of the University of California Board of

John Richard Carrigan
John Richard Carrigan is a graduate of Harvard Law School and is a partner in the Birmingham office of Balch & Bingham.

John J. Coleman, III
John J. Coleman, III is a graduate of Duke University School of Law and is also a partner in the Birmingham office of Balch & Bingham.

Regents to discontinue preferences based on race or gender in admissions and employment provoked an immediate response from the U.S. Department of Justice threatening sanctions if the University of California system does not honor the affirmative action commitments made in order to receive 2.5 billion dollars annually in federal funds.

ADARAND IN WONDERLAND - THE WASHINGTON SPINMASTERS AT WORK

There is sharp difference of opinion in Washington as to the effect of *Adarand*. The Clinton Administration has simultaneously embraced and discounted *Adarand* in a sweeping directive[8] to federal agencies to review affirmative action:

> [I]n all programs you administer that use race, ethnicity or gender as a consideration to expand opportunity or provide benefits to members of groups that have suffered discrimination, I ask you to take steps to ensure adherence to the following policy principles. *The policy principles are that any program must be eliminated or reformed it if:*
>
> (a) creates a quota;
> (b) creates preferences for unqualified individuals;
> (c) creates reverse discrimination; or
> (d) continues even after its equal opportunity purposes have been achieved.
>
> In addition, the Supreme Court's recent decision in *Adarand Constructors v. Pena* requires strict scrutiny of the justifications for, and provisions of, a broad range of existing race-based affirmative action programs. You recently received a detailed legal analysis of *Adarand* from the Department of Justice. Consistent with that guidance, I am today instructing each of you to undertake, in consultation with and pursuant to the overall direction of the Attorney General, an evaluation of programs you administer that use race or ethnicity in decision making. With regard to programs that affect more than one agency, the Attorney General shall determine, after consultations, which agency shall take the lead in performing this analysis.
>
> Using all of the tools at your disposal, you should develop any information that is necessary to evaluate whether your programs are narrowly tailored to serve a compelling interest, as required under *Adarand's* strict scrutiny standard. *Any program that does not meet the constitutional standard must be reformed or eliminated.*

THE WHITE HOUSE[9]

This review is to be guided by the Justice Department Memorandum on Supreme Court's Adarand Decision, 1995 DLR 125 d33 (June 29, 1995) ("DOJ Memo"), which displays intense focus on the limits of *Adarand*, with somewhat less attention to its plain thrust. Although the DOJ Memo recognizes the "clear" holding of *Adarand* that "strict scrutiny will now be applied by the courts in reviewing the federal government's use of race-based criteria in health, education, hiring and other programs as well," the DOJ Memo hopefully suggests that "Congress may be entitled to greater deference than state and local governments." Such an argument was certainly strong in light of *Fullilove* (which accepted Congressional authority in section 5 of the Fourteenth Amendment as justification for intermediate scrutiny of a set-aside created by Congress); but it is hard to understand how that argument survived the *Adarand* rejection of intermediate scrutiny in favor of strict scrutiny of the federal set-aside.

The strict scrutiny requirement entails evaluation of both the end and the means for the use of race. The end must be a "compelling interest"; and the means must be "narrowly tailored" to achieve that end. Although the DOJ Memo purports to see greater deference to Congressional action (as four dissenters would give, and the Court had given in *Fullilove*), it is not clear how this can be implemented. Neither Justice O'Connor nor others in the *Adarand* majority offer any insight how an interest that would be less-than-compelling to justify state or local action is acceptable when presented by Congress; nor is there a clear way to excuse less-narrow tailoring of a program at the hands of Congress than would be constitutionally permitted from a state or local government.

The DOJ Memo also rather boldly suggests that the Court will allow the government to rely on "post-enactment" evidence—*i.e.*, after-acquired evidence—to justify a previously-enacted preference. That suggestion is difficult to reconcile with *McKennon v. Nashville Banner Pub. Co.*, 115 S.Ct. 879 (1995), in which the Court foreclosed employers from relying

on after-acquired evidence to avoid liability for unlawful discrimination. Although the *McKennon* context differs because Title VII claims often deal with actions that may be lawful or unlawful depending upon the employer's motive at the time of decision, the Supreme Court may be reluctant to accept after-acquired evidence to satisfy a "strict scrutiny" evaluation of a racial preference even though motive is not the primary issue.[10] That is, if the necessary evidence of compelling interest did not exist at the time action was taken, it is reasonable to question whether the decisionmakers had a different and less defensible end in mind.

The intensive review directed by the White House has not yet identified any federal affirmative action program that requires modification or elimination in accordance with either the President's "policy principles" or the *Adarand* decision.

At the other end of Pennsylvania Avenue, Republicans in Congress promptly proposed legislation to codify *Adarand* and eliminate many forms of affirmative action. Section 2 of the "Dole/Canady" Bill provides as follows:

> Notwithstanding any other provision of the law, neither the Federal Government nor any officer, employee, or department or agency of the Federal Government (1) may intentionally discriminate against, or may grant a preference to, any individual or group based in whole or in party on race, color, national origin, or sex, in connection with—
> (A) a Federal contract or subcontract;
> (B) Federal employment; or
> (C) any other federally conducted program or activity;
>
> (2) may require or encourage any Federal contractor or subcontractor to intentionally discriminate against, or grant a preference to, any individual or group based in whole or in part on race, color, national origin, or sex; or (3) may enter into a consent decree that requires, authorizes, or permits any activity prohibited by paragraph (1) or (2).

104th Cong. 1st Sess. S.1985 HR2128 § 2.

Section 3 provides:

> Nothing in this Act shall be construed to prohibit or limit any effort by the Federal Government or any officer, employee, or department or agency of the Federal Government—
>
> (1) to recruit qualified women or qualified minorities into an applicant pool for Federal employment or to encourage businesses owned by women or by minorities to bid for Federal contracts or subcontracts, if such recruitment or encouragement does not involve using a numerical objective, or otherwise granting a preference, based in whole or in part on race, color, national origin, or sex, in selecting any individual or group for the relevant employment, contract or subcontract, benefit, opportunity, or program; or (2) to require or encourage any Federal contractor or subcontractor to recruit qualified women or qualified minorities into an applicant pool for employment or to encourage businesses owned by women or by minorities to bid for Federal contracts or subcontracts, if such requirement or encouragement does not involve using a numerical objective, or otherwise granting a preference, based in whole or in part on race, color, national original, or sex, in selecting any individual or group for the relevant employment, contract or subcontract, benefit, opportunity, or program.

104th Cong. 1st Sess. S.1985 HR2128 § 3.

The Republican response accepts "wider search" affirmative action, and seems to permit "barrier removal" affirmative action, but goes beyond *Adarand* in forbidding the use of race even where a compelling interest could be served by narrowly tailored means - that is, where use of a racial preference would survive strict scrutiny. One of the many intriguing questions presented by *Adarand* is whether the Clinton Administration's fondness for judicial deference to Congressional action under section 5 of the Fourteenth Amendment will extend to action such as the "Dole/Canady" Bill, which could be characterized as implementing the equal protection clause.

THE EFFECT OF OTHER LAWS

The *Adarand* case interpreted the U.S. Constitution particularly limits on race-based action by the federal government. It does not have any direct impact on non-governmental entities. However, race-based action by employers is regulated by several statutes, the most important of which is 42 U.S.C. § 1981. Section 1981 forbids racial discrimination in the making and enforcement of contracts. Under § 1981, it is (and has been) unlawful to refuse to deal with someone because of race. The extent to which race-conscious subcontracting policies are permissible under § 1981 was unclear before the *Adarand* decision, and remains unclear.

In particular, it has widely been assumed that good faith compliance with a federal subcontracting commitment would be a defense to a § 1981 claim brought by an unsuccessful non-minority subcontractor.

Many companies that do business with the federal government have been obligated as a condition of their federal contracts to take affirmative action to award subcontracts to small businesses controlled by "socially and economically disadvantaged individuals." There does not appear to be any decision holding preferences for small businesses controlled by "socially and economically disadvantaged individuals" to violate § 1981. However, the same reasoning process used by the Court majority in *Adarand* to question the federal government's authority to give subcontracting preferences based on racial classifications may present a problem for private action to confer similar preferences.

CONCLUSION

Although the *Adarand* decision has no immediate impact on any affirmative action program, the Court's reasoning suggests that explicit racial preferences in subcontracting programs may be held unlawful. For that reason, it would be safer to examine questions of "social and economic disadvantage" on a case-by-case basis, rather than assuming that all minorities are, and that non-minorities are not, racially and economically disadvantaged. Subcontracting plans should be reviewed to determine the extent to which the reasoning of the *Adarand* decision calls such plans into question.

Affirmative action in non-governmental employment is not so directly affected by *Adarand*, but the standard of strict scrutiny to be applied to governmental use of racial preferences has broad implications for the "voluntary" affirmative action plans required of employers that do business with the federal government. "Goal/Quota" affirmative action is largely driven by the financial leverage brought to the contracting process by the federal government, and it is likely that there will be vigorous challenges to the authority of federal contracting agencies to compel the setting of racial goals in employment. The Clinton Administration intends to insist upon compliance with the undertakings of such plans, so action inconsistent with an existing Affirmative Action Plan is likely to be challenged until there is an authoritative resolution of the lawfulness of such Affirmative Action Plans by the Supreme Court. ■

ENDNOTES

1. The *Adarand* reasoning applies explicitly to racial preference, not to gender, and the questions raised by affirmative action as to gender are not answered by *Adarand*.
2. The terms "wider search," "barrier removal," "goal/quota," and "set-aside" to distinguish types of affirmative action are not used by the Court, nor are they in common use. They are used here simply to illustrate different affirmative action concepts
3. *Id.* at 888-91. Justices Scalia and Chief Justice Rehnquist continue to argue for *Weber*'s reversal. There is reason to believe that *Weber* as a judicial doctrine soon may be gone. Congress, under Chief Justice Burger's plurality opinion in *Fullilove*, certainly could have enacted a narrowly-drawn statute providing for affirmative action even to other than victims of actual discrimination and even in the absence of prior judicial findings of discrimination. However, it is becoming less likely that a court will be able to do so for much longer.
4. Race-based distinctions outside the affirmative action context in the past have received strict scrutiny, *see Korematsu v. United States*, 323 U.S. 214 (1944), but sex-based distinctions generally have received in all contexts the kind of intermediate scrutiny, *see Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979), that race-based distinctions have received only in the affirmative action context. *See Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990).
5. 448 U.S. 448 (1980)
6. Companies that have direct contracts with the federal government assume obligations under Executive Order 11246 as government contractors; other companies may be considered sub-contractors under such government contracts.
7. Several Supreme Court justices appear to apply the same standards in Title VII affirmative action cases as are applied in equal protection clause affirmative action cases. *See, e.g., Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616, 649, 650-51 (1987) (O'Connor, concurring), 664 (Scalia, J., Rehnquist, C.J., dissenting), 669-70 (White, J., dissenting); *but see id.* at 627 n.6 (rejection of such parity).
8. The White House directive, issued in July 1995, is available on the World Wide Web at http://www.whitehouse.gov/White House/EOP/OP/html/aa/aa01.html
9. The emphasis has been supplied.
10. The DOJ Memo points out that several lower courts had, before *Adarand*, accepted post-enactment evidence to support racial preferences by state or local governments.

OPINIONS OF THE GENERAL COUNSEL

By J. Anthony McLain, general counsel

QUESTION:

"A member of this firm has been asked to serve as a hearing officer for two state agencies: the State Agency and the Alabama Department of M. Both members of the firm also represent clients before these two agencies. We recognize that we would be unable to represent a client before the agency, and then hear a case involving that same client. We are seeking your opinion, however, as to whether we can continue to represent clients before the agencies generally and recuse ourselves on any cases which involve our clients and/or issues which are the same as issues being addressed in cases involving our clients.

"Some background on each agency may be important to your opinion. In the case of the State and Agency, the firm member would be sitting as a 'fair hearings' officer. This person decides appeals from decisions made by the Certificate of Need Board. The fair hearing officer can override decisions of the Board.

"In the case of the Alabama Department of M, the hearing officer is appointed by the M Commission which oversees the operation of the Alabama Department of M. When decisions by the Department are appealed, they are appealed initially to the Commission. The Commission appoints a hearing officer to hear cases for them. The hearing officer makes a recommended decision to the Commission for its consideration. The Commission makes the final determination in these cases.

"Please advise if this firm can continue to represent clients before the State and Agency and/or the Alabama Department of M and serve as hearing officer for the respective Board and Commission."

ANSWER:

You may represent clients before a state agency even though your partner serves as a hearing officer for said agency, provided that your representation involves matters completely unrelated to those in which partner presided as a hearing officer. However, your partner, who also serves as a hearing officer for a particular state agency, cannot represent clients before the agency.

DISCUSSION:

In RO-91-18, the Disciplinary Commission addressed the inquiry of whether the Alabama Rules of Professional Conduct prevented a lawyer from representing clients before a state board, when that lawyer's partner also served as a hearing officer for matters within the jurisdiction of that same state agency. The Commission determined that the lawyer could represent clients before the state agency in question, provided that the representation involved matters completely unrelated to those in which the lawyer's partner presided as a hearing officer. Therefore, you could continue to represent clients before the state agencies listed in your inquiry, provided that your representation involved matters which were completely unrelated to those matters in which your partner presided as a hearing officer for that state agency.

However, most jurisdictions which have addressed the second portion of your inquiry, i.e., whether your partner can likewise represent clients before the agencies for which he serves as a hearing officer, hold that such is prohibited by the former Disciplinary Rules, and carried forward under the Rules of Professional conduct as adopted by the Supreme Court of Alabama in January of 1991.

In Opinion 1990-4 of the Committee on Professional Ethics of the Association of the Bar of the City of New York, consideration was had of the situation wherein a lawyer serves as an administrative law judge or a mediator for an assistance program sponsored by the New York City Commission on Human Rights. It was held that such a lawyer or members of his firm could not represent claimants before that Commission when the lawyer served frequently and repeatedly as a part-time administrative law judge; on the other hand, the lawyer and members of his firm would be allowed to represent claimants before the Commission if the lawyer served only occasionally and sporadically as a judge *pro tempore*.

In Opinion 1985-7 of the State Bar of New Mexico Advisory Opinions Committee, it was held that a lawyer who practices before a state taxation and revenue department may not accept a contract with that agency to serve as a part-time hearing officer. The Committee reasoned that a part-time judge could not appear before his own tribunal as a lawyer, since a hearing officer fills a judicial role in a quasi-judicial forum. Such circumstances give rise to an appearance of impropriety, even if procedures are established to eliminate conflicts of interest. The Committee based its decision on Disciplinary Rule 9-101(C), which prohibits a lawyer from stating or implying that he is able to influence improperly or on irrelevant grounds any tribunal, legislative body, or public official. The Committee reasoned that in a situation where an individual represented clients before a state agency, that individual also occupying the position of a part-time hearing officer created implications of improper influence so inescapable that such part-time judges would be precluded from appearing before their forums.

Rule 8.4(e), Alabama Rules of Professional Conduct, states as follows:

"Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

***

(e) State or imply an ability to influence improperly a government agency or official."

The Commission is of the opinion that this rule would prohibit an attorney who serves as a hearing officer for a state agency to likewise represent clients before that same state agency. The possible perception of favoritism or influence

should be avoided in order to preserve the propriety of the administrative agency process. This would best be accomplished by precluding lawyers who serve as hearing officers for a particular state agency from also representing clients before the same state agency. The relationships developed by the hearing officer in dealing with the personnel of the state agency could appear to continue into a setting where the hearing officer has now changed roles and is appearing as an advocate for a client before that same state agency.

The Commission feels that the purpose of the rules, as well as the integrity of the profession, would be best served by prohibiting lawyers from representing clients before state agencies while concurrently serving as a hearing officer for that same state agency. ■

Notice of Election

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

President-Elect

The Alabama State Bar will elect a president in 1996 to assume the presidency of the bar in July 1997. Any candidate must be a member in good standing on March 1, 1996. 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, 1996. Any candidate for this office must also 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 23, 1996.**

Commissioners

Bar commissioners will be elected by those lawyers with their principal offices in the following circuits: 8th; 10th, places no. 4, 7 and Bessemer Cut-off; 11th; 13th, place no. 1; 17th; 18th; 19th; 21st; 22nd; 23rd, place no. 1; 30th; 31st; 33rd; 34th; 35th; 36th; and 40th. Additional commissioners will be elected in these circuits for each 300 members of the state bar with principal offices therein. The new commissioners positions will be determined by a census on March 1, 1996 and vacancies certified by the secretary on March 15, 1996.

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 26, 1996).

Ballots will be prepared and mailed to members between May 15 and June 1, 1996. Ballots must be voted and returned by 5 p.m. on the second Tuesday in June (June 11, 1996) to state bar headquarters.

C·L·E OPPORTUNITIES

The following in-state programs have been approved for credit by the Alabama Mandatory CLE Commission. However, information is available free of charge on over 4,500 approved programs nationwide identified by location date or specialty area. Contact the MCLE Commission office at (334) 269-1515, or 1-800-354-6154, and a complete CLE calendar will be mailed to you.

JANUARY

11 Thursday

ALABAMA LABOR AND EMPLOYMENT LAW
Birmingham
National Business Institute, Inc.
Credits: 6.0
(715) 835-8525

18 Thursday

LIMITED LIABILITY COMPANIES: ENTITY OF CHOICE
Mobile, Admiral Semmes Hotel
National Business Institute, Inc.
Credits: 6.0 Cost: $149
(715) 835-8525

19 Friday

LIMITED LIABILITY COMPANIES: ENTITY OF CHOICE
Montgomery, Holiday Inn East
National Business Institute, Inc.
Credits: 6.0 Cost: $149
(715) 835-8525

SOCIAL SECURITY LAWS
Birmingham
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

25-27

MIDWINTER CONFERENCE
Birmingham
Alabama Trial Lawyers Association
Credits: 10.5
(334) 262-4974

26 Friday

NURSING HOME LAW
Birmingham
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

FEBRUARY

9 Friday

A DAY ON TRIAL
Birmingham
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

COMPLETE WILL & TRUST SHORT COURSE
Birmingham
Clearwater Information Systems, Inc.
Credits: 6.7 Cost: $159
(715) 835-2111

16 Friday

FAMILY LAW
Birmingham, Edna Merle Carraway Convention Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

23 Friday

APPELLATE PRACTICE
Birmingham, Medical Forum Building
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

WORKERS' COMPENSATION IN ALABAMA
Birmingham
Lorman Business Center, Inc.
Credits: 6.0 Cost: $145
(715) 833-3940

MUNICIPAL COURT PRACTICE AND PROCEDURE
Birmingham
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

MARCH

1 Friday

WORKERS' COMPENSATION LAW
Birmingham, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

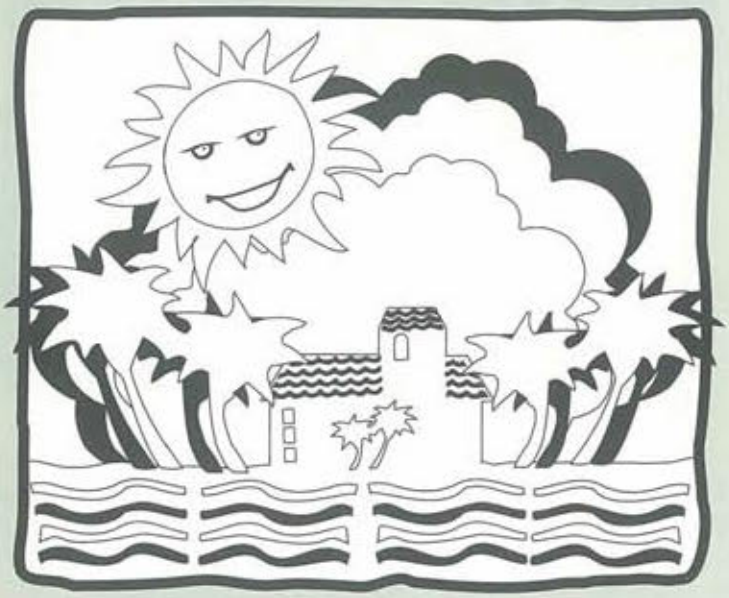
8 Friday

BANKING LAW
Birmingham
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

15 Friday

EMPLOYMENT LAW
Birmingham, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

It's Back To The Beach In '96



ALABAMA STATE BAR

ANNUAL MEETING

July 24-27, 1996
Perdido Beach Resort
Orange Beach, Alabama

You won't want to miss...

A New Vision of Law Practice – Do you want to practice law ... and still have time for other interests, too? Most busy practitioners do! The 1996 ALABAMA STATE BAR Annual Meeting will be offering you a way to do just that with a look into the future of the practice of law ... and ways to keep you on course in a time of both multiple demands and a myriad of attacks on the legal profession.

- Learn how leveraging new technologies can give you both money & time
- Discover the art of effective speaking for lawyers
- Find out how to use results-oriented writing in your practice

PLUS

- Seventy-five Tips in 75 Minutes
- What's Hot ... and What's Not ... for Solo, Small & Large Firms
- The Future is Now: How Technology Is Changing Your Practice
- Winning in the Courtroom with Technology

A New Vision of Law Practice is only one part of the outstanding programming planned for the 1996 ALABAMA STATE BAR Annual Meeting – the one meeting you won't want to miss this year!

ALABAMA'S AMENDED ETHICS LAW

by James S. Christie, Jr., Anne S. Hornsby and Ann P. Vandevelde[1]

On June 8, 1995, the House and Senate of the Alabama Legislature passed an act amending Title 36, Chapter 25, "Code of Ethics for Public Officials, Employees, Etc." ("Ethics Act"), Ala. Code §§ 36-25-1, *et seq.* (1991). On June 19, 1995, Governor Fob James, Jr. signed the amended Ethics Act, Alabama Act 95-194, H. 135, 1995 Regular Session (1995) (effective October 1, 1995). The amended Ethics Act, which actually replaces the former Ethics Act, is the former Ethics Act with many amendments. The effect of these amendments will likely be far reaching and have a significant impact on public employees, public officials, candidates and lobbyists.

Introduction to the Amended Ethics Act

With the amended Ethics Act, the Alabama Legislature sought to clarify and make changes to the existing statute, in addition to adding new provisions. These additions and changes are too numerous to identify all of them here. For example, the amended Ethics Act expands the definitions section from 12 to 33 defined terms and substantively amends eight of the 12 former definitions. Ala. Code § 36-25-1 (effective Oct. 1, 1995).

One amendment to a definition will have a substantial impact on many lawyers. Under amended sections 36-24-1(17) and (18), any person attempting to influence legislation or regulations, other than by testimony, is lobbying and needs to register as a lobbyist. A lawyer drafting bills or advising clients about proposed legislation or regulations is expressly not a lobbyist. There is no other exemption for lawyers. Therefore, lawyers representing clients before any state or local legislative or regulatory body will need to carefully consider whether they are attempting to influence legislation or regulations and thus are lobbyists.

One principal objective of the amended Ethics Act is to clarify the eligibility of State of Alabama Ethics Commission members. *See id.* § 36-25-3 (creation and composition of the Ethics Commission). Another objective is to provide for a black appointee to the Ethics Commission. *Id.* The amended Ethics Act also clarifies the powers and responsibilities of the Ethics Commission members and of the director. *Id.* at § 36-25-4.

The amended Ethics Act changes when a candidate, public official or principal campaign committee may accept or solicit campaign contributions. Accepting or soliciting contributions is restricted to 12 months before an election and 120 days after the election. *Id.* at § 36-25-6; *see id.* at § 36-25-1(30) (defining candidate).

The amended Ethics Act changes who must file Statements of Economic Interests, raising the minimum salary from $25,000 to $50,000 for public employees, and perhaps for appointed public officials, yet adding a laundry list of specific public officials and public employees who must file regardless of salary. *Id.* at § 36-25-14(a); *see id.* at §§ 36-25-1(24) (defining public employee) & 36-25-1(25) (defining public official). A special exception for coaches of athletic teams at four-year institutions of higher learning allows such coaches not to disclose any contractual income other than salary in their Statements of Economic Interests. *Id.* at § 36-25-14(b).

Whether appointed public officials who are paid less than $50,000 per year are exempt from filing Statements of Economic Interest is unclear. The wording in section 36-25-14(a)(2) is ambiguous. Section 36-25-14(b) again makes clear that this filing exemption applies to certain public employees, but does not mention public officials paid less that $50,000 per year, implying that such public officials should file Statements of Economic Interest. Yet, this interpretation of section 36-25-14(a)(2) seems to make sections 36-25-14(a)(4), 36-25-14(a)(10), and 36-25-14(a)(17) redundant. In addition, this interpretation would overload the Ethics Commission with Statements of Economic Interest filed by the many Alabamians who volunteer their time on local boards, as well as perhaps discourage such volunteers from donating their time. For these reason, it seems that appointed public officials who are paid less that $50,000 were intended to be exempt from filing Statements of Economic Interest.

The amended Ethics Act prohibits public officials and public employees from soliciting contributions from lobbyists for any purpose other than a campaign contribution. *Id.* at § 36-25-23(b); *see id.* at § 36-25-1(18) (defining lobbyist). It prohibits paying lobbyists contingent upon the passage or defeat of legislative action. *Id.* at § 36-25-23(c). It also establishes many filing guidelines for lobbyists. *Id.* at §§ 36-25-18 to 21.

Finally, the amended Ethics Act creates the crime of false reporting to the Ethics Commission and increases the penalties for other violations. *Id.* at §§ 36-25-26 & -27. At the same time, the amended Ethics Act repeals former section 36-25-25, which imposed severe penalties for falsely accusing anyone of violating the Ethics Act.

Case Law Interpreting the Ethics Act

A recent surge of interest in enforcement of governmental ethics was generated in this state in part by the publicity surrounding the trial and subsequent removal of Governor Guy Hunt, but the phenomenon is occurring on a national level as well. Although Alabama has had a version of an Ethics Act in place since 1973, there have been relatively few cases interpreting its provisions until the last few years.

Cases interpreting the former Ethics Act provide insight for understanding the amended Ethics Act. Whether the use of excess campaign funds is a violation of the Ethics Act was a critical issue in the *Hunt* cases.[2] Other issues arising under the Ethics Act have included determinations of who is deemed a "public official," "public employee," or "candidate," and specifics of what constitutes a "conflict of interest" or "direct personal financial gain."

A. Use of "Excess Campaign Funds"

In the *Hunt* cases, allegations against Governor Hunt were based on his use of contributions, which he maintained were "excess campaign funds," for his personal and living expenses. In *Ex Parte Hunt*, Governor Hunt argued that the use of such funds for this purpose was permitted by the Fair Campaign Practices Act, Ala. Code §§ 17-22A-1 *et seq.*, and therefore was not a violation of the Ethics Act. 642 So. 2d 1060 (Ala. 1994) (per curiam). An Attorney General advisory opinion interpreting the 1988 Fair Campaign Practices Act states that the statute's allowance of use of campaign funds for "other lawful purposes" permits their use for personal expenses. *See* 219 Ala. Atty. Gen. Op. 16 (1990) (interpreting the Fair Campaign Practices Act).

On appeal from the Alabama Court of Criminal Appeals, the Supreme Court of Alabama rejected Governor Hunt's argument for two reasons. First, the funds at issue were solicited after the election for a non-profit corporation for the purposes of funding the inauguration, transition expenses, renovating the Governor's mansion, and the like. The Alabama Supreme Court held that these purposes were unrelated to campaigning and, therefore, the monies contributed to this non-profit charitable corporation were not excess campaign funds. *Ex Parte Hunt*, 642 So. 2d 1060.

Second, even if they were considered excess campaign funds, the supreme court affirmed that their use for personal expenses would be a violation of the Ethics Act. *Id.* at 1065. Interpreting the Fair Campaign Practices Act in tandem with the Ethics Act, the Alabama Supreme Court ruled that personal use of campaign funds is not a "lawful purpose" within the meaning of section 17-22A-7, since the use of those funds for personal expenses is made illegal by the Ethics Act. *Id.*

In response to Governor Hunt's use of the Attorney General opinion, the Alabama Court of Criminal Appeals noted that such an opinion is not law and that in this particular opinion the Attorney General had not addressed the spending of excess campaign funds by elected officials, only by "candidates," and had not issued the opinion to Governor Hunt. Moreover, the Attorney General opinion on which Governor Hunt relied addressed only the lawfulness of conduct under the Fair Campaign Practices Act. The Attorney General opinion did not address the lawfulness of conduct under the Ethics Act. *Hunt v. State*, 642 So. 2d 999, 1015 (Ala. Crim. App. 1993) (per curiam), *aff'd per curiam, Ex Parte Hunt*, 642 So. 2d 1060 (Ala. 1994).

The amended Ethics Act incorporates the *Hunt* decisions into section 36-25-6, which now references the Fair Campaign Practices Act. This amended section states that contributions may only be used for expenses of the campaign, those reasonably related to the performance of official duties, donations to state funds, IRS recognized non-profits, or transitional and inaugural expenses. Ala. Code § 36-25-6(c) (effective Oct. 1, 1995). It goes on to prohibit specifically the conversion of contributions to personal use. *Id.* at § 36-25-6(d).

B. Coverage — "Candidates," "Public Officials" and "Public Employees"

Prior to the amended Ethics Act, only those qualifying or running for office were considered to be "candidates." The Alabama Supreme Court determined that this was the Legislature's intent with the former Ethics Act. *Watson v. Figures*, 631 So. 2d 936 (Ala. 1994). Section 36-25-1(3) of the amended Ethics Act expands the definition of candidate, broadening it to include those who have received contributions or made expenditures (or consented for another to do so) "with a view to bringing about ... nomination or election to any state or local office," in addition to those who have either qualified or taken action to qualify in a particular election. Ala. Code § 36-25-1(3) (effective Oct. 1, 1995). The language is adopted from the Fair Campaign Practices Act, Ala. Code § 17-22A-2 (Supp. 1994), and creates parallel coverage of candidates under both acts. This amendment also alters the holding in *Muncaster v. Alabama State Ethics Commission*, 372 So. 2d 853 (Ala. 1979), which held that candidates were not governed by the Ethics Act until they applied to qualify for an election.

The broad sweep of the amended definition of "candidate" is mitigated somewhat by the establishment of a minimum amount of contributions or expenditures that must be reached before a person is a "candidate." The minimums are $25,000 for statewide office, $10,000 for Alabama Senate, $5,000 for circuit or district office or Alabama House of Representatives, and $1,000 for local office.

Additional burdens are placed on municipal and county candidates by the amended Ethics Act, overruling *Watson v. Figures*, 631 So. 2d 936 (Ala. 1994). In *Watson*, the Alabama Supreme Court held that candidates for municipal and county offices were not required to file a Statement of Economic Interests. By including municipal and county candidates in the definition of "candidate," and by the changes in sections 36-25-14 and 15, candidates for those offices, as well as candidates for state office who were covered under the former Ethics Act, are now required to file a Statement of Economic Interests.

Determination of who is governed by the Ethics Act is and has been a source of controversy throughout its existence. In this respect, the amended Ethics Act is much more thorough in its

definitions of a "public official" and "public employee." Under amended section 36-25-1(25), a "public official" is any person elected or appointed to public office at the state, county or municipal level of government, including government corporations. In addition, chairs and vice-chairs of each state political party are defined as public officials. Under amended section 36-25-1(24), a "public employee" is any person employed at the state, county or municipal level of government, including governmental corporations and authorities, who is paid in whole or in part by state, municipal, or county funds. Employees of hospitals or other health care corporations, however, are excluded. In addition, except for lobbyists, part-time professionals who earn less than 50 percent of their income from government work are also *not* considered "public employees."

The amended Ethics Act's more detailed definitions help to resolve some of the coverage issues arising under the Ethics Act that have been decided heretofore on a case-by-case basis. Early in the Ethics Act's history, the Alabama Supreme Court ruled that members of the Board of Bar Commissioners of the Alabama State Bar, the Judicial Compensation Commission, and the Court of the Judiciary were not covered under the Ethics Act. *Wright v. Turner*, 351 So. 2d 1 (Ala. 1977). The amended Ethics Act presumably continues to exclude those and other members of entities of that type (entities with members that are neither elected or appointed officials, nor paid employees of a state, county, or municipal government, or their instrumentalities).

The specific inclusion of employees of government corporations and authorities as "public employees" clarifies some confusion demonstrated in *Langham v. State*, No. CR-92-1302, 1994 WL 169978 (Ala. Crim. App. May 6, 1994). In that case, the question arose as to whether members of the Prichard Water Works and Sewer Board were subject to the Ethics Act. The board members argued that as employees of a corporation, they were not "public employees," while the state argued that they were within the scope of this term under the Ethics Act. The Alabama Court of Criminal Appeals resolved the issue by looking to the "original" statute (shortened and amended in 1986) and determined that, as board members of a "public utility," they were covered under the Ethics Act. Under amended section 36-25-1(24), a board member of a "government corporation" is clearly a "public employee".

In *Harris v. Ethics Commission of State*, 585 So. 2d 93 (Ala. Civ. App. 1991), the issue was whether an Industrial Development Board (IDB) was an "instrumentality" of a municipal government so that its members were "public officials" subject to the Ethics Act. The Alabama Court of Civil Appeals ruled that it was, based on legislative intent expressed in the definition of "public official" under the Ethics Act and the entity's fundamental ties to the municipality. Under the amended Ethics Act, members of the IDB and similar "instrumentalities" of state, county or municipal government would continue to be within the scope of the Ethics Act as public officials.

C. "Conflict of Interest" and "Direct Personal Financial Gain"

A formal definition of a "conflict of interest" is now included in the amended Ethics Act in section 36-25-1(8). This definition in the amended Ethics Act clarifies and adopts court rulings applying provisions of the former Ethics Act. Until now, Alabama courts have relied on a definition supplied by the Alabama Court of Criminal Appeals, which was adapted from the Ethics Act's statement of purposes, describing a conflict of interest as a "conflict between an official's private interests and his or her official duties." *Rampey v. State*, 415 So. 2d 1184 (Ala. Crim. App. 1982). The new definition is more detailed and includes a list of specific exclusions not considered conflicts of interest.

Another significant addition to the Ethics Act is a provision that obliges legislators not to vote on matters in which they know or *should know* they have a "conflict of interest." Ala. Code § 36-25-5(b). The adopted language is basically a codification of the decision by the Alabama Supreme Court in the 1985 *Opinion of the Justices No. 317,* 474 So. 2d 700 (Ala. 1985).

The question posed to the supreme court in 1985 was whether legislators may vote on pay raises for educators when either they or their spouses are employed or paid by the state education system. The challenge questioned whether the legislator's act of voting was in violation of either the Alabama Constitution or the Ethics Act. The supreme court answered, on constitutional grounds only, that so long as a bill does not affect a legislator differently from the other members of the class to which he belongs, there is no violation of law. *Id.*

The amended Ethics Act reflects the Alabama Supreme Court's opinion by adopting the answer of the *Opinion of the Justices No. 317* in its definition of "conflict of interest":

> A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which could materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.

Ala. Code § 36-25-1(8) (effective Oct. 1, 1995). In the opinion, the supreme court discussed the potential complexities of limiting legislators' ability to vote on matters that could affect them personally. *Opinion of the Justices No. 317*, 474 So.2d at 703-04. The supreme court drew a distinction between those matters that benefit a legislator as an individual or as a member of a small class, as opposed to those that benefit a large class of which the legislator may be a member. For instance, the opinion pointed out the problems of a legislator asked to vote for a tax cut, a decision that will result in a financial ben-

James S. Christie, Jr.
James S. Christie, Jr. received his undergraduate degree from Rhodes College and his master's degree and law degree from Duke University. He is a partner with the firm of Bradley, Arant, Rose & White in Birmingham.

Anne S. Hornsby
Anne S. Hornsby is a student at the University of Alabama School of Law.

Ann P. Vandevelde
Ann P. Vandevelde is a student at Vanderbilt University School of Law.

efit for the legislator. Similarly, the conflict arises where a vote by a legislator who is involved in the banking industry may affect interest rates, which ultimately might work to his or her financial benefit.

Based on the Alabama Supreme Court's belief that voters know and expect their legislators to deal with such matters as education and finance when they elect them, the supreme court found no constitutional reason to require legislators to recuse themselves from the vote on an education pay raise despite their financial link to the legislation. Although the supreme court declined to answer the question on the basis of the Ethics Act, it specifically noted that its analysis would apply to it as well. *Id.*

In *Lambert v. Wilcox County Commission*, 623 So. 2d 727 (Ala. 1993), the Alabama Supreme Court extended its holding and rationale from the 1985 *Opinion of the Justices No. 317* to the Ethics Act. It ruled that a county commissioner need not eliminate himself from a vote on a sales tax increase to fund education merely because he is also a school bus driver.

The amended Ethics Act reflects the logic of the Alabama Supreme Court's decisions and echoes similar policies in other states. *See id.* (citing comparable law in Kentucky, Delaware, and Connecticut). Nonetheless, where a legislator is a member of a small class that benefits from legislation, even if all class members are affected in the same way, the result is less clear. Notably, a proposed amendment to the Ethics Act would have taken a different view, forbidding legislators to vote on a matter affecting their employer or directly affecting their income or employment.

The amended Ethics Act has new language for whether fees for advice or assistance on matters concerning a governmental body, where there is no connection between the public official's or public employee's duties and the advice or assistance, violates the Ethics Act. Former section 36-25-7 simply prohibited public officials or public employees from receiving fees for providing advice or assistance to a government agency, without any mention of a conflict of interest. In *Kirkland v. State*, 529 So. 2d 1036 (Ala. Crim. App. 1988), the Alabama Court of Criminal Appeals found that the mere receipt of a fee for advice or assistance from a state agency, absent a conflict of interest in the consulting services provided, did not violate the former Ethics Act. The court of criminal appeals looked to the Ethics Act's statement of purposes (section 36-25-2) in determining that a conflict of interest was a necessary element of an infraction. Amended section 36-25-7 states that no covered person "shall solicit or receive any money ... for advice or assistance on matters concerning the legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member." Amended section 36-25-7 also prohibits soliciting, receiving or offering a thing of value "for the purpose of influencing official action." Logically, receipt of fees for legitimate consulting services *unrelated* to a public official's or public employee's duties, that is, where no conflict of interests exists, would still not be prohibited.

An issue related to conflicts of interest is the question of what constitutes "direct personal financial gain." Are activities entered into that could result in financial benefit a violation of the Ethics Act? Or, must such benefit be realized before a violation exists? In *Allen v. State*, 380 So. 2d 313, 330-32 (Ala. Crim. App. 1979), *cert. denied*, 380 So. 2d (Ala. 1979), 449 U.S. 842 (1980), the Alabama Court of Criminal Appeals held that Allen's conduct

in securing financing for a venture in which she had an unspecified connection was for the sole purpose of promoting her corporate endeavors, which would ultimately result in personal gain. This conduct was held sufficient to support a conviction under the Ethics Act, despite the fact that the financing was later rescinded. *Id.*

Similarly, in *Chandler v. Alabama*, 615 So. 2d 100, 106-07 (Ala. Crim. App. 1992), *cert. denied*, 615 So. 2d 111 (Ala. 1993), the Alabama Court of Criminal Appeals found that a mayor who used his office to negotiate and sell real property that he personally owned had violated the Ethics Act. The court of criminal appeals stated that to require that a contract actually be executed would be contrary to the purposes of the Ethics Act. In *Hunt v. Tucker*, 875 F. Supp. 1487, 1511-12 (N.D. Ala. 1995), the district court discussed *Chandler* in its analysis of when a violation took place, thus starting the running of the statute of limitations, and commented that under *Chandler* "serious" negotiations seemed sufficient to violate the Ethics Act.

Amended section 36-25-5 still uses the phrase "personal gain," but also requires that personal gain encompass the receiving, obtaining, exerting control over, or converting to personal use the object constituting the personal gain. Although still determined somewhat on a case-by-case basis, the additional language of amended section 36-25-5 seems to reflect the broad view of the courts in considering when an improper benefit has been realized.

D. Conclusion

The amended Ethics Act largely reflects the case law construing the former Ethics Act. Significantly, the Alabama Legislature relied on court decisions in amending the Ethics Act's definitions and other provisions. These amendments should clarify the Ethics Act for those attempting to comply with the law.

Scope and Effect of Other Law

A. Ethics Commission Advisory Opinions

Advisory opinions issued by the State of Alabama Ethics Commission are not law, but they may protect certain persons from liability under the Ethics Act. Section 36-25-4(a)(9) of the amended Ethics Act defines the scope of individuals protected under advisory opinions as those who request the opinion and those who reasonably rely, in good faith, on the opinion in a materially like circumstance. The amendments to this section of the Ethics Act reflect prior court decisions such as *Hunt v. Anderson*, 794 F. Supp. 1557 (M.D. Ala. 1992), *aff'd without opinion*, 976 F.2d 744 (11th Cir. 1992).

Hunt v. Anderson illustrates the significance of Ethics Commission advisory opinions as viewed by the courts. This case arose from Governor Guy Hunt's use of state aircraft to travel to religious services where he accepted monetary donations. In deciding this case, the district court considered the applicability of two advisory opinions. State of Alabama Ethics Commission Advisory opinions 466 and 1019 placed no limits on the use of state-owned vehicles and aircraft by a governor and authorized their use for personal and vacation trips. Governor Hunt argued that, in light of these Ethics Commission advisory opinions, application of the Ethics Act would be discriminatory and a violation of his constitutional right of due process. However, the district court held that advisory opinions protect only the persons to whom they are directed. Thus, the District Court found that the advisory opinions did not create any rights in Governor Hunt to have his actions governed by them as a matter of due process. *Hunt v. Anderson*, 794 F.Supp. 1557.

Had the District Court in *Hunt v. Anderson* determined the protective scope of the Ethics Commission's advisory opinions under the recently amended Ethics Act, it would have focused on whether Governor Hunt's situation was "materially like" the circumstances upon which either advisory opinion was based. While not a primary consideration, the district court noted that the advisory opinions did not address the specific question of a governor receiving payments of money for activities conducted while on such trips. *Hunt v. Anderson*, 794 F. Supp. at 1560. This distinction drawn by the district court suggests that the courts may narrowly define the scope of advisory opinions issued by the Ethics Commission.

While the authority of the Ethics Commission to issue an advisory opinion, the scope of that opinion, and the validity of the Ethics Act may be challenged, the substance of an advisory opinion, which does not have the power of law, cannot be tested in court. Accordingly, the Alabama Supreme Court dismissed on appeal an action brought by a state official challenging the conclusion of an advisory opinion issued by the Ethics Commission. *Underwood v. State*, 439 So. 2d 125 (Ala. 1983). The supreme court held that an advisory opinion of an administrative board, having no force of law, is not subject to review by courts, either by appeal or by action for declaratory judgment. *Id.* at 128.

Nonetheless, Alabama courts have afforded Ethics Commission advisory opinions serious consideration. In *Kirkland v.*

Lusk Appointed New Assistant General Counsel

Robert E. Lusk, Jr. was recently appointed to the position of assistant general counsel of the Alabama State Bar. Lusk received his undergraduate degree from Auburn University and his law degree from the University of Alabama School of Law. After serving as law clerk and bailiff for the Honorable H. Randall Thomas, he became an assistant attorney general for the State of Alabama in May 1988. In January 1993, he was named chief counsel, deputy district attorney for the Fifteenth Judicial Circuit. ■

State, 529 So. 2d 1036, 1040-41 (Ala. Crim. App. 1988), the Alabama Court of Criminal Appeals declared that the Ethics Commission's interpretation of the Ethics Act should not be disregarded unless it is erroneous based on the statutory language. Recognizing that the Ethics Commission's opinions are not law, the court of criminal appeals nevertheless found that they are "entitled to due weight and favorable consideration when the reviewing court interprets the [Ethics Act]." *Id.*

B. Attorney General Opinions

Attorney general opinions are merely advisory and also are not considered law by the courts. In *Hunt v. State*, 642 So. 2d 999 (Ala. Crim. App. 1993) (per curiam), *aff'd per curiam, Ex Parte Hunt*, 642 So. 2d 1060 (Ala. 1994), the Alabama Court of Criminal Appeals held that an attorney general opinion protects only the officer to whom it is directed from liability arising from an action performed as advised in the opinion. *Id.* at 1015. In addition, the court of criminal appeals recognized that the attorney general opinions in question addressed only the Fair Campaign Practices Act without any reference to the Ethics Act. For these reasons, the court of criminal appeals rejected Governor Hunt's arguments based on two attorney general opinions that were issued *after* he performed the actions in questions in his suit. *Id.*

Alabama's attorney generals have repeatedly stated that they will not issue advisory opinions on the Ethics Act as that is the duty of the Ethics Commission. Therefore, attorney general opinions should not directly affect or be affected by the amended Ethics Act.

C. Other Related Statutes

Section 36-25-30 of the Ethics Act states that it "shall be construed in *pari materia* with other laws dealing with the subject matter hereof, and repeals all laws and parts of laws in conflict herewith." Therefore, the Ethics Act and other laws that regulate similar activities must be construed with reference to each other. In *Ex Parte Hunt*, the Alabama Supreme Court recognized this fundamental principle of judicial statutory construction. 642 So. 2d 1060 (Ala. 1994). In reconciling the Fair Campaign Practices Act and the Ethics Act, the supreme court held that using excess campaign funds for direct personal financial gain is a violation of the Ethics Act. *Id.*

The scope of this article reaches only as far as the Ethics Act. Yet, issues discussed here may involve other statutes. While an action may not violate the Ethics Act, it may violate another Alabama law. Hence, one should consider other Alabama laws before concluding that an action is legal in Alabama.

Contacting the State of Alabama Ethics Commission

The State of Alabama Ethics Commission office in Montgomery is located at RSA Union, Suite 104, 100 N. Union Street, and is open from 8:00 A.M. until 5:00 P.M. on weekdays. Under section 36-25-4(a)(5) of the Ethics Act, the Ethics Commission must make reports and statements filed with the Ethics Commission available to the public inquiry during regular business hours. In addition, one may request in person copies of advisory opinions. According to section 36-25-4(a)(9) of the Ethics Act, reasonable charges may be imposed on persons requesting advisory opinions.

Each year, the Ethics Commission publishes in one volume its formal advisory opinions for that year, a cumulative index of all opinions issued since the 1973 passage of the Ethics Act, and a list of all formal advisory opinions altered or rendered moot by court decisions or statutory amendments. This book can be purchased from the Ethics Commission for approximately $25.00. The published advisory opinions for each year are generally available late in the following year.

If one has any doubts about a certain activity, it is advisable to contact the State of Alabama Ethics Commission at (334) 242-2997 or send a written request to P.O. Box 4840, Montgomery, Alabama, 36130-4840. All inquiries, based on actual or hypothetical situations, are answered either by an oral response or a formal written advisory opinion.

ENDNOTES

1. This article includes excerpts from the *Alabama Ethics Law Handbook*, which is being published and distributed by Bradley, Arant, Rose & White. In addition to Mr. Christie, Ms. Hornsby and Ms. Vandevelde, Thomas N. Carruthers, Joseph E. Smith and L. Wayne Pressgrove provided invaluable assistance with the *Alabama Ethics Law Handbook*. Mr. Carruthers and Mr. Christie are partners and Mr. Smith is an associate at Bradley, Arant, Rose & White. Mr. Pressgrove is a L.L.M. student at New York University.
2. *Hunt v. Anderson*, 794 F. Supp. 1557 (M.D. Ala. 1992) (granting summary judgment for defendants in Governor Hunt's action for declaratory and injunctive relief with regard to application of state ethics laws), *aff'd without opinion*, 976 F.2d 744 (11th Cir. 1992); *Hunt v. State*, 642 So. 2d 999 (Ala. Crim. App. 1993) (per curiam) (affirming Governor Hunt's conviction in Montgomery Circuit Court for using a political office for direct personal financial gain), *aff'd per curiam, Ex Parte* Hunt, 642 So. 2d 1060 (Ala. 1994); *Hunt v. Tucker*, 875 F. Supp. 1487 (N.D. Ala. 1995) (denying former Governor Hunt's habeas corpus petition).

LEGISLATIVE WRAP-UP

By ROBERT L. McCURLEY, JR.

The 1996 Regular Session of the Legislature convenes Tuesday, February 6, 1996 and can continue until the last possible day for meeting which is May 20, 1996. One of the major pieces of legislation that will be presented to the Legislature is the Revised Partnership Act, see *Alabama Lawyer*, July 1995, with a section concerning Limited Liability Partnerships.

Attorney Bruce Ely, one of the members of the committee that helped draft the Limited Liability Partnership (LLP) section, states that it is the latest addition to the choice of entity menu. The number of states that have adopted LLP legislation in the last four years has grown from one to 37. This is getting close to the number of states which have adopted Limited Liability Company (LLC) legislation which, to date, is 48, including Alabama who adopted the LLC law in 1993.

While the Alabama Law Institute's Partnership Committee, chaired by Fred Daniels, was working on the Partnership Act, a separate task force of representatives of the state bar, the Alabama Trial Lawyers Association and the Alabama Society of CPAs met on several occasions to review the various state Limited Liability Partnership acts and determine how a proposed LLP legislation in

Alabama would fit with the other Alabama entities. This task force, chaired by Scott Ludwig of Huntsville, and using as technical advisors three co-authors of the LLC act, namely Bruce Ely of Tuscaloosa, Brad Sklar of Birmingham and University of Alabama School Law Professor Jim Bryce, chose to adopt the more modern LLP approach commonly referred to as the "bullet-proof" variety. In the Limited Liability Partnership venicular, a bullet-proof LLP provides a liability shield very similar to that provided by Limited Liability Companies and business corporations but at the same time will not shield a professional from his or her own malpractice or that of a subordinate.

Unlike the Alabama Limited Liability Company Act there would be no required organizational documents of an LLP. A general partnership would simply register as an LLP with the probate judge in the county in which the LLP has its principal place of business and secondarily with the Alabama Secretary of State and would pay an annual registration fee to maintain its status. The LLP is commonly used by large law firms and accounting firms in other states and appears to have become the entity of choice with multi-state law and accounting partnerships. The Partnership Act also provides an article on how to convert partnerships to limited liability partnerships and the effect of such merger. This bill has received some minor tuning from the one introduced late in the 1994 Legislature by Senator Wendell Mitchell and Representative Mike Box.

Another major revision of the Alabama Law Institute to be introduced will be Revised Article 8 of the Uniform Commercial Code, see *Alabama Lawyer*, July 1995. The Article 8 bill was introduced in both houses of the Legislature and passed both the House and the Senate but neither version was able to gain consideration in the last day of the session although no opposition appeared. It is also expected that the Institute will introduce a bill to appeal Article 6 of the UCC. Article 6, Bulk Transfers, has been repealed in 34 states and has been recommended for repeal by the Permanent Editorial Board of the Uniform Commercial Code, the Commissioners on Uniform State Laws and the American Law Institute.

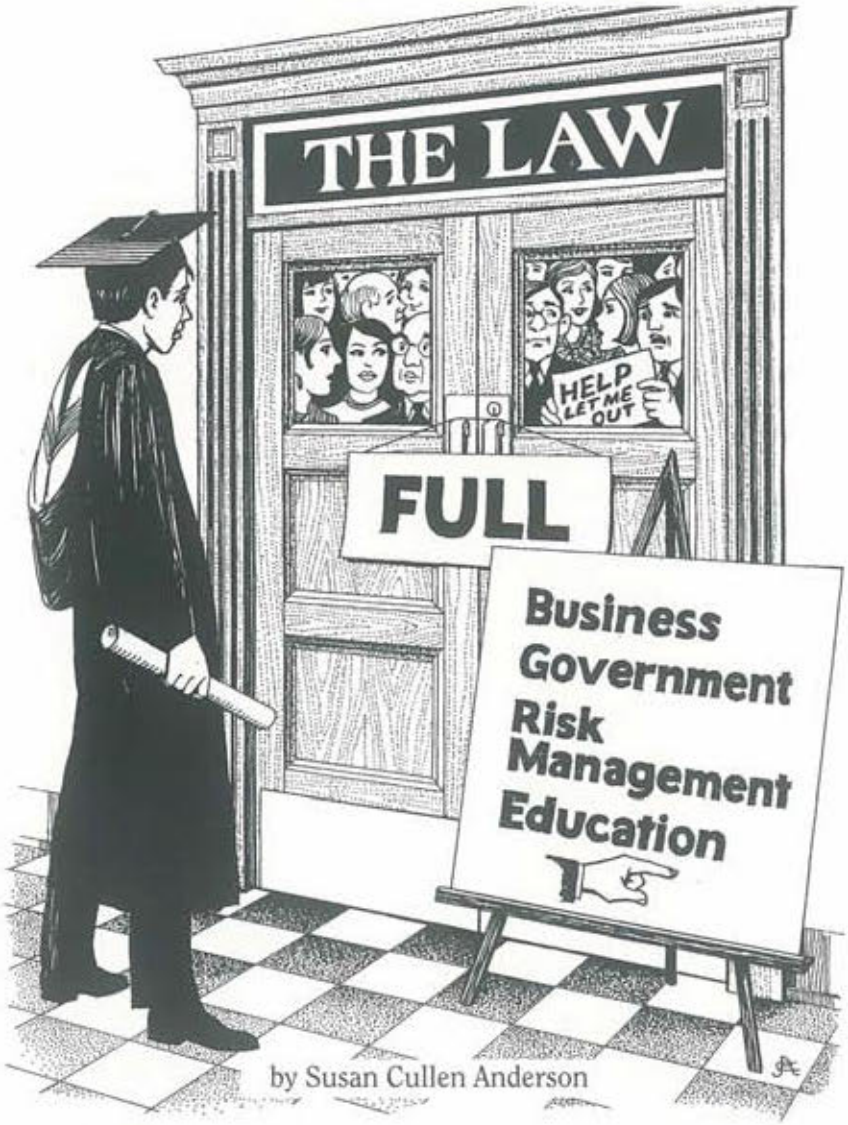
For further information, contact Bob McCurley, Alabama Law Institute, P.O. Box 1425, Tuscaloosa, Alabama 35486, or call (205) 348-7411, FAX (205) 348-8411. ■

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.

Wanted: Legal Employment

Job Hunt a Struggle for Alabama Grads



by Susan Cullen Anderson

Mike White has followed the rules. He has done well in law school, clerked for two law firms, and is a member of the ABA national trial team. He is chief judge of the Cumberland Trial Advocacy Board and he has several years of real-life work experience. What White doesn't have is a job.

White, a third-year Cumberland student in the top 22 percent of his class, is confident that something will work out, but his wife Martha is getting nervous. "It's frustrating not having a job, but there are plenty of people with higher grades than me that don't have one yet," White said.

Both statewide and nationally, the statistics bear out White's experience. While the job market is better than it was two years ago, private practice employment is the lowest it has been since 1980, according to Paula A. Patton, executive director of the National Association for Law Placement. Nationally, only 55 percent of 1994 law school graduates went into private practice. "It's been in a downward spin for the last five years," she said.

White

Still, 1995 graduates have a rosier future than their 1992 or 1993 counterparts had. "We tend to think the market is better than it was three years ago, but not as good as it was 12 years ago," said Jenelle Marsh, assistant dean for students and academic affairs at the University of Alabama School of Law. The latest figures available, for the class of 1994, show that 96 percent of her school's graduates got a job of one sort or another or went on to graduate school as of March 1995. Her worry is that students have fewer offers from which to choose.

At Cumberland, 91 percent of the 1994 graduates were employed or in graduate school as of March 1995. Jeanette Rader,

Cumberland's director of career services, said she sees more of an upswing than two or three years ago. Still, it's not the buyer's market of the mid-80's. "It may never be again," she said.

At Cumberland, 68 percent of the 1994 graduates who found work are in private practice, compared to 59 percent of Alabama graduates. The rest are in clerkships, government work, public interest law, business and industry or academia. At Alabama, the number of students going to work for the government has almost doubled in the last five years, from eight in 1990 to 15 in 1994. Dean Marsh said she does not know why, but she suspects that students are now forced to look beyond private practice for job opportunities.

Starting salary expectations generated from watching *L.A. Law* are not being realized by recent graduates who are employed in full-time legal work. Of the 1994 Cumberland graduates who reported their salaries, the median salary was $30,000. The University of Alabama reported similar figures. With an average educational debt of $40,000 to repay upon graduation, according to NALP figures, the decision to go to law school may be suspect.

White, who gave up a nice salary as an insurance underwriter in South Carolina and is deep in educational debt, was more realistic than some of his classmates were when they started law school, he said. Now 31, he wants his loans paid off by the time he is 40. "I don't expect to make a lot of money right away," he said. "I'm looking way down the road for income potential."

Employers of all types can be choosier than they used to be in hiring law school graduates. Jefferson County Circuit Judge William Wynn said he could fill a dumpster with the resumes he receives from all over the country. "I am being deluged," he said. When he first became a judge in January 1989, his law clerk had not even been to law school. His present clerk graduated with honors from the University of Alabama School of Law and had two years of experience in Montgomery before she came to work for him. "She knows more law than I do," he said. Judge Wynn said he questioned one highly qualified applicant as to why she was interviewing for a state court clerkship. "There are no jobs," he said she told him. "There are simply no jobs."

Pete Burns, a partner with Burns, Cunningham & Mackey in Mobile, said his firm has four lawyers and has no plans to grow. "It would be inadvertent," he said, explaining that the applicant would have to be really exciting. With today's technology, a small firm can compete toe to toe with large firms, Burns said. "I think smaller and more specialized firms will have a significant competitive advantage over big firms," he said. "A lawyer who is computer-sophisticated can put out a tremendous amount of work."

Ms. Patton of the NALP said she has seen a "real shift" in the job market as a result of technology. One paralegal can do the work of four junior associates, and law firms increasingly recognize that, she said.

The most important factor in the tough market, however, is lateral hiring, Ms. Patton said. With big firms downsizing, young associates are being told they are not on the partnership track, so they are back on the job hunt, she said. Lawyers with three or four years of experience are competing with new graduates for jobs, and firms generally can hire laterals for the same price as new graduates, Ms. Patton said. The lateral hires realize the scarcity of law jobs and are willing to take less money, she said.

Fournier J. Gale, III, hiring partner at Maynard, Cooper & Gale in Birmingham, said he has seen a "marked increase" in the number of lateral applicants in the last three or four years. Young lawyers in cities like Atlanta and Washington, D.C., where firms are downsizing, are looking for jobs, he said. "We're not good at hiring those people, though," he said. Because of Maynard, Cooper's heavy reliance on their summer clerkship program for permanent hiring, lateral hiring would not sit well with their young associates, he said. Gale has heard about more active lateral movement in Birmingham, however, he said.

Maynard, Cooper has grown steadily over the last decade without the extreme fluctuation seen in big firms in other cities, Gale said. With a total of 72 lawyers, Maynard, Cooper has added an average of five lawyers a year for the last ten years." I think we've been much more stable, " he said. "We didn't have a peak, so we didn't have to let people go." Maynard's hiring philosophy is that they intend to practice for a lifetime with all

of the lawyers they employ, unlike the custom at some New York firms of hiring with the expectation that only 20 percent will become partners. The result is little fluctuation, he said.

Gale noted that his firm receives resumes from students at Virginia, Harvard, Yale and Duke, and the students are generally without Alabama connections. "We couldn't get them five years ago," he said. "The big firms in the big cities have cut back, and we're getting the benefit." Top students at Alabama's law schools are recruited by Maynard, Gale said, but he conceded the competition is tough.

To that, Frederica White Hecker can attest. In the top five percent of her class at the University of Alabama School of Law and a member of *Law Review*, Ms. Hecker found a job clerking for Bankruptcy Judge Thomas B. Bennett two weeks before she took the bar exam in July 1995. Even though she knew there was a rational explanation, "it was really frustrating," she said of her intense job hunt. "You know it's not really you," she said. "The big law firms have their choice of anyone in the country now."

Ms. Hecker, a 1987 Mountain Brook High School graduate and cum laude biology graduate of UAB, clerked for law firms both summers during law school and interviewed constantly during her third year. She still struggled. Like White at Cumberland, she said most of her classmates were jobless during her third year. She feels blessed that she got a job when she did.

White also clerked for law firms both summers, has done more than the expected extracurricular activities, and has real-life work experience. While he is frustrated that he does not have a job yet, he is not surprised. "I was fairly realistic," he said of his decision to quit his job and go to law school. "I knew I was taking a real big chance." White is interviewing regularly, and he has heard only one "no" thus far. He said he knows plenty of his classmates who can't even get interviews. "I don't know what you do if you're in the lower half of the class," he said. White said he would like to stay in Alabama, but, "I'll go wherever."

These days, "wherever" includes non-law jobs for many graduates, ranging from business to education. Cumberland's Jeanette Rader said a few more of her graduates are moving into non-traditional careers. Few University of Alabama students consider non-traditional jobs while in law school, said Dean Marsh, but once they graduate, more are willing to say they have made a mistake and move out of the practice of law. Paula Patton of the National Association for Law Placement believes non-traditional careers are becoming more prevalent, although the data is not yet available to show it.

There is a new mind set in the academic community about job quality and alternative professions, and more schools recognize that the J.D. is a flexible degree which can be useful outside the profession, Ms. Patton said. Blue bloods at old-line schools still insist private practice is the only respectable route, and "it will take a lot of effort by a lot of people at the very top" to change that mind set, she said.

Mary Abbott Harkins, assistant vice president at an insurance brokerage firm in Birmingham, is satisfied with her decision to follow the non-traditional route. A 1991 Cumberland graduate, Ms. Harkins was offered a job at McGriff, Seibels and Williams, Inc. in the spring of her third year. She spent most of her third year on the job hunt despite the fact that she was chief justice of the honor court and in the top 25 percent of her class.

Ms. Harkins, a paralegal in her previous life, entered Cumberland with the expectation of practicing law upon graduation. While she had offers at law firms, the job at McGriff, Seibels and Williams allowed her the opportunity to design insurance programs for billion-dollar companies and still use her law degree on a regular basis, she said.

The absence of law firm stress was an added attraction, Ms. Harkins said. She was 31 when she graduated, engaged to be married soon and looking forward to having a family. The insurance brokerage firm offered her flexibility. "The pressure I have is pressure I put on myself," she said. "There are no billable hours, no one taking roll on weekends."

Amy Hubbard used her law degree to land a job as director of the job corps center at Trenholm State Technical College in Montgomery. A 26-year-old 1993 graduate of the University of Alabama School of Law, Ms. Hubbard never intended to practice law, she said. Ms. Hubbard, from Attalla, worked for Paul Hubbert's gubernatorial campaign after graduation but wanted to move into higher education, she said. Her law degree was invaluable. "People look at your resume and say, you're qualified for anything," she said. She never would have been considered

for her position at her age without the degree, Ms. Hubbard said.

New law graduates should not look to in-house counsel positions as a possibility, said James D. Pruett, a Gadsden attorney who was until a few months ago acting general counsel for AmSouth Bank in Birmingham. "It's a waste of time and stamps," Pruett said.

Pruett, who worked for AmSouth from 1986 until the fall of 1995, said most corporations find in-house lawyers in firms which work for the company or attorneys with special expertise. He said he received a surprising number of resumes from quite experienced lawyers with varied legal backgrounds. Pruett had 22 years of private practice experience before AmSouth recruited him, he said. In the time he was there, the number of in-house lawyers shrunk from nine to six, he said. He did not expect the services performed by the in-house counsel's office to expand, or the number of lawyers to grow much larger.

The prospects for law school graduates in coming years may be brighter, with the number of applicants to law schools decreasing every year since 1991, said Ms. Patton. The job market for undergraduates is better, so higher numbers are going straight into the work world, she said. With an average of four applicants for every law school slot, however, high quality graduates still will be facing intense competition for employment.

In the meantime, Mike White is still looking. "Can you put my resume in your article?" he joked, adding that he is available at the Cumberland trial advocacy board office any day of the week. He is self-confident, the placement office at Cumberland has been helpful and he is still interviewing. "I will find a job doing something," he said. "I'll do whatever it takes." ■

Susan Cullen Anderson
Susan Cullen Anderson is a graduate of the University of Alabama and the University's School of Law. She practices with the Law Offices of G. Daniel Evans in Birmingham. She is a former reporter for *The Birmingham News*.

NOT SO FAST:

Turning Down That Co-Employee Liability Case Can Cost the Injured Employee and You Money

By Glenda G. Cochran and David P. Stevens

Employees and attorneys, rejoice: Co-employee liability is not dead in the state of Alabama. It is still possible to recover for injured clients who are injured by willful conduct of co-employees.

Code of Alabama §25-5-11 provides that an employee who is injured on the job by the willful conduct of another employee can recover against that employee.[1] The code provides four definitions for willful conduct. Subsequently, Alabama Supreme Court decisions have made it very difficult, if not impossible, to recover under three of the definitions of willful conduct. The quest for the practitioner is how to recover under § 25-5-11. This article will offer two areas of interest to the practitioner: a survey of the law of Alabama regarding subsection (c)(2) of 25-5-11, the "safety device" section, and a guide as to how to analyze a 25-5-11(c)(2) cause of action. Specifically, this article will focus on the hurdles a practitioner must overcome in order to prove a 25-5-11(c)(2) claim and include a discussion of the Alabama Supreme Court's recent expansion of what constitutes a "removal" of a safety device for the purposes of attaching liability.

§25-5-11(c)(2) is Fundamentally Different from the Other Co-Employee Liability Sections

§25-5-11, *Code of Alabama* provides four specific definitions of "willful conduct." The first of the these defines "willful" conduct as follows: "A purpose or intent or design to injure another; and if a person, with knowledge of the danger or peril to another, consciously pursues a course of conduct with a design, intent and purpose of inflicting injury, then he or she is guilty of `willful conduct.'"[2] The supreme court has held that in order to recover under this subsection, the plaintiff must show that the defendant had a specific intent to injure the plaintiff. The requirement of a specific intent limits the application of this subsection to fact specific cases.

The second definition for "willful conduct" is: "The intoxication of another employee of the employer if the conduct of that employee has wrongfully and proximately caused injury or death to the plaintiff or plaintiff's decedent, but no employee shall be guilty of willful conduct on account of the intoxication of another employee or another person."[3] Again, this subsection has a very limited practical application since it only applies to situations involving intoxication.

The third definition of "willful conduct" is also fact-specific and is: "(The) [w]ilfull and intentional violation of a specific written safety rule of the employer after written notice to the violating employee by another employee who, within six months after the date of receipt of the written notice, suffers injury resulting in death or permanent total disability as a proximate result of the willful and intentional violation."[4]

The fourth definition for "willful con-

duct" which is the most important to today's practitioner is that found in § 25-5-11(c)(2) and is the subject of this article. It defines willful conduct as follows:

"The willful and intentional removal from a machine of a safety guard or safety device provided by the manufacturer of the machine with knowledge that injury or death would likely or probably result from the removal; provided, however, that removal of a guard or safety device shall not be willful conduct unless the removal did, in fact, increase the danger in the use of the machine and was not done for the purpose of repair of the machine or was not part of any improvement or modification of the machine which rendered the safety device necessary or ineffective."[5]

This definition is fundamentally different from the other definitions of willful conduct in 25-5-11 because it does not require that the plaintiff prove intent as the state of mind. The plaintiff must merely show that the removal of a safety guard occurred with the knowledge that an injury would *likely or probably* result. This is a negligence standard and was explained by the Alabama Supreme Court in *Presley v. Wiltz* [6] as follows:

"By making the willful, intentional removal of a safety guard the basis for a cause of action without the higher burden of proof of "intent to injure" found in section (a) or (c)(1), the Legislature acknowledged the important public policy of promoting safety in the work place and the importance of such guards in providing safety. The same dangers are present when a safety guard has been removed."[7]

The fundamental difference between (c)(2) and the other co-employee liability sections is this lesser burden of proof. It is far easier for a plaintiff to recover when a safety device is involved because of the underlying public policy concern for safety in the workplace. Therefore, to recover under (c)(2), the plaintiff does not need to establish an actual intent to injure.

§ 25-5-11(c)(2): Essential Elements of Your Case under Supreme Court's Interpretation of Code Section

A. The First Hurdle: Identify the Manufacturer

The first issue which you must address is to identify the "manufacturer" under the code section. In many cases, the question is whether the employer becomes a manufacturer of the machine by altering the machine.

In *Harris v. Simmons*,[8] the employee plaintiff was injured when three of her fingers were amputated by a power press with which she was working.[9] The plaintiff brought an action pursuant to §25-5-11(c)(2) and the Alabama Supreme Court held that if the manufacturer of a machine does not provide a safety device, the employer cannot be held liable under 25-5-11(c)(2).[10] This case stands for the proposition that where a manufacturer provides a safety guard, co-employees have a duty not to remove the device. Harris does not assist plaintiff's counsel to determine whether the employer can ever be the manufacturer of the machine for the purposes of 25-5-11(c)(2). However, this question was answered in the landmark case of *Harris v. Gill*.[11]

In *Gill*, the plaintiff's employer purchased a punch press that was 40 years old and basically unusable.[12] The employer's engineering department rewired and reworked the press to get it into working order.[13] The employer also altered the control buttons to increase efficiency and bypassed an emergency stop button.[14]

The main issue addressed by the court was whether the defendant employer's modifications of the punch press made

International Law Section

The board of bar commissioners recently approved the formation of an International Law Section. International law is becoming more important to clients of all types. There has been a steady growth in the number of attorneys who regularly serve the needs of clients involved in all aspects of international law. The organizational meeting will be held on January 26, 1996, at the Alabama State Bar in the boardroom, from 10:30 a.m. until noon. At the organizational meeting, officers will be elected, the form of bylaws approved by the commissioners will be made available, sub-committees will be identified, and concrete plans will be formulated to define the work of the International Law Section during 1996.

You are invited to attend the organizational meeting. If you are unable to attend, but would like to join the section, please contact the director of programs for more information at 1-800-354-6154.

the defendant the manufacturer of the press.[15] The Alabama Supreme Court held that the term "manufacturer" may include not only the original manufacturer of a machine, but also a subsequent entity (an employer) that substantially modifies or materially alters the product through the use of different components and\or methods of assembly.[16] Therefore, since the defendant took an unusable and unworkable punch press and turned it into a useable and workable punch press, the employer substantially modified or materially altered the machine and became the manufacturer for purposes of §25-5-11(c)(2).[17]

Thus, the practitioner should first check whether the defendant removed any safety devices from the machine. Then counsel must determine whether the devices were provided by the original manufacturer or the employer, and whether the employer made alterations and modifications to the machine. If so, the "manufacturer" hurdle can be cleared and the second hurdle can be approached.

The Second Hurdle: Distinguishing a "Machine" from a Work Environment

The second hurdle the practitioner must clear is to determine whether the safety guard was removed from a machine or the work environment. The Alabama Supreme Court has considered what the legislature meant by the term "machine" in two cases.[18]

In *Mallisham v. Kiker*,[19] the plaintiff employee was injured while working in a mine. The government mandated that support timbers should be installed within the mine for safety.[20] The timbers had been designed to prevent the injury which happened to Mallisham.[21] The plaintiff employee brought suit against his co-employees claiming that their failure to install the needed timbers amounted to removal of a safety guard pursuant to section (c)(2).[22] The trial court granted summary judgment to the defendant because the timbers involved were part of the entire working environment and not a part of a machine as required by § 25-5-11(c)(2). The supreme court affirmed, holding that the timbers(safety mechanisms) required by the federal regulations were not a part of a machine but rather a work environment. Thus, a work environment is not a machine.

In *Layne v. Carr*,[23] a case involving another mine accident, the Alabama Supreme Court again addressed what the legislature meant by the term "machine",[24] and found that the defendants had once again created a working environment where the plaintiff was injured. The issue in *Layne* was whether the failure to repair a pumping device needed for the safety for the entire working environment was equivalent to removal of a safety device from a machine.[25] In holding that Layne was not entitled to a trial pursuant to §25-5-11(c)(2) the Court said intention of the legislature was to prevent removal of a safety guard from a machine, not an entire work environment.[26] The failure to repair the pump or improve its pumping capacity to keep the mine free of water was not equivalent to removing a safety guard from a machine. Thus, the defendant's conduct was not willful under the act and the suit was barred by the exclusivity provision of Alabama's Workers Compensation Act.[27] Once again the court drew a distinction between a machine and a work environment.

Thus, the practitioner must determine whether the plaintiff employee was injured by a safety device being removed from the entire environment, or from a specific machine. When the evidence indicates that the safety device was indeed removed from a machine, then the second hurdle can be cleared and the third and most important hurdle approached.

The Third Hurdle: Identify the Safety Guard

The third hurdle for the practitioner to consider when evaluating a potential co-employee case based on § 25-5-11(c)(2) is to identify the safety device or guard. Several Alabama cases have addressed this issue.[28] The first of these cases determined whether failure to give safety instructions to an employee constitutes willful and intentional conduct under (c)(2).[29] In *Beam v. Craig* ,[30] the plaintiff was injured when he attempted to unclog the paper waste removal system of a baler at the plant where he worked.[31] Specifically, the plant's manager, the defendant, had failed to follow the written safety precautions provided by the manufacturer of the baler, which provided that the baler should be turned off when unclogging it.[32] When the defendant employer was told the baler was clogged, he instructed that the baler should be left in operation while an employee unclogged it.[33] This instruction led directly to the plaintiff's

injury and the plaintiff brought suit pursuant to 25-5-11(c)(2), alleging willful conduct by the defendant for failing to follow the safety instructions.

The Alabama Supreme Court held that the provisions of §25-5-11(c)(2) regarding a safety device did not include instructions like the ones in *Bean*. The court reasoned that the exception in c(2) deals only with safety guards and devices provided by the manufacturer, not instructions. Therefore, the instruction not to stop the baler did not constitute willful conduct under the act, and the plaintiff's action was barred under the exclusivity provision. From this case, "safety guard" does not include the failure to provide safety instructions which the manufacturer of the machine provides.

The next and most important case to the viability of any (c)(2) action is *Moore v. Reeves*.[34] In *Moore*, the plaintiff was a security guard who was employed by Oakwood College. His duties included patrolling the campus.[35] On the day of the plaintiff's injury, the plaintiff was driving a vehicle provided by the employer for the security guard to make his rounds.[36] However, the door of the vehicle would not remain closed unless the driver held it closed with his left arm. The defendant was aware of the problem. Yet, despite knowledge, the defendant ordered the plaintiff to use the vehicle.[37] While the plaintiff was operating the vehicle, the door opened and the plaintiff fell out suffering injuries.[38] The plaintiff brought suit claiming the door was a safety guard which the defendant had removed by failing to repair it.[39] The Alabama Supreme Court set out to define the term safety guard in order to determine whether the door met the definition.[40] The court concluded that a safety device or safety guard is an item which is provided *principally, but not exclusively,* as protection to an employee, which provides some shield between the employee from incurring injury while he is engaged in the performance of the service required of him by the employer. It is not something that is a component part of the machine whose principal purpose is to facilitate the work.[41] In applying this definition, the Court found that the door to the car was a safety device as it was provided to protect the driver of the vehicle from hazards while driving during the course of his duties for the College.[42]

Recently, the Alabama Supreme Court reiterated this definition of safety device in *Smith v. Wallace*.[43] In this case, an ironworker was injured while operating a metal grinding machine. The machine was used to shape or sharpen metal which was held against the machine's abrasive wheel as it rotated at high speed. A tool resting on the grinder served a dual purpose; it allowed the work to be done with greater precision and it also protected the worker's hands from injury while the grinding wheel was in operation. Thus, although the tool rest was not exclusively provided for the safety of the worker, safety was a factor. The court held this was sufficient to make it a safety device within § 25-5-11(c)(2).

In order to overcome the safety guard hurdle, the attorney must produce evidence that the removal of any item, where safety was a factor in its installation, would have protected the employee from the injury. Applying this definition, there are hundreds of examples of items which could constitute safety guards if they are removed. For instance, car doors, any type of cat walk, insulation on pipes which is designed to protect employees from contact with pipes, even boards on top of tanks which employees use to walk across the tanks, could be construed as safety devices if their removal caused the injury. Expert testimony may be necessitated to help establish the purpose of the device in question.

Once the practitioner can clear this hurdle he or she may be faced with yet another hurdle, the concept of removal.

The Fourth Hurdle: Determine Whether the Safety Guard was Removed — Either Actively or Constructively

The practitioner must next determine whether a safety guard has been *removed* from the machine. The concept of "removal" has resulted in various and sometimes inconsistent results from the Alabama Supreme Court. The statute imposes liability if a safety guard or safety device which was provided by the manufacturer of the machine was removed with knowledge that injury would likely or probably result from that removal. This is an area of concern to the practitioner as the evidence must show that a safety guard was removed or some equivalent of removal.

The first, and most important, case which is instructive to the practitioner with regard to removal of a safety device is *Moore v. Reeves*.[44] *Moore* was the case described above involving the security guard where the door was determined to be a safety device. The court addressed a second important issue in that case; whether the failure to maintain or repair a safety device was tantamount to removal of that safety device. The court held that a co-employees' *failure to maintain or repair a safety device is the equivalent of the removal of that safety device* for purposes of Section 25-5-11(c)(2).[45] To hold otherwise, the Court explained, "would allow supervisory employees to neglect the maintenance and repair of safety equipment provided to protect co-employees from injury, which, by its very nature is a clear violation of public policy."[46] Therefore, in cases where there is evidence that the defendant failed to main-

tain or repair a safety device the removal hurdle can be overcome because failure to maintain can constitute a "constructive removal."

Recently, the court has gone even further with its opinion in the *Smith* case, described above. In that case, there was evidence that the tool rest, which the court held to be a safety device, was allowed to fall into a state of disrepair due to several years of use.[47] Evidence presented in the case showed that there was a dispute as to whether the supervisors responsible for making the repairs actually knew of the condition of the tool rest.[48] This fact distinguished the case from *Moore* because in that case, the supervisors knew of the defective condition of the car door but actively declined to repair it. The court, however, held that the plaintiff was entitled to a trial and reversed the granting of summary judgment. In doing so, the court implied that the supervisors in charge *should have known* of the condition of the tool rest and that they should have repaired it.[49]

This expansion of the definition of removal could prove to be invaluable to the practitioner. According to *Moore* and *Smith*, an employer can now be held liable for failing to maintain a safety device. The *Smith* case implies that since employees now have a duty to inspect and keep safety devices in a workable condition, actual knowledge of the defect may no longer be required. As previously mentioned, the Alabama Supreme Court has given a broad definition as to what may constitute a "safety device" for the purposes of 25-5-11(c)(2). Therefore, the practitioner should be on the lookout for instances where a safety device has been maintained in a state of disrepair. This could be a key to liability.

In addition to *Moore* and *Smith*, there are several other important decisions addressing the removal element.[50] The first case produced by the Alabama Supreme Court on the removal question was *Bailey v. Hogg*.[51] In *Bailey*, the employer of the plaintiff had purchased a used concrete manufacturing plant from another party.[52] The plant was delivered to the employer with a guard that would make certain areas inaccessible.[53] The defendant oversaw the construction of the plant and knew that the guards had not been installed.[54] In its decision, the Alabama Supreme Court discussed why the failure to install an available safety guard was tantamount to the removal of a safety guard stating as follows:

> The same dangers are present when an available safety guard is not installed as are present when the same guard has been removed. To say that an injury resulting from the willful and intentional removal of an available guard actionable but that an injury resulting from the willful and intentional failure to install the same guard is not contravenes... public policy.[55]

This 1989 case suggested that the supreme court was willing to expand the meaning of "removal" to factual situations in which the defendant made the safety device inaccessible or unusable to the plaintiff.[56] However, the court narrowed this interpretation in 1991.[57]

In *Sharit v. Harkins*,[58] the plaintiff employee was injured when a blow torch became entangled in his legs and burned him.[59] The torch had a separate oxygen control lever which, when depressed, allowed the torch to cut metal.[60] This lever was designed with a device which would disengage when it was no longer in the grip of the user.[61] The defendant in *Sharit* pinned this torch open thereby bypassing the safety device designed to protect users of the torch.[62] Based on the holding in *Bailey*, the plaintiff brought suit claiming that bypassing the cut-off switch was the same as failure to install and removal.[63] The court disagreed, however, stating that *Sharit* presented a different case than did *Bailey*.[64] The court found that the critical distinction between these two cases was that in *Bailey* the defendant was provided with guards that were a part of the equipment delivered with the machine and the defendant failed to install the guards and put them in place.[65] However, in *Sharit*, the court opined that the defendant did not fail to install a safety device: instead the court held that the defendant failed to correct an unsafe practice by his employees who were using the torch with it wired open.[66] The equipment was already in place at the time of the bypassing in

Sharit and the court viewed this distinction as critical. Thus, from *Bailey* and *Sharit* it appears that removal means the failure to install an available safety guard but not the bypassing of one.

The *Sharit* decision, rendered in 1990, was a year before the *Gill* case discussed above.[67] *Gill* involved a punch press where the emergency stop switch was bypassed and the plaintiff was injured as a result. The court held that bypassing a safety device of a particular machine that would prevent an injury was encompassed within the meaning of the word "removal". The court once again said to hold otherwise would contravene public policy. In reaching its decision in *Gill* the court failed to address *Sharit* and its implication that bypassing a safety device was not encompassed within the word "removal", thus it must be concluded that *Gill* was intended to overturn *Sharit* and bypassing a safety device should now be included in the definition of the word removal.

Therefore, the practitioner in evaluating a employee case must then consider three aspects of removal. The first is the actual taking away from a machine of a safety guard: either by actively taking the guard away, or by failing to maintain the safety guard as explained in the *Moore* and *Smith* cases. The second is the failing to install an available safety guard and the third is the bypassing of a safety guard. If any of these three can be proven then the removal hurdle can be cleared.

Conclusion

The Alabama Supreme Court has again made it possible for a practitioner and his or her client to recover for co-employee liability under 25-5-11 under the above-mentioned exceptions in subsection (c)(2). Specifically, where a safety device is at issue, the court's liberal interpretations of the various definitions in subsection (c)(2) have made it much easier for a plaintiff to successfully maintain a cause of action and collect damages. As stated above, safety devices are interpreted broadly by the courts, so the lawyer should constantly be on the lookout for items in the workplace which could place the claim under this subsection. And with the addition of the *Smith* case and its implicit holding that a failure to maintain a safety device can

be grounds for liability for the purposes of subsection (c)(2), plaintiffs once again can rejoice in the proposition that a co-employee's willful conduct is actionable in Alabama. ■

Endnotes

1. The code states: "If personal injury or death to any employee results from the willful conduct, as defined in subsection(c) herein, of any officer, director, agent, or employee of the same employer...the employee shall have a cause of action against the person." Ala. Code § 25-5-11(b) (1992).
2. Ala. Code 25-5-11(c)(1) (1992).
3. Ala. Code § 25-5-11(c)(3) (Ala. 1992).
4. Ala. Code S 25-5-11 (c)(4) (1992).
5. Ala. Code § 25-5-11(c)(2) (1992).
6. 565 So.2d 26 (Ala. 1990).
7. *Id at 28.*
8. 585 So. 2d 906 (Ala. 1991)
9. 585 So.2d at 907.
10. *Id.*
11. 585 So. 2d 831 (Ala. 1991).
12. 585 So.2d at 831.
13. Id.
14. Id.
15. Id at 835.
16. *Id.*
17. *Id.*
18. *See Layne v. Carr*, 631 So.2d 978 (Ala. 1994); *Mallisham v. Kiker*, 630 So.2d 420 (Ala. 1993).
19. *Supra*, note 18.
20. *Mallisham*, 630 So.2d at 421.
21. Id.
22. Id.
23. *Supra*, note 18.
24. *Layne*, 631 So.2d at 978.
25. Id.
26. Id at 981.
27. Id.
28. *See*, e.g. *Moore v. Reeves*, 589 So.2d 173 (Ala. 1991), *Bean v. Craig*, 557 So.2d 1249 (Ala 1990), *Sharit v. Harkins*, 564 So.2d 876 (Ala. 1990), *Kruszewski v. Liberty Mutual Ins. Co.*, 1995 WL 11439 (Ala. 1995), *Smith v. Wallace*, 1995 WL 124 (Ala. 1995).
29. *Bean*, 557 So.2d at 1251.
30. *Supra*, note 28.
31. Id.
32. Id.
33. Id.
34. 589 So.2d 171 (Ala. 1991).
35. *Moore*, 589 So.2d at 175.
36. Id.
38. *Moore*, 589 So.2d at 175.
39. Id.
40. Id. The failing to repair a safety guard being tantamount to removal is discussed infra in the next section.
41. Id.
42. Id.
43. Id at 177.
44. 1995 WL 124657, No. 1930608 (Ala. 1995).
45. 589 So.2d 173 (Ala. 1991).
46. Id at 178-79.
47. Id.
48. *Smith*, 1995 WL 124657, at *2.
49. *Id.*
50. At page four of the opinion, the Court notes the job descriptions of each of the defendants in this case. Namely, that each of them had a duty to monitor and/or investigating and developing safety problems and procedures. This shows implicitly that the court was placing an active duty on the part of supervisors in the position to correct safety defects to affirmatively maintain safety devices in a safe working condition. *Id.*, at *4.
51. *See, Bailey v. Hogg*, 547 So.2d 498 (Ala. 1989), *Harris v. Gill*, 585 So.2d 831 (Ala. 1991), *Sharit v. Harkins*, 564 So.2d 876 (Ala. 1990).
52. 547 So.2d at 500.
53. Id.
54. Id.
55. Id.
56. *Bailey*, 547 So.2d at 500.
57. Id.
58. *Sharit v. Harkins*, 564 So.2d 876 (Ala. 1990).
59. 564 So. 2d 876 (Ala. 1990).
60. *Sharit*, 564 So.2d at 877.
61. Id.
62. Id.
63. Id.
64. *Sharit*, 564 So.2d at 878.
65. Id.
66. Id.
67. See Supra note 11 above and accompanying text.

Glenda G. Cochran

Glenda G. Cochran holds a B.A. degree from the University of South Alabama, an M.P.A. from the University of Alabama, and the J.D. degree from Cumberland School of Law. She is a member of the Alabama Trial Lawyers Association Board of Governors, the American Bar Association, and the Birmingham Bar Association.

David P. Stevens

David P. Stevens is a *cum laude* graduate of Washington and Lee University, and a 1995 graduate of Cumberland School of Law. He serves as law clerk for Alabama Supreme Court Justice Terry L. Butts.

DISCIPLINARY REPORT

Reinstatements

• **Clarence Christopher Clanton,** a Mobile lawyer, was reinstated to the practice of law by order of the Supreme Court of Alabama, effective September 5, 1995. [Pet. No. 93-05]

• Effective September 18, 1995, Mobile attorney **LeMarcus Alan Malone** has been reinstated to the practice of law. He had been suspended for noncompliance with the Mandatory Continuing Legal Education Rules. [CLE No. 95-12]

Disbarment

• Mobile attorney **James Borrie Newell, Jr.** was disbarred by the Supreme Court of Alabama by order of that court, effective April 10, 1995. Newell's disbarment was based upon his conviction in federal court on four counts of misapplication of bank funds, two counts of false statements in bank records, one count of a violation of the Bank Holding Company Act, and one count of false statements in relation to ERISA. [Rule 22(a) Pet. No. 93-06]

Surrender of License

• Mobile attorney **Joseph Talmadge Brunson** surrendered his license to practice law in the State of Alabama. Pursuant to an order of the Supreme Court of Alabama, said surrender was accepted and Brunson's license to practice law was canceled and annulled effective August 17, 1995. [ASB No. 95-280]

• Mobile attorney **Thomas Earle Bryant, Jr.** surrendered his license to practice law, causing the Supreme Court of Alabama to enter an order canceling and annulling Bryant's license to practice law in the State of Alabama, effective September 22, 1995. Bryant had earlier been interimly suspended from the practice of law pursuant to Rule 20(A), Alabama Rules of Disciplinary Procedure, for his alleged misappropriation of clients' funds. [ASB No. 95-176]

Suspensions

• Effective September 15, 1995, Wilsonville attorney **Orrin Russell Ford** has been suspended from the practice of law for noncompliance with the Mandatory Continuing Legal Education Rules of the Alabama State Bar. [CLE No. 95-04]

• Effective August 25, 1995, Mobile attorney **William Coleman Gamble, Jr.** has been suspended from the practice of law for noncompliance with the Mandatory Continuing Legal Education Rules of the Alabama State Bar. [CLE No. 95-05]

• Effective August 25, 1995, Mobile attorney **William Coleman Gamble, Jr.** has been suspended from the practice of law for noncompliance with the Client Security Fund Assessment Rules of the Alabama State Bar. [CSF No. 95-03]

• In the July 1995 issue of *The Alabama Lawyer*, it was reported that Gadsden attorney **Milford Leon Garmon** was ordered by the Supreme Court of Alabama to be suspended from the practice of law for a period of 225 days, with automatic reinstatement. Subsequent to the publication of this notice in *The Alabama Lawyer*, Garmon filed suit against the Alabama State Bar and other defendants in the United States District Court for the Middle District of Alabama.

In conjunction with the lawsuit, Garmon requested that the federal court stay the suspension previously ordered by the Supreme Court of Alabama. The federal court granted the stay.

On October 30, 1995, the federal court entered an Order and Judgment granting defendants' motions for summary judgment and dismissing Garmon's lawsuit. Part and parcel of the federal court order was dissolution of the stay which the federal court had previously entered concerning the 225-day suspension of Garmon.

On November 15, 1995, the Supreme Court of Alabama entered an order suspending Garmon from the practice of law in the state courts of Alabama beginning December 26, 1995, and continuing until August 7, 1996.

This notice is provided to supersede and supplement the notice previously issued concerning Garmon's suspension from the practice of law in the state courts of Alabama. [ASB Nos. 89-99(A), 89-173, 89-341 & 90-775]

On November 2, 1995, the Disciplinary Commission of the Alabama State Bar ordered the interim suspension of Montgomery attorney **John Merrill Gray, II**, pursuant to Rule 20 of the Rules of Disciplinary Procedure.

Public Reprimands

• On November 16, 1995, Mobile attorney **Franklin Louis Shuford, Jr.** received a public reprimand with general publication for violating Rules 1.3, 1.4(a) and 5.3(a) of the Rules of Professional Conduct. A client retained Shuford for an uncontested divorce in March 1994, and paid his fee in full. Rather than being filed, the divorce documents were returned to a file cabinet. That was later discovered, but when the divorce was filed, some necessary documents were omitted. In December 1994, the client demanded that the divorce be finalized since the husband was not making any child support payments. Finally, on January 26, 1995, the divorce decree was obtained. Shuford blamed the delay on his lack of an experienced secretary, and "several other things that proceeded to go wrong".

• On September 22, 1995, Millbrook attorney **Neva Claire Conway** was issued a public reprimand, without general publication, by the Alabama State Bar. Conway had prepared an antinuptial agreement for a husband and wife prior to their marriage. Less than a year after Conway provided these services, the wife filed for a divorce by and through Conway as her counsel of record. The husband then filed a complaint against Conway with the Alabama State Bar. In responding to the complaint Conway admitted that she prepared the anti-nuptial agreement in question, and that she thereafter filed the divorce on behalf of the wife.

The Disciplinary Commission determined that Conway's actions violated Rule 1.9, Alabama Rules of Professional Conduct, in that she represented a client in a matter which was substantially related and materially adverse to the interest of a former client, Rule 1.9(b), in that she used information relating to the representation of the former client to that client's disadvantage or detriment, and Rule 8.4(g), in that her conduct in these matters adversely reflected on her fitness to practice law. [ASB No. 95-105]

• Birmingham attorney **Hycall Brooks, III** was administered a public reprimand, without general publication, on September 22, 1995. A formal bar complaint was filed against Brooks by a former employee. During the investigation of that complaint, it was discovered that beginning in the summer of 1993, Brooks established a trust account incidental to his law practice. A review of trust account records disclosed that there were a number of checks written on Brooks' trust account by him which were not payable to clients or for client purposes, a violation of Rule 1.15(a), Alabama Rules of Professional Conduct.

The investigation further disclosed that Brooks improperly commingled his personal funds with those of his clients in said trust account, thereby failing to maintain a separate trust account segregating the property of his clients from his own property. Brooks was also unable to produce any and all records relating to this trust account in response to the investigation of the bar complaint. The Disciplinary Commission found that Brooks' actions, in addition to violating Rule 1.15(a), also violated Rule 8.4(g), for having engaged in conduct that adversely reflected on his fitness to practice law. [ASB No. 94-202] ■

IN THE SUPREME COURT OF ALABAMA

AUGUST 30, 1995

ORDER

IT IS ORDERED that Rule IV, Rules Governing Admission to the Alabama State Bar, be amended to read as follows:

"Rule IV. PERSONS ENTITLED TO ADMISSION BY EXAMINATION

"A. General Requirements.

Any person who is at least nineteen (19) years of age, who has complied with the requirements of Rule I, and whose character and fitness have been approved by the Committee on Character and Fitness, is entitled to be examined for admission to the Alabama State Bar, at any examination held as prescribed by those rules, upon proof that he or she has complied with the education requirement set out in this rule.

"B. Education Requirements.

"(1) Proof of Prelegal Education.

"(a) An applicant who did not graduate from a law school that was on the approved list of the American Bar Association (A.B.A.) or the Association of American Law Schools at the time of the applicant's graduation shall give proof that he or she has met the following prelegal education requirements:

"That the applicant has caused to be filed with the secretary of the Board of Commissioners of the Alabama State Bar a certified copy of a diploma or certificate showing (i) that the applicant has received a baccalaureate degree from a university or college that, at the time of the applicant's graduation, appeared on the approved list of any standard accrediting agency or association in the various states, or which is accepted by the accrediting agency as meeting substantially the same standards required for appearing on the approved list of the agency, and (ii) that the degree was received *before* the applicant entered law school.

"(b) An applicant who has graduated from a law school that was on the approved list of the American Bar Association of American Law Schools at the time of the applicant's graduation shall not be required to give proof that he or she has met the prelegal education requirements set out in (a), unless such proof is required by the Committee on Character and Fitness.

"(2) Proof of Legal Education.

"An applicant shall make proof of legal study by filing with the secretary of the Board of Commissioners of the Alabama State Bar a certificate or certificates from the dean or deans of one or more law schools, from which it shall appear that the applicant has completed legal study conforming to and fulfilling the following requirements:

"(a) That the applicant has pursued and satisfactorily completed, as a resident student in a law school or law schools, a course of law studies that extended for at least three (3) academic years of at least thirty (30) weeks each; that the applicant has graduated from such a law school; and that at the time of the applicant's graduation the school from which the applicant graduated was approved by the American Bar Association or the Association of American Law Schools; or

"(b) That the applicant has pursued and satisfactorily completed as a resident student at Birmingham School of Law, Jones School of Law of Faulkner University, or Miles College of Law, a course of law studies that extended for at least four (4) academic years of at least thirty (30) weeks each, and is a graduate of that law school, provided that as of the date of the applicant's graduation the school has been continuously located and has remained in continuous operation in the county in which it was operating on August 30, 1995; or

"(c) That the applicant has pursued and satisfactorily completed as a resident student at a law school located outside the state of Alabama that, as of the date of the applicant's graduation, had not been approved by the American Bar Association or the Association of American Law Schools, a course of law studies that extended for at least four (4) academic years of at least thirty (30) weeks each, and is a graduate of that law school; that the applicant has been admitted to the practice of law before the court of highest jurisdiction in the state or other jurisdiction wherein that law school is located; that the applicant has, after the applicant's admission to practice law before the court of highest jurisdiction in that state or other jurisdiction, been continuously engaged in the active practice of law for at least five (5) years; and that the applicant is a member in good standing of the bar of that court of highest jurisdiction; provided, however, that an applicant may qualify under this subsection (c) only if the state or other jurisdiction in which is located the law school from which the applicant graduated extends comity to graduates of Birmingham School of Law, Jones School of Law of Faulkner University, and Miles College of Law who seek admission the bar of that state or jurisdiction, and graduates of those schools are permitted to seek admission to the bar of that state or jurisdiction on terms and conditions no more onerous than those imposed on the applicant by this subsection (c).

"C. Limitation on Examinations.

The number of times an applicant may be examined for admission to the Alabama State Bar shall be unlimited.

"(Amended effective April 28, 1993; January 6, 1994; January 1, 1996)."

IT IS FURTHER ORDERED that this amendment be effective January 1, 1996.

Hornsby, C. J., and Maddox, Almon, Houston, Kennedy, Ingram, Cook, and Butts, JJ., concur.

RECENT DECISIONS

By WILBUR G. SILBERMAN

RECENT BANKRUPTCY DECISIONS

Eleventh Circuit discusses application of tax refunds

In re Ryan, 64 F.3d 1516 (11th Cir. Sept. 26, 1995). Ryan owed income taxes for 1986, 1987, 1988 and 1989. The 1990 tax return indicated a refund, and contained a request that the refund be applied to the 1989 tax liability. The IRS applied the refund to 1986. Later, after filing Chapter 7, the Ryans brought an adversary proceeding against the government asking, because of the lapse of time, for discharge of taxes prior to 1989, and a determination that the 1989 tax liability had been paid. Both the bankruptcy and district courts agreed with the Ryans, but in reversing, the Eleventh Circuit made some interesting observations.

The Court stated that the administrative requirement of requesting a refund was a condition precedent for the court to entertain jurisdiction, but that the filing of the 1990 tax return containing a refund request, which described the nature of the claim, was sufficient compliance. The court deferred determining whether a turnover order under Section 542 was an appropriate method of retrieving tax payments. More importantly, in a *de novo* ruling, it held that the voluntary payment rule allowing taxpayers to elect the application of payment of tax applies on voluntary partial payments, but that IRC Section 6402(a), allowing discretion to the IRS, controls application of money coming to the government because of over-payment of a particular liability. The court distinguished *A&B Heating*, 823 F.2d 462, 463 (11th Cir. 1987) by stating that *A&B Heating* did not apply to over-payment of taxes.

Comment: *Ryan* is an Alabama case emanating from the Southern District. Conceivably, the case could have gone either way. For anyone concerned with application of refunds, I suggest that because of the various nuances in the opinion, the case be reviewed carefully.

Conflict in state – Judge Michael Stilson rules that IRA in Alabama is exempt

In re Harless, 187 B.R. 719, Bktcy, N.D. Ala., Western Division (Sept. 25, 1995). On August 18, 1994, Judge Margaret Mahoney ruled that an IRA could not qualify as exempt under Alabama Code Section 19-3-1(b), nor as a spendthrift trust to be out of the bankruptcy estate under Section 541 of the Bankruptcy Code as it did not contain language of an anti-alienation nature. *In re Slepian*, 170 B.R. 712 (Bktcy S.D. Ala. 1994). *In Harless*, Judge Stilson agreed that an IRA could not be excluded from the bankrupt estate under Bankruptcy Code Section 542(c)(2), but that the wording in Alabama Code §19-3-1(b) allows exemption of the proceeds. First, Judge Stilson stated that a conflict existed between the Alabama statute and 26 U.S.C. 408(a) [the rollover IRA], as the Alabama statute did not contain the necessary restrictions on transfer to allow it to meet the requirements of Bankruptcy Code Section 541(c)(2). The holding was based upon the lack of an alienation prohibition under the Alabama statute, even though the stated intent of the statute was to meet the requirements of federal law in not becoming part of the bankruptcy estate. Judge Stilson said: "State law cannot, by words alone, create a substantive restriction on IRA's that Congress and the parties did not choose to place there." Nevertheless, he held that improper portions of §19-3-1 could be eliminated, leaving intact the wording which provides for the allowance of the claim of exemption. He reasoned that Alabama had "opted out" of the federal exemptions provided in §522(b), and that even though the Alabama statute conflicts with §541(c)(2) of the Bankruptcy Code, "Alabama Code 19-3-1(b) contains the material components to create a free-standing exemption from all debt collection with the invalid language deleted." Thus, he allowed the exemption for the IRA proceeds.

Comment: Judge Murphy, in the concluding portion of her opinion in *Slepian*, opined that the IRA had no alienation restrictions, and did not qualify as exempt under Alabama Code 19-3-1(b)(1). Query – Will the different holdings in the Southern and Northern districts cause forum shopping until there is an appellate court ruling? Of course, the Middle District could follow its name, and take the middle course.

Lenders beware! Post-petition interest denied pre-confirmation to oversecured lender

In re Delta Resources, 54 F.3d 722 (11th Cir. June, 1995). Orix, an oversecured creditor, sought adequate protection payment of post-petition interest. In an opinion which probably will agitate the financial community, the Eleventh Circuit held that only interest in the collateral is protected; an amount equal to collateral value at time of filing is the most to be received in bankruptcy, and payment of post-petition interest is deferred until the case is concluded.

Continued on page 57

Wilbur G. Silberman

Wilbur G. Silberman, of the Birmingham firm of Gordon, Silberman, Wiggins & Childs, attended Samford University and the University of Alabama and earned his law degree from the University's School of Law. He covers the bankruptcy decisions.

Recent Decisions

Continued from page 55

Comment: Certiorari has been denied by the U.S. Supreme Court. Probably, it will take conflict in the circuits to have the ruling examined by the Supreme Court, but please read the case to reach your own conclusions as to the holding. The reader is also referred to the Georgia case, opinion by Judge Holmer Drake of M4 Enterprises, 183 B.R. 981, in which Judge Drake extended *Delta Resources* to include cash collateral.

U.S. Supreme Court declares valid an "administrative freeze" on bank account of debtor

Citizens Bank of Maryland v. Strumpf, 1995 U.S. Lexis 7408; 64 U.S.L.W. 4001 (U.S. S.Ct., Oct. 11, 1995). Without a dissent, in an opinion by Justice Scalia, the high court stated that a bank did not violate the automatic stay in placing a hold on the debtor's bank account, which hold was equal to the right of set-off. The reasoning was that the hold was only temporary for purposes of preventing a withdrawal while the creditor was attempting to perfect its set-off. The ruling was bottomed on the theory that a bank account is a debt from the bank to the depositor, and that Code Section 542(b) permits an offset under Section 553. The court rejected the argument that §553 contained an exception as to §§362 and 363, stating that such exception applied only to an actual set-off, and that an administrative freeze was temporary only, for protection of the bank's right to set-off.

Section 523(a)(2)(A) "Reliance by Creditor" defined by Eleventh Circuit

In re Edwin Leo Vann, 67 F.3d 277, 28 B.C.D. 23 (11th Cir. Oct. 19, 1995). This case involves exception to discharge of debt allegedly arising through misrepresentation of the debtor. The debtor's financial condition had deteriorated between the initial negotiation and loan closing without disclosure by the debtor. The bankruptcy court stated the standard to be that of reasonable reliance. After affirmance by the district court, the appellate court reversed and remanded. The Eleventh Circuit held that although reliance on debtor's misrepresentations must be shown, only *justifiable reliance* must be shown. The court quoted several authorities in defining the term, first stating that it is a compromise between the standards of rigid reasonableness, and lenient actual reliance; as §523(a)(2)(B) mandates reasonable reliance, it is obvious such strictness is not required under §523(a)(2)(A) which does not contain the words "reasonably relied."

Comment: It would appear in determining reliance under §523(a)(2)(A), a comprehensive review of the entire transaction is necessary to obtain a subjective construction of the reliance of the creditor on the facts upon which the matter was consummated. ■

• M·E·M·O·R·I·A·L·S •

Edward M. Friend, Jr.

Bernard Shaw defined a gentleman as one who refuses to take out more than he receives. In the death of General Edward M. Friend, Jr., we mourn the passing of a true gentleman. After 83 years of fruitful contribution to life on this earth, God took General Friend to a heavenly reward.

Ed Friend was no ordinary man, nor was his life an ordinary life. He drank deeply from the well spring of his creation and gave generously of his talents to those who walked the path with him. The fruits of his living are indicative of the depths of the roots nurtured from a spiritual soil.

How do we know him? Let us but count the ways: lawyer, statesman, teacher, soldier, scholar, son, husband, father, and friend. Regardless of the role, he was a man - yeah, a gentle man. God rest his soul.

Man walks the earth for a little while, and passes from human sight; cities are built, and crumble to a wind strewn dust; but a thought once born and expressed lives on and on into eternity.

Ed Friend left his indelible mark on this world.

Untold thousands now, and will, enjoy a better life because of the seeds planted in the legal, civic and cultural life of which he was a part. His administrative abilities have inured to the benefit of this bar that he so dearly loved, the State, the City, the University of Alabama School of Law, the United States Army Reserve, and the Alabama National Guard. He is a former president of this association and the University of Alabama School of Law Foundation, the recipient of the Pipes Outstanding Distinguished Alumnus Award from the University of Alabama, the Honorary Doctor of Law degrees from the University of Alabama and Birmingham- Southern College, and Outstanding Lawyer of the Year Award of the Birmingham Bar Association. The organizations of which he served as president are far too numerous to detail here. Need we only note that the heritage Ed Friend leaves the members of the Birmingham Bar Association is a responsibility to fill the void left by his passing.

The precious memories of the life and achievements of Ed Friend as hereinabove stated is a summary that falls far short of a deserved tribute to this magnanimity, will always be a part of the thoughts of this Executive Committee of the Birmingham Bar Association as both an encouragement and an inspiration to a more dedicated service to our system of justice. As one of his friends once wrote:

> All things of value in excellence in the world depend for their existence and continuation upon the capacity, labor and perseverance of a very few people.

General Friend was one of that "handful" of people.

General Friend left behind a devoted wife who was an inspiration in her own right, a son who bears his name, a daughter, three grandchildren, and an innumerable host of colleagues and friends who mourn his passing.

Whereas, it is well that we pause and reflect on this life which was so important to our own, mindful that such reflection can do no less than contribute to a better tomorrow for each of us.

—J. Frederic Ingram
President, Birmingham
Bar Association

William Inge Hill

William Inge Hill was born in Montgomery, Alabama on December 11, 1911. He died in Montgomery on March 24, 1995. He had a long and distinguished career as an attorney. He first attended the University of Alabama at the age of 14 in January 1926, and received a B.A. Degree at the age of 17. He received a Bachelor of Laws degree in the spring of 1931 at the age of 19 and commenced the practice of law in Montgomery with his late brother, Thomas B. Hill, Jr.

In undergraduate school, he was awarded Phi Beta Kappa and membership in the Omicron Delta Kappa. In 1929, he was awarded the Trustee's Award for Outstanding Student at the University of Alabama for that year. He was also a member of Tau Kappa Alpha and Phi Alpha Delta fraternities. He received an award from the University of Alabama for the highest scholastic average in the graduating class of 1931. In law school, his grades were all A's except for one B in a course entitled "sales."

He was president of the Montgomery County Bar Association in 1942, prior to his entry into service of the United States Navy in W.W.II. Following his service in the Navy as a commissioned officer, he was separated as a lieutenant commander in 1945 and returned to the practice of law in Montgomery.

In 1973 and 1974, he was president of the University of Alabama Alumni Association. His other activities included serving as president of the Montgomery Lions Club and the Blue & Gray Association (sponsor of the Blue & Gray Football Classic in Montgomery). He was the first chairman of the Montgomery Planning Commission.

His great-grandfather, William B. Inge, was the first student who enrolled at the University of Alabama in 1831, and was also a member of the first graduating class. He was active in all activities for the betterment of the University of Alabama.

He is survived by his widow, the former Ilouise Partlow, B.S., University of Alabama 1947, and two children, William Inge Hill, Jr. and Lee Hill Beck, two stepchildren, LeRoy McEntire and Nancy M. Bradford, and several grandchildren.

During his life, William Inge Hill made important and substantial contributions to and for the University of Alabama.

—Ralph A. Franco
Partner, Hill, Hill, Carter,
Franco, Cole & Black

• M·E·M·O·R·I·A·L·S •

Nicholas S. McGowin

Whereas, Nicholas Stallworth McGowin, who died on the 19th day of May 1995, practiced law with honor and integrity for over 50 years; and

Whereas, Mr. McGowin was highly regarded for his service not only as a lawyer but as a member of this community to which he gave so much in time, talent and financial support; and

Whereas, it is the desire of the Mobile Bar Association, in meeting duly assembled, to honor the memory of Mr. McGowin.

Now, therefore, be it known that Nicholas S. McGowin was born in Chapman, Alabama on May 17, 1912. He was educated at the University of Alabama and received his undergraduate degree in 1933, a member of Phi Beta Kappa. Mr. McGowin read international law at Pembroke College in Oxford from 1933-1934 and received his law degree from Harvard Law School in 1937. He was admitted to the Alabama State Bar in 1937 and to the Pennsylvania State Bar in 1939. Mr. McGowin practiced law in Greenville, Alabama from 1937 until 1939, and in Philadelphia with the firm of Drinker, Biddle & Reath from 1939 to 1941. He worked with the British Purchasing Commission in Washington, D.C. from 1941 to 1942, while awaiting his commission as a lieutenant in the United States Navy.

He served his country during World War II as a combat intelligence officer with an amphibious reconnaissance airplane squadron in the South Pacific. He continued to serve his country as a lieutenant commander in the United States Naval Reserve from 1945 to 1954.

Mr. McGowin began the practice of law in Mobile, Alabama with the firm of Armbrecht, Inge, Twitty & Jackson, and remained there from 1945 to 1956. Prior to his early retirement from law practice in 1991, he and the Honorable J. Edward Thornton practiced law together for approximately 35 years. It was during this time that Mr. McGowin was president of the Mobile Bar Association (1974) and chairman of the Real Property, Probate & Trust Law Section of the Alabama State Bar. He was a member of the American and Alabama State bar associations. Those who worked with Mr. McGowin or who in any way were associated with him in the practice of law know that his integrity and character have been unsurpassed among practitioners in Alabama, and that his reputation is one to which we each should aspire.

Mr. McGowin was Swedish Consul of Mobile for almost 40 years and was inducted by the Swedish Crown into the Royal Order of Vasa, the Swedish equivalent of knighthood.

In addition to being a highly regarded lawyer, Mr. McGowin served his community as a leader of many organizations, serving as president or chairman of the board of the following: the Mobile Symphony; the Mobile Chamber Music Society (co-founder); the Mobile Public Library; Lyman Ward Military Academy (Camp Hill, Alabama); the English Speaking Union; and the Alabama Fulbright Scholarship Committee. He also served on the advisory board of the Auburn University Center for the Arts and Humanities; as an Honorary Fellow of the Mobile College (now University of Mobile); on the Board of Directors of Mobile United; on the Board of Directors (founding member) of the Bank of Mobile; as a member of the advisory board of the American Sport Art Museum and Archives; on the Board of Directors of the Mobile City Museum; on the Board of Trustees of Springhill College Library; and on the Board of Directors (founding member) of the Mobile Mental Health Association.

In addition to positions of leadership in the foregoing organizations, Mr. McGowin also lent his financial support and membership to many groups, including the following: Mobile Opera; Mobile Community Foundation; Alabama Shakespeare Festival; Naval Aviation Museum Foundation; Navy League; Fine Arts Museum of the South; International Tennis Hall of Fame; Harvard Law School Alumni; Harvard Club of Mobile; Pembroke College Foundation; and University of Alabama National Alumni Association.

Not only was Mr. McGowin involved in his profession and his community, he is fondly remembered as an avid tennis player and spectator all of his life. Until illness forced him to retire from active participation, he was among the best in Mobile, and perhaps the best in his age group.

Mr. McGowin left to survive him his lovely wife, Elizabeth Smith; a daughter, Elizabeth Brittain McGowin; a son, Peter H. McGowin; and one granddaughter.

Those who knew Nick will always recall his kind smile, and his compassionate and gentle spirit. He will be sadly missed not only by his family and this community, but also by his many friends and fellow practitioners in the honorable profession of the law, a profession which he revered and respected, and by which he was respected.

—Alton R. Brown, Jr.
President, Mobile Bar Association

Please Help Us

The Alabama Lawyer "Memorials" section is designed to provide members of the bar with information about the death of their colleagues. The Alabama State Bar and the Editorial Board have no way of knowing when one of our members is deceased unless we are notified. Please take the time to provide us with that information. If you wish to write something about the individual's life and professional accomplishments for publication in the magazine, please limit your comments to 250 words and send us a picture if possible. We reserve the right to edit all information submitted for the "Memorials" section. Please send notification information to the following address:

Margaret L. Murphy,
***The Alabama Lawyer*,**
P.O. Box 4156,
Montgomery, AL 36101

• M·E·M·O·R·I·A·L·S •

Arthur Ernest Parker

Arthur Ernest Parker was called by his Maker to his eternal home on July 26, 1995. Arthur Parker graduated from Howard College, the University of Alabama School of Law, served in the United States Army during World War II, and was a member of the Birmingham Bar Association, the Alabama State Bar, the Sigma Delta Kappa Legal Fraternity and the Alabama Criminal Defense Lawyers' Association. Arthur Parker was honored by his colleagues who awarded him the Roderick Beddow Award.

It is with co-mingled emotions of sadness and of pride that we, the members of the Birmingham Bar Association, adopt this memorial resolution to Arthur Ernest Parker. Those who had the fortune to practice with Arthur Parker were privileged in that association. His devotion to the law, to our system of justice and to the defense of those who sought his service were an inspiration to the members of this association. While saddened by the loss of the physical presence of one of our number who was beloved by us all, we are proud to have been delegated the sweet and coveted privilege to try to express on the printed page, the tribute of love and affection which each of us feels in his heart for our departed friend and colleague.

Forty-five years ago, Arthur Parker, along with 11 newly admitted members to the bar, was appointed to defend four individuals who had been indicted as result of a crime spree that spread from one corner of this city to another. Arthur was like a runner in the blocks. He could not wait for the starting gun. He prevailed upon the Court to try his client first. And try he did. Unfortunately for his client, the weight of the evidence soon overcame the enthusiasm with which he was defended. Fortunately, the spell was not broken for the then-young Arthur Parker. From that moment on, he devoted his life to representing those who were called to account before the bar of justice.

While the memories of the life and achievements of Arthur Parker will always be a part of the thoughts of those who worked with him, little purpose can be served by here cataloging the honors, the highlights and the achievements of the life produced by Arthur Parker. That role can best be served by the memories of those whom he served. Here we seek to capture a flicker of the light that was his life, for in that light we find the true success that was Arthur Parker. Here we simply recall that the faith with which he lived carried Arthur through life and to death without fear or worry.

To those he left behind, a loyal and devoted wife, two sons ever loyal and closely bound by the bonds of filial affection, and the innumerable host of friends who mourn his passing may derive consolation for the thought that:

They are not dead who live
In hearts they leave behind
In those whom they have blessed
They shall live a life again.
They shall live through the years
Eternal life, and grow
Each day more beautiful,
As time declares their good,
forgets the rest,
And proves their immortality.

Whereas, precious memories of the life and achievements of Arthur Earnest Parker will always be a part of the thoughts of the members of the Birmingham Bar Association and both an encouragement and an inspiration to more dedicated service to the profession we follow; and

Whereas, it is well that we pause and reflect on this life which was so important to our own, mindful that such reflection can do no less than contribute to a better tomorrow for each of us; and

That copies of this resolution be furnished to his widow, Marilyn Jackson Parker, his son, Kim Parker, and his son, Daniel Parker, as our expression to them of our deepest sympathy.

—J. Frederic Ingram
President, Birmingham
Bar Association

David Evan Veal
Birmingham
Admitted: 1965
Died: April 15, 1995

Michael Elias Zoghby
Mobile
Admitted: 1957
Died: September 7, 1995

Ronald Alexander Johnston, Jr.
Montgomery
Admitted: September 30, 1994
Died: October 2, 1995

Vaughan Hill Robison
Montgomery
Admitted: 1938
Died: October 20, 1995

Alvin Buster Foshee
Clanton
Admitted: 1933
Died: October 1, 1995

Lawrence E. Greer
Birmingham
Admitted: 1950
Died: October 27, 1995

Alice Manry Meadows
Mobile
Admitted: 1951
Died: October 29, 1995

• M·E·M·O·R·I·A·L·S •

Joseph Clewis Trucks

This universally liked and highly respected member of the Birmingham Bar Association was called by his Maker to his eternal home on July 19, 1995 after a long and successful practice of law, replete with unusual honors.

Today we pause for a moment to mourn the passing of our brother in the profession. When a great life, like a great tree, falls into the dust from whence it came, only then can its real statue be truly measured. Clewis Trucks was a devotee to a life that kept values in their proper perspective. His formula for a balanced life consisted of work, play, love and religion. By his daily devotion in the ordinary routine of living he sustained the moral and cultural values of his community, the profession we serve and his family. He gave to every client and cause all the vigor and effort allowed him to provide. He industrially applied himself to the opportunities that came his way. We are better off for Clewis Trucks' having been a part of this association.

In these troubled times when we live so fast and furiously, we give little thought or heed to the perplexing mysteries of life and death. It is only when we are suddenly stricken by the departure from our midst of one so near and dear to us that we pause to think, and ask the question: "What is life, and what is this thing called death?" As we blindly seek an answer to the seemingly unsolvable question, we derive much comfort from the thoughts and observations of the Great Commoner, William Jennings Bryant, in one of his lectures on immortality:

> If the Father designs to touch, with devine power, the cold and pulseless heart of the buried acorn to make it burst forth from his prison walls, will He leave neglected in the earth of the soul of man, made in the image of his Creator? If he stoops to give the rose bush, whose withered blossoms flowed upon the autumn breeze, the sweet assurance of another spring time, will He refuse the words of hope to the sons of men when the frost of winter comes? If matter's multitude of forms can never die, will the spirit of man suffer annihilation when it is paid a brief visit like a royal guest, to this tenement of clay? No, I am as sure there is another life as I am that I live today.

Whereas, it is well that we pause and reflect on this life which was so important to our own, mindful that such reflection can do no less than contribute to a better tomorrow for each of us; and,

Whereas, this resolution is offered as a record of our admiration and affection for Clewis Trucks and of our condolences to his wife, his son and the members of his family.

—J. Frederic Ingram
President, Birmingham Bar Association

Irvine Craig Porter, Jr.

The Birmingham Bar Association lost one of its most distinguished members through the death of Irvine Craig Porter, Jr. on May 28, 1995 at the age of 85. It is fitting that the Executive Committee of the Birmingham Bar Association, by resolution, mourn the passing of this dear brother.

Irvine C. Porter was born in Florence, Alabama; graduated from Phillips High School in Birmingham, Alabama; graduated from Florence State Teacher's College; and graduated from the University of Alabama School of Law. He was a member of the Birmingham Bar Association, the Alabama State Bar and the American Bar Association. He rendered long and devoted service to the City of Homewood and City of Irondale as their city attorney. He was universally recognized as one of the most outstanding authorities on city government in this state.

Irvine C. Porter was an outstanding member and spokesman of the National Rifle Association, serving as its president and as a lifetime member of its Executive Council.

Little purpose can be served by here cataloging the honors and achievements produced by the life of Irvine C. Porter. Others will do so. Here we seek to capture a flicker of the light that was his life. A life that was an inspiration to those of us who knew and worked with him; in the life he shared; in the life he instilled in his loved ones; and in the life lived with those with whom he came in contact. The words that were originally dedicated to that great Southerner, Henry W. Grady, are equally applicable to the life of Irvine C. Porter.

> I have seen the light that gleamed at midnight from the headlight of some giant locomotive rushing onward through the darkness, heedless of opposition, fearless of danger,—and I thought it was grand. I have seen the light come over the eastern hills of glory, driving the lazy darkness like mist before a seaborne gale until leaf and tree and blade of grass glistened and glittered in the myriad diamonds of the morning's ray,—and I thought it was grand. I have seen the light and leaped and flashed at midnight afore the storm-swept sky, mid chaotic clouds and howling winds til clouds and darkness in the shadow-haunted earth flashed into noon day splendor,—and I knew it was grand. But the grandest thing, next to the radiance that flows from the Almighty's throne, is the light of a noble and beautiful life, wrapping itself in benediction round the destinies of men and finding its home at last in the blessed bosom of the everlasting God. That man is great who has the strength to serve, the patience to suffer, and who, seeking not to conquer the world, masters himself and devotes his life in unselfish service to his fellow man.

Irvine C. Porter left behind a devoted wife, four children and an innumerable host of colleagues and friends who mourn his passing.

Whereas, it is well that we pause and reflect on this life which was so important to our own, mindful that such reflection can do no less than contribute to a better tomorrow for each of us; and

Whereas, this Resolution is offered as a record of our admiration and affection for Irvine Craig Porter, Jr. and of our condolences to his wife, his sons and daughters and the members of his family.

—J. Frederic Ingram
President, Birmingham Bar Association

ALABAMA STATE BAR
SECTION MEMBERSHIP APPLICATION

To join one or more sections, complete this form and attach separate checks payable to each section you wish to join.

Name _____

Firm or Agency _____

Office Address _____

_____

Office Location _____

_____

Office Telephone Number _____

Section	Annual Dues
☐ Administrative Law	$20
☐ Bankruptcy and Commercial Law	$20
☐ Business Torts and Antitrust Law	$15
☐ Communications Law	$15
☐ Corporate Counsel	$30
☐ Corporation, Banking and Business Law	$10
☐ Criminal Law	$10
☐ Disabilities Law	$20
☐ Environmental Law	$20
☐ Family Law	$30
☐ Health Law	$15
☐ International Law	$15
☐ Labor and Employment Law	if practicing less than 5 years–$10 if practicing 5 or more years–$30
☐ Litigation	$15
☐ Oil, Gas and Mineral Law	$15
☐ Professional Economics and Technology Law	$25
☐ Real Property, Probate and Trust Law	$10
☐ Taxation	$15
☐ Workers' Compensation Law	$20
☐ Young Lawyers'	0

TOTAL _____

Remember: Attach a separate check for each section.

Mail to: Sections, Alabama State Bar, P.O. Box 671, Montgomery, AL 36101

CLASSIFIED NOTICES

RATES: Members: 2 free listings of 50 words or less per bar member per calendar year EXCEPT for "position wanted" or "position offered" listings — $35 per insertion of 50 words or less, $.50 per additional word; **Nonmembers:** $35 per insertion of 50 words or less, $.50 per additional word. Classified copy and payment must be received according to the following publishing schedule: **January '96 issue** — deadline November 15, 1995; **March '96 issue** — deadline January 15, 1996. No deadline extensions will be made.

Send classified copy and payment, payable to *The Alabama Lawyer*, to: *Alabama Lawyer* Classifieds, c/o Margaret Murphy, P.O. Box 4156, Montgomery, Alabama 36101.

MISCELLANEOUS

- **ADOPTION:** New Mexico attorney seeks attorney who handled adoption of Bill and Dan Phalen, natural sons of Michael R. and Cay C. Phalen, through State Department of Human Resources in Montgomery, Alabama. Information needed to administer estate of Michael Phalen. Please contact William J. Arland, III, Arland & Askew, P.A., P.O. Box 2208, Albuquerque, New Mexico 87103-1108.

- **CODES WANTED**: If you have any soft-bound copies of the 1994 (last year's) Criminal Code that you are willing to donate, please drop them by my office, or call and leave a message and I will pick them up from your office. Several juvenile group homes, detention centers and our local jail would greatly appreciate your kindness. Shirley T. Chapin, 720 Lurleen Wallace Boulevard, North, Tuscaloosa, Alabama 35401. Phone (205) 752-7066.

- **LAST WILL & TESTAMENT**: Anyone having knowledge of the preparation of a last will & testament for James Richard Compton of 1601 Colesbury Circle, Birmingham, Alabama 35226 please contact Elaine Jones at (205) 945-8666.

POSITIONS OFFERED

- **IN-HOUSE LEGAL COUNSEL:** Needed immediately. Salary negotiable. Warranty Corporation, est. in 1988, has experienced well-managed 10-fold growth the last three years, offers excellent compensation, pension and full range of fringe benefits. Send resume and salary history to: Larry T. Myers, President, Warranty Corporation, One Warranty Plaza, 4400 Government Boulevard, Mobile, Alabama 36693.

- **ATTORNEY JOBS:** Indispensable monthly job-hunting bulletin listing 500-600 current jobs (government, private sector, public interest), RFPs, and legal search opportunities for attorneys at all levels of experience in Washington, D.C. nationwide and abroad. Order the National and Federal Legal Employment Report from: Federal Reports, 1010 Vermont Avenue, NW, Suite 408-AB, Washington, D.C. 20005. $39—3 months; $69—6 months. Phone 1-800-296-9611. Visa/MC.

SERVICES

- **DOCUMENT EXAMINER:** Examination of Questioned Documents. Certified Forensic Handwriting and Document Examiner. Twenty-nine years' experience in all forensic document problems. Formerly, Chief Questioned Document Analyst, USA Criminal Investigation Laboratories. Diplomate (certified)—British FSS. Diplomate (certified)—ABFDE. Member: ASQDE: IAI; SAFDE: NACDL. Resume and fee schedule upon request. Hans Mayer Gidion, 218 Merrymont Drive, Augusta, Georgia 30907. Phone (706) 860-4267.

- **EXPERT WITNESS**: Professional engineer and attorney with a practice of expert testimony in construction, safety, highway and structural design. Over 30 years' experience in highway, railroad, commercial buildings and power plant construction. Call or write for resume, fees: Lamar T. Hawkins, 950 22nd Street, North, Suite 632, Birmingham, Alabama 35203. Phone (205) 458-8485. *No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.*

- **LEGAL RESEARCH:** Legal research help. Experienced attorney, member of Alabama State Bar since 1977. Access to State Law Library. WESTLAW available. Prompt deadline searches. Sarah Kathryn Farnell, 112 Moore Building, Montgomery, Alabama 36104. Phone (334) 277-7937. *No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.*

- **DOCUMENT EXAMINER**: Certified Forensic Document Examiner. Chief document examiner, Alabama Department of Forensic Sciences, retired. American Board of Forensic Document Examiners, American Academy of Forensic Sciences, American Society of Questioned Document Examiners. Over 20 years' experience in state and federal courts in Alabama. Lamar Miller, 11420 N. Kendall Drive, Suite 206-A, Miami, Florida 33176. In Birmingham, phone (205) 988-4158. In Miami, phone (305) 274-4469. Fax (305) 596-2618.

- **BUSINESS VALUATIONS**: Professional, accurate, supportable business valuations to assist your clients in attaining the best possible benefits. Contact Alabama's premier business valuation firm: Williams, Taylor & Acton, P.C., 2140 11th Avenue, South, Suite 400, The Park Building, Birmingham, Alabama 35205. Phone (205) 930-9111 or (800) 874-8552.

- **INSURANCE EXPERT:** Over 20 years of hands-on life and health experience. State Insurance Department Assistant Commissioner, formerly president, vice-president, etc. Degreed. Court and deposition experienced. For information, phone Gary Chartier, FLMI, ALHC, AALU, ACS, (405) 752-2991.

- **BAD FAITH SPECIALIST**: 25+ years of insurance claims experience, in the areas of BI, UM, UIM, PIP & CPL. Deposed and testified in trial, as an expert witness. Don Ching & Associates, P.O. Box 1798, Kapaa, Hawaii 96746. Phone (808) 822-0912. Fax (808) 822-0803.

- **MEDICAL RECORDS EXAMINER**: Birmingham physician in full-time medical practice has knack for reviewing medical records and assisting litigators with medical evidence and deposition preparation. Phone Jack at (205) 251-9958.

- **CORPORATE TAX EXPERT**: Retired Alabama corporate tax auditor with 20-plus years' experience reviewing Alabama corporate franchise and income taxes. Expert analysis of returns to recover overpayments; review and verification of audit findings to minimize taxes and prepare defenses; tax planning and filing assistance; expert witness. Contact John H. Burgess, J.D., P.O. Box 241283, Montgomery, Alabama 36124-1283. Phone (334) 279-6496.

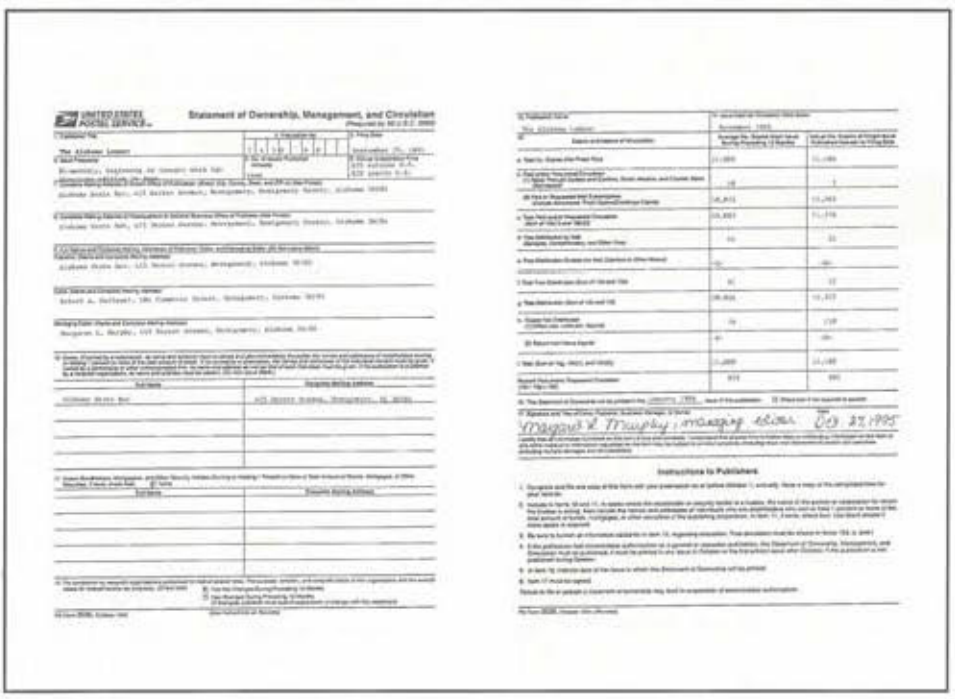
- **FORENSIC DOCUMENT EXAMINATION**: Handwriting, typewriting, altered documents, medical records, wills, contracts, deeds, checks, anonymous letters. Court-qualified. Eighteen years' experience. Certified: American Board of Forensic Document Examiners. Member: American Society of Questioned Document Examiners, American Academy of Forensic Sciences, Southeastern Association of Forensic Document Examiners. Criminal and civil matters. Carney & Hammond Forensic Document Laboratory, 5855 Jimmy Carter Boulevard, Norcross (Atlanta), Georgia 30071. Phone (770) 416-7690. Fax (770) 416-7689.

- **DOCUMENT EXAMINER**: Handwriting Expert/Forensic Document Examiner. ABFDE certified. Past president of Southeastern Association of Forensic Document Examiners, American Academy of Forensic Sciences fellow. Federal court qualified. Seventeen years' experience. Civil and criminal. Handwriting comparison, forgery detection, detection of altered medical records and other documents. L. Keith Nelson, Stone Mountain, Georgia. Phone (770) 879-7224.

- **TRAFFIC ACCIDENT RECONSTRUCTIONIST**: Case evaluation performed with respect to issues. Legal testimony, including deposition and trial. Accident analysis, scene scale drawing, and evidence evaluation. Registered Professional Engineer. Technical society member. Over 18 years' engineering experience. Traffic Accident Investigation Training. Background includes technical and communication skills, adversarial experience, and legal process familiarity. Contact John E. Reinhardt, P.O. Box 6343, Huntsville, Alabama 35824. Phone (205) 837-6341.

- **INSURANCE EXPERT WITNESS**: Litigation support services for defendants and plaintiffs, specializing in property, casualty and marine. Twenty-five years' experience as agent, broker and teacher. Agents E&O a specialty. Will travel. CV on request. Mark B. Rosen, CPCU, 401 Bryan Circle, South, Brandon, Florida 33511-6034. Phone (813) 685-1110.

- **MEDICAL FACILITY MANAGING EXPERT**: Administrator with 25 years' experience running hospitals, extended care facilities, rehabilitation centers, retirement centers, and clinics. Extensive experience in medical malpractice cases. Ph.D. in health administration. Phone (919) 929-1885.


Statement of Ownership, Management, and Circulation

FOR SALE

- **LAWBOOKS:** William S. Hein & Co., Inc., serving the legal community for over 60 years. We buy, sell, appraise all lawbooks. Send want lists to: Fax (716) 883-5595 or phone 1-800-4WM-HEIN.

- **LAWBOOKS**: Save 50 percent on your lawbooks. Call National Law Resource, America's largest lawbooks dealer. Huge inventories. Lowest prices. Excellent quality. Satisfaction guaranteed. Call us to sell your unneeded books. Need shelving? We sell new, brand name, steel and wood shelving at discount prices. Free quotes. 1-800-279-7799. National Law Resource.

Quick! What's The Value Of Your Client's Company?

THE IRS (OR A DEPARTING PARTNER OR SOON-TO-BE-EX-SPOUSE OR THE EXECUTOR OF THE ESTATE) WANTS AN ANSWER RIGHT AWAY AND WILL NOT LOOK KINDLY ON A RESPONSE CONTAINING THE WORDS "APPROXIMATELY" AND "ROUGHLY".

YOU HAVE TWO CHOICES.

BEST :

CALL WILLIAMS, TAYLOR & ACTON, THE FIRST ACCOUNTING AND CONSULTING FIRM IN BIRMINGHAM TO HAVE FOUR CERTIFIED VALUATION ANALYSTS ON PERMANENT STAFF, AND RANKING IN THE TOP EIGHT PERCENT OF ACCOUNTING ORGANIZATIONS NATIONWIDE IN QUALITY OF CLIENT REPORTS.*

2ND-BEST :

PANIC.

GO WITH THE BEST.
CALL 930-9111 TODAY ABOUT A FREE BUSINESS VALUATION CONSULTATION.

JAMES L. WILLIAMS, CPA, CVA

ROBIN E. TAYLOR, CPA, CVA

WILLIAM K. NICROSI II, CPA, CVA

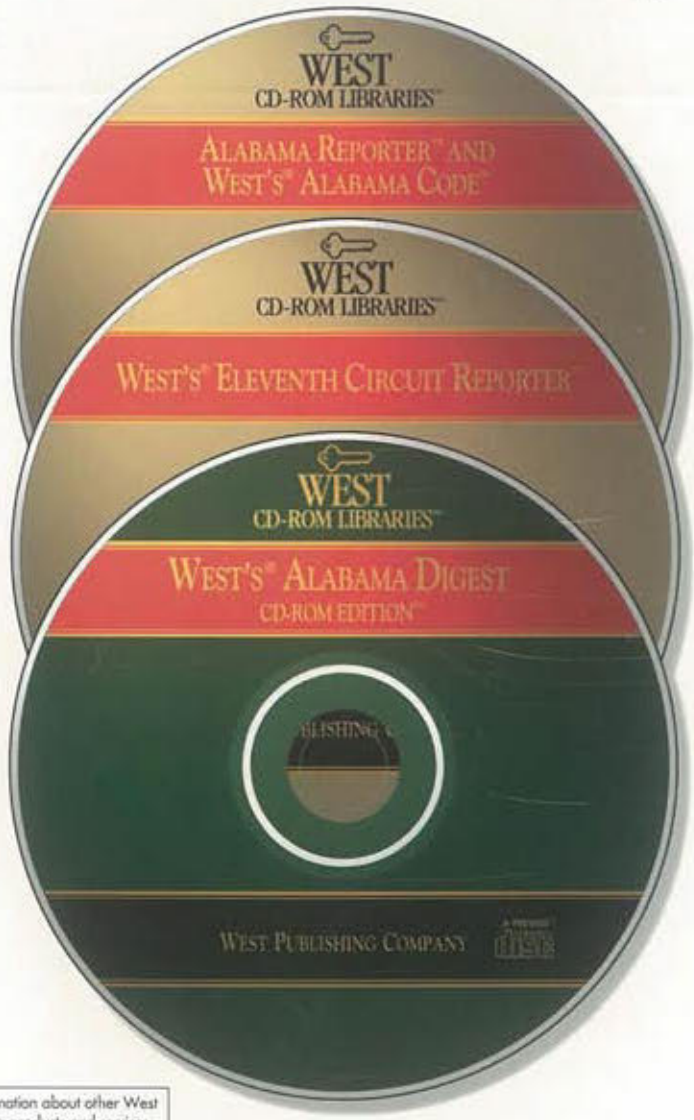
TIMOTHY W. YORK, CPA, CVA

WILLIAMS · TAYLOR · ACTON
ACCOUNTANTS & CONSULTANTS

2140 ELEVENTH AVENUE, SOUTH • THE PARK BUILDING, SUITE 400 • BIRMINGHAM, ALABAMA 35205
(205) 930-9111 • (800) 874-8552 • FACSIMILE (205) 930-9177

*Study performed by the Peer Review Board of the American Institute of Certified Public Accountants.

The most complete CD-ROM library in Alabama.



ALABAMA REPORTER™ AND WEST'S® ALABAMA CODE™ ON CD-ROM GIVES YOU

- Reported decisions from 1944 to date
- Slip opinions
- Alabama Attorney General Opinions from 1977 to date
- Weekly advance sheets and regular disc updates

WEST'S ALABAMA CODE INCLUDES

- Alabama Constitution and Code
- Alabama Court Rules and Orders
- Session laws as appropriate

NOW AVAILABLE ON CD-ROM!

West's® Alabama Digest CD-ROM Edition™

West CD-ROM Libraries™ give you West's exclusive editorial enhancements, including West Topics and Key Numbers, for focused results and faster research. And of course a subscription to West CD-ROM Libraries includes the direct connection to WESTLAW®.

ASK ABOUT

West's® Eleventh Circuit Reporter™ and West's® Federal District Court Reporter™ – Eleventh Circuit.

FIND OUT MORE ABOUT WEST CD-ROM LIBRARIES FOR ALABAMA

1-800-255-2549 EXT. 201

WEST CD-ROM LIBRARIES™

West. An American company serving the legal world.

For information about other West Publishing products and services, visit us on the Internet at the URL: http://www.westpub.com

6-9290-4/11-95 608651

1-203-479-2

Mr. Keith Byrne Norman
Alabama State Bar
P. O. Box 671
Montgomery AL 36101