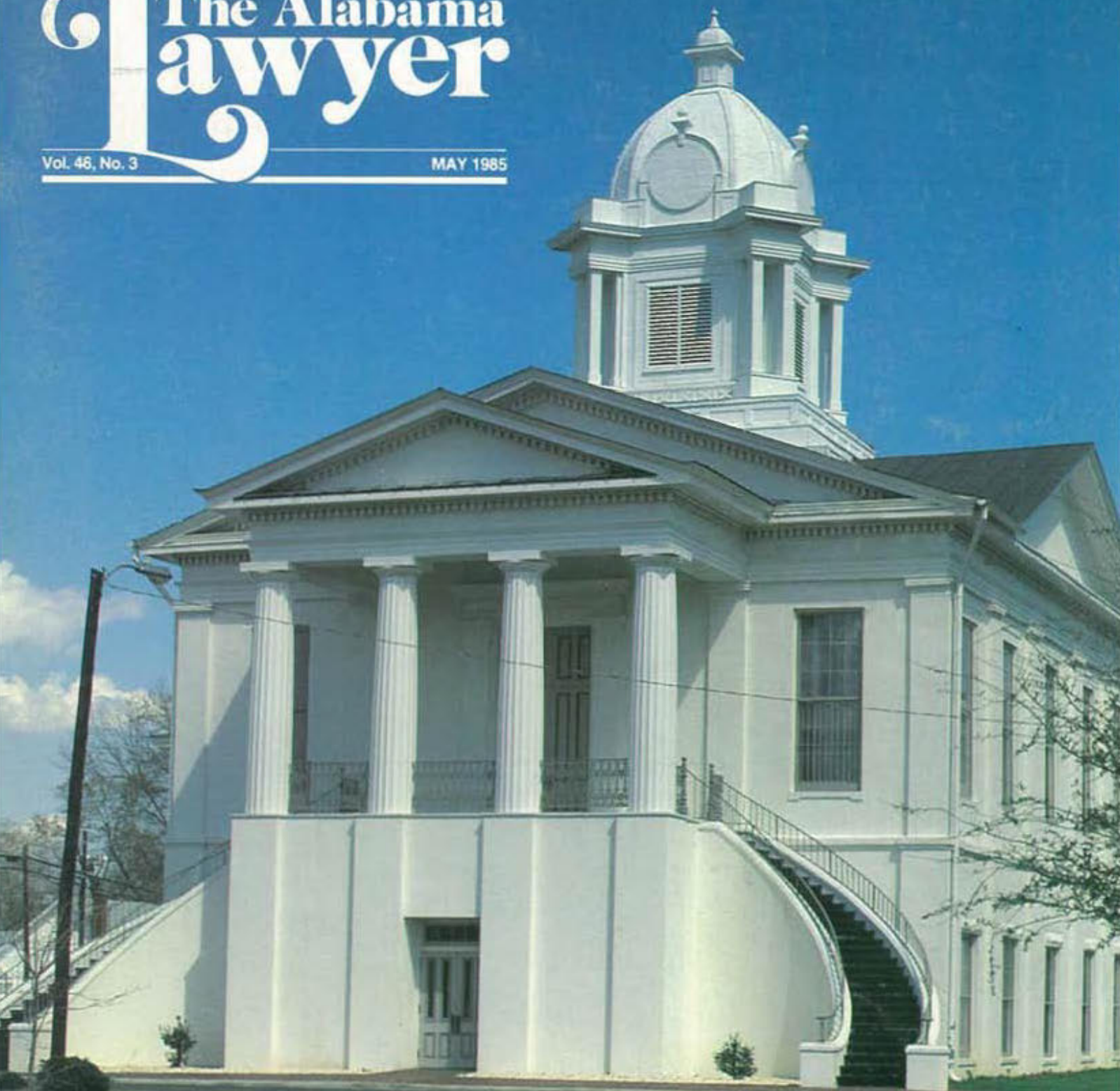


The Alabama Lawyer

Vol. 46, No. 3

MAY 1985



Liberty & Justice
For All
Law Day|USA|May 1

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

—Henry A. Leslie
President and Chief Executive Officer

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

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

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

Union
BANK & TRUST MEMBER FDIC

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

Tools of the trade for the Alabama attorney . . .

Treatises . . .

- Criminal Offenses and Defenses in Alabama, *Chiarkas, Chiarkas & Veigas* \$42.95
- Alabama Criminal Trial Practice, *Chiarkas* \$55.95
- Alabama Law of Damages, *Gamble & Corley* \$70.95
- Alabama Divorce, Alimony & Child Custody, *McCurley & Davis* \$60.95
- Alabama Criminal Trial Practice Forms, *Chiarkas* \$59.95
- Alabama Limitations of Actions & Notice Provisions, *Hoff* \$29.95
- Alabama Workmen's Compensation, *Hood, Hardy & Saad* \$39.95

Monographs . . .

- Collections of Accounts, *Jeffries & Wilkinson* \$24.95
- Corporations — Formation with Forms, *Walthall* \$24.95
- Detinue, Executions & Mechanics' Liens, *Hairston* \$24.95
- Enforcement of Security Interests in Personal Property, *Jeffries* \$24.95
- Landlord & Tenant — Breach & Remedies, *Huskey & Etheredge* \$24.95
- Wrongful Death Actions, *Jeffries* \$24.95

National . . .

- Adjustment of Debts, Individual with Regular Income, Ch. 13, Federal Bankruptcy Act, *Phillips* \$39.95
- Evidence in Trials under Bankruptcy Act, *Norton & Russell* \$29.95
- Liquidation under Ch. 7 of the Bankruptcy Act, *Phillips* \$37.95
- Reorganizations under Ch. 11 of the Bankruptcy Code, *Dobbs* \$39.95
- Contracts: Contemporary Cases, Comments and Problems, *Closen, Perlmutter and Wittenberg* \$33.00
- Determining Disability & Personal Injury Damage, Medical Evaluation for Trial Lawyers, *McQuade* \$89.95
- Dental Practice for Trial Lawyers, *Pekarsky* \$54.95
- The Insanity Defense: A Bibliographic Research Guide, *Picquet and Best* \$35.95
- Preparation of Medical Cases for Settlement and Trial, *Holley* \$79.95

- Medical Information Newsletter for Trial Lawyers, *McQuade* \$89.95
- Medical Practice for Trial Lawyers, *McQuade* \$64.95
- Analyzing Medical Records — A Method for Trial Lawyers, *McQuade* \$79.00
- Nursing Homes and the Law: State Regulation and Private Litigation, *Johnson, Wolff & Terry* \$36.95
- Out-of-State Practice of Law — Multistate and Pro Hac Vice, *Keenan* \$42.95
- Pharmacy Practice for Trial Lawyers, *Hickmon* \$52.95
- Postconviction, Federal and State Remedies and Relief, *Wilkes* \$54.95
- American Real Estate Law, *Pindar* \$99.95
- RESPA, Truth-In-Lending & ECOA (in Real Estate Transactions), *Padrick* \$39.95
- Seamen's Damages for Death and Injury, *Hood and Hardy* \$54.95
- Social Security Disability Claims, Practice and Procedure, *Keenan, Ashman & Lucas* \$64.95
- Federal Tax Planning for Vacation Homes & Condominiums, 2d Ed., *Bristow & Dalton* \$39.95
- Wills, The Truth About Probate, *McConaughy* . . .
Softbound . . . \$14.95 Hardbound . . . \$19.95

THE **THE CO** HARRISON COMPANY, PUBLISHERS

3110 Crossing Park • P O Box 7500 • Norcross, GA 30091-7500

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

Robert A. Huffaker
Editor

Carol Ann Smith
Associate Editor

Margaret Dubberley
Managing Editor

BOARD OF EDITORS

Phillip E. Adams, Jr., Opelika • Robert P. Denniston, Mobile • Susan S. DePaola, Montgomery • Patrick H. Graves, Jr., Huntsville • Francis H. Hare, Jr., Birmingham • Robert R. Kracke, Birmingham • Champ Lyons, Jr., Mobile • Grover S. McLeod, Birmingham • Keith B. Norman, Montgomery • Robert L. Potts, Tuscaloosa • L. Drew Redden, Birmingham • Romaine S. Scott III, Mobile • Julia Smeds, Birmingham • J. Mark White, Pittsburgh • Steven L. Wise, Tuscaloosa • Robert G. Esdale, Ex-officio, Montgomery

OFFICERS

Walter R. Byars, Montgomery • President
James L. North, Birmingham • President-elect
Joe C. Cassidy, Enterprise • Vice president
Reginald T. Hamner, Montgomery • Secretary

BOARD OF COMMISSIONERS

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

GENERAL INFORMATION

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

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

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

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

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

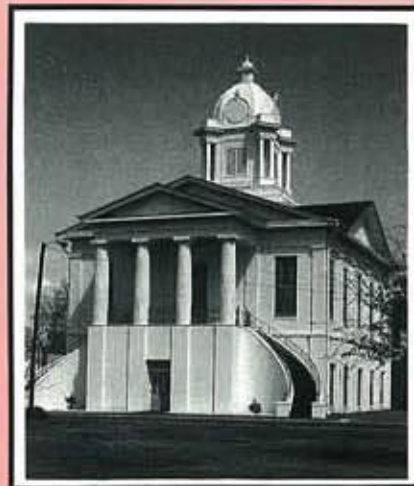
THE MAY 1985



Huntsville — Heritage and High Tech

— pg. 120

Heading for Huntsville in July? Then be sure to find out what's going on and where to go in the Rocket City. Details are inside.



On the cover

The cover photograph, of the recently restored Lowndes County Courthouse, was taken by Montgomery attorney and amateur photographer Tom McGregor of Webb, Crumpton & McGregor.



Income Taxation of Wrongful Death Proceeds in Alabama

— pg. 127

A recent ruling by the IRS has changed the long-standing rule on the taxability of wrongful death proceeds. Under the new standards beneficiaries of wrongful death judgments or settlements will incur significant tax consequences.

ISSUE IN BRIEF



Midyear Conference Highlights — pg. 140

For those who missed this year's conference, it was quite a success. Highlights, in pictures, are inside.



Review of Uninsured and Underinsured Motorist Law in Alabama — pg. 142

Uninsured motorist coverage had engendered a number of appellate decisions which have carved many special rules in this area. Recent amendments to the uninsured motorist statutes have added a new category of coverage — "underinsured motorist."



A Look at Alabama State Bar Headquarters — pg. 146

Personnel of the state bar headquarters perform a myriad of services for Alabama practitioners. These services may be of benefit to you in the practice of law.

Special Recognition

Special thanks for help with this issue go to Tom McGregor, Richard Gill, Pat Graves and Alex Jackson for his photographic contributions.

Inside This Issue

President's Page	112
Executive Director's Report	113
Book Review	114
About Members, Among Firms	115
Riding the Circuits	117
Bar Briefs	118
Young Lawyers' Section	123
CLE News	124
Legislative Wrap-up	125
Recent Decisions	131
CLE Opportunities	136
CLE Committee Report	139
Opinions of the General Counsel	152
Disciplinary Report	157
In Memoriam	159
Classifieds	162
Etc.	164

President's Page



BYARS

Participation

Every lawyer licensed to practice in Alabama has an opportunity for an active role in the bar. Those who participate the most get the most out of the bar organization. Likewise, the more participants, the more responsive the bar.

The annual meeting of the Alabama State Bar is close at hand. I personally invite each of you to be in Huntsville at the Hilton and Von Braun Civic Center July 25-27, 1985. There is an outstanding program planned with some portion devoted to the interests of each member of the bar. As in the past, we will have programs designed for those who wish credit for continuing legal education, in addition to the normal business of the bar. Of course, we have gala entertainment scheduled for your pleasure. We look forward to seeing you in Huntsville!

When you receive your annual meeting program within the next few days, please immediately pre-register. We are hopeful this will be the largest meeting of the Alabama State Bar,

and, certainly, it will be one of the most outstanding.

By now, you should have received a committee preference questionnaire from President-elect Jim North. The bar needs your help, and we wish to accommodate your preferences. Please take a few moments to consider and respond on the questionnaire. Whenever possible, your preference will be honored.

The Alabama State Bar is undertaking your program with the primary emphasis on the betterment of our profession. Your contribution is wanted, needed and necessary to make your bar a truly representative body.

During the past 18 months, the Governance Committee has been hard at work redesigning the method of representation on the bar governing body and the method of electing officers. All of this is aimed at making the bar more responsive to the needs of each of its members. However, without your help as an individual practitioner, your bar truly cannot be representative and re-

sponsive to the needs of our profession. I urge you to participate in the committee program of the Alabama State Bar.

Your state bar is involved in several innovative programs which will assist you as a lawyer to keep pace with the times. However, as we adapt to change, we lawyers must not compromise our professionalism.

Despite some of the criticism of our profession, we can look with pride to the fact the services of lawyers are more available today to more people than ever before in our history. Let us strive to make certain those services are more competently and ethically performed today than ever before.

Each generation of lawyers faces its own pressures, dilemmas and challenges. With your participation, the Alabama State Bar can point the way to meet those pressures, dilemmas and challenges — now and in the future. I urge each lawyer to seize the opportunity and duty to participate "in the upbuilding of the profession." □

— Walter R. Byars

Executive Director's Report



HAMNER

Procrastination

Andy Rooney might well ask, "Why do people procrastinate? Do you know people who procrastinate? Are lawyers the best procrastinators of all? Do you procrastinate?"

The past six months have convinced me of the answers to the last three questions. They all would be YES. If I knew the answer to the first, I could solve many of the problems various members and would-be members have created for themselves within our association.

Areas of Procrastination

Licensing Requirements The number of lawyers who delayed — and some still are delaying — purchasing their 1984-1985 license (due no later than October 31, 1984,) is alarming. Most licensing authorities send notices on or before October 1 of each year; however, the number of lawyers who called to complain about the late fees and penalty provisions indicates the notices get put aside and forgotten. Delinquency costs can be substantial. Failure to purchase the license raises the possibility of a client's action for practicing without a license after opposing counsel prevails on a motion to dismiss. Mark your 1985 calendar now: your 1985-1986 license is due October 1, 1985. Do not rely on the firm's bookkeeper to remind you.

MCLE Requirements This area

of procrastination is equally disturbing. While the vast majority of our members comply with the 12-hour requirement, many have complained to me about the course offerings in late November and December. Complaints relate to the timing and selection during those months. Invariably I was told, "It's my fault, I just put off getting in my hours." We had received less than one-half the required reports as late as the end of November (only 30 percent). Compliance was at 70 percent by the end of December, the compliance deadline.

We received another 21 percent of the forms during January. Interestingly, a high percentage of these late compliers was in the same group last year. It was a matter of concern to note further how many of them also had client complaints filed against them. Many complaints were generated by continuing failure to communicate with the client.

Bar Admission Deadlines Far too many applicants wait until the last 72 hours to file an examination application, and this creates problems for the applicants. Many of our members serve as affiants, and the required affidavits in support of character and fitness frequently are laid aside by well-meaning attorney friends and then not submitted by the completed application filing deadline. The lawyer who

delayed sending the affidavit always is remorseful; however, the applicant is the party penalized by not qualifying to sit for the next bar examination due to an incomplete application. If you agree to send an affidavit, send it that day.

Professional Liability Insurance The spiraling rates in professional liability insurance have generated many telephone calls to me in recent weeks. Rates for professional liability insurance fluctuate in cycles, and, unfortunately, nationwide we are in the phase where the market is severely limited and those few writers of this coverage are raising rates to stay in the market. Many of our insureds are delaying action, when renewal notices are received, until the end of the policy period. The restricted market has caused most carriers to require new applications with renewals, and the delays in receiving renewal confirmation plus a significantly increased premium are causing concern.

I strongly suggest you have your agent review the market for you the day you receive your renewal notice. For those not presently insured with the bar's endorsed carrier, you will find in most instances the best coverage at the most competitive rates.

The rate increases are justified based
(Continued on page 138)



Reminiscences of Men and Things in Alabama

by Benjamin F. Porter
researched and edited by Sara Walls

H. Edward Persons

Undoubtedly, every Alabama lawyer has had occasion to cite as precedent a case reported by Benjamin Faneuil Porter, leading that cite with the phrase, "It has been the law in this jurisdiction for more than 100 years. . . ." Indeed, many a modern decision often draws upon those early reported cases which remain today only because of Porter's sustained attention to his appointment by the supreme court as reporter of decisions, a position Porter held at the age of 26, while he was actively practicing law in Tuscaloosa and later while he was a circuit judge in the 10th Judicial Circuit in Mobile.

What every Alabama lawyer may not know, however, is this man neither began nor ended his career in his capacity with the supreme court, but was, and remains, one of the most, if not the most, noteworthy figure in the development of Alabama law. Porter was a man of extreme versatility: a physician; lawyer; circuit judge; newspaperman; poet; reporter and editor of the decisions of the Alabama Supreme Court; railroad president; regional and national politician; colonel in charge of planning and building a Confederate governmental hospital in Greenville, Alabama; and translator of historical documents. It was as a contemporary and correspondent of Alabama historian A.J. Pickett Porter penned his history of the state of Alabama in *Reminiscences of Men and Things in Alabama*.

Fortunately for the modern reader, the diligence of Sara Walls uncovered the original manuscript of *Reminiscences*, and through her careful researching and editing, the printed version of



Benjamin Faneuil Porter

this manuscript is available today. This intriguing autobiography of Porter recounts life in Alabama from the early days of the 19th century through the Civil War years, citing many historic events, including the founding of the law school at the University of Alabama. Porter, incidentally, was offered the first chair of law at the University of Alabama School of Law. Porter's attention to his contemporaries is unequalled by any historical work of his day. He speaks of circuit judges and other officers of the law, military personnel and prominent citizens throughout Alabama.

This work contains a map of early Alabama showing various cities and counties in which Porter lived and worked during a 39-year period; photographs and drawings representing dwelling places of Porter's in Claiborne, Tuscaloosa, Mobile, Porterville (in DeKalb County), Sydney (in Mar-

shall County) and Greenville, Alabama; photographs of scenic locations throughout Alabama; and an early etching of Porter by Alexander Hay Ritchie of New York. Within the text of the very accurate and faithful reflection of the original *Reminiscences* are interspersed a few closely related passages selected from Porter's writings previously published in *Southern Quarterly Review*, volume XVI, October 1849, and in John Belton O'Neill's *Biographical Sketches of Bench and Bar of South Carolina*, volume II, 1859. As Walls explains in her forward, "These passages, amplifying Porter's literary intention, are set in a distinctive type face to differentiate them from the *Reminiscences* per se."

Rufus Bealle, a prominent Tusca-

(Continued on page 139)



Originally from Greenbriar in Limestone County, Alabama, Ed Persons graduated from the University of Alabama School of Law in 1984, was admitted to the bar that year and now practices with the firm of Hubbard, Waldrop, Reynolds, Davis & McIlwain in Tuscaloosa.

About Members, Among Firms

About Members

Laird R. Jones has joined Union Camp Corporation as counsel at the company's Montgomery mill. Jones is a native of Andalusia and received his law degree from the University of Alabama School of Law January 1979.

Prior to joining Union Camp, he practiced with the Montgomery law firm of Argo & Enslin.

Steve R. Forehand has been named director of taxes and corporate counsel for Russell Corporation in Alexander City, Alabama.

Among Firms

Robert S. Ramsey, Stephen J. Flynn and **S.C. Middlebrooks** are pleased to announce the formation of their new practice as **Ramsey, Flynn and Middlebrooks, P.C.** Their offices are located in Suite 1806, First National Bank Building, Mobile, Alabama 36602. Phone 433-8100.

Clifton S. Price, II, and **Herbert B. Sparks, Jr.**, are pleased to announce the formation of their partnership for the general practice of law with offices in the Highland Professional Building, 2220 Highland Avenue, Birmingham, Alabama, phone 939-3999.

The law firm of **Hollis & Leathers** is pleased to announce **Lee B. Osborn**, formerly in practice in Sheffield, Alabama, is now associated with them in the practice of law. Offices are located at 28 East 1st Avenue North, P.O. Box 708, Winfield, Alabama 35594; 109 First Street S.E., Fayette, Alabama 35555 and 212 South Vernon Street, P.O. Box 599, Sulligent, Alabama 35586.

Wiginton & Bailey take pleasure in announcing **G. Daniel Reeves** has become associated with the firm, and the firm name will be **Wiginton, Bailey & Reeves**. They have relocated to the Statesman Building, 105 Vulcan Road, Suite 401, Birmingham, Alabama 35209. Phone 942-9233.

The law firm of **Gaines & Cleckler, P.C.**, takes pleasure in announcing **Charles P. Gaines** is now a member of the firm, and **Robert B. Barnett, Jr.**, has become an associate of the firm. Offices are located at 127 East North Street, Talladega, Alabama 35160. Phone 362-2386.

Balch and Bingham, located in Birmingham and Montgomery, takes pleasure in announcing **Michael L. Edwards** has joined the firm as a partner, and **Ralph F. MacDonald, III**, has become a partner in the firm.

Arthur T. Powell, III, announces the opening of his law office at 1204 First National Bank Building, 31 N. Royal Street, Mobile, Alabama 36602. Phone 433-8310.

Harold E. Walden, Sr., and **Joseph E. Walden** are pleased to announce the formation of a firm for the general practice of law under the name of **Walden & Walden** with offices located at Suite 201, 1240 Jessup Building, P.O. Box 1610, Ababaster, Alabama 35007. Phone 663-0915.

John P. Furman, attorney at law, announces the opening of his branch office for the general practice of law in Orange Beach, Alabama. The coastal office is located on Alabama Highway 180, Callaway Company, Inc. Building, P.O. Box 275, Orange Beach, Alabama 36561. Phone 981-9100. The Mobile office is located at 161 Conti Street, Mobile, Alabama 36602. Phone 432-5700 or 432-5701.

James R. Bowles and **John I. Cottle, III**, are pleased to announce the formation of a partnership for the general practice of law under the name of **Bowles & Cottle**. **Nancy I. Cottle** also will be associated with the firm. Temporary offices will be located at the Tallassee Shopping Center, Gilmer Avenue, Tallassee, Alabama. Phone 283-6548.

The offices of **O'Bannon and O'Bannon** are pleased to announce the removal of their offices to 402 South Pine Street in Florence, Alabama.

Donald H. Patterson and **Gary L. Jester** are pleased to announce the formation of a partnership for the general practice of law under the name **Patterson & Jester**. Offices are located at 117 Mobile Plaza, Florence, Alabama. Phone 764-3941.

The law firm of **deGraffenried and Hawkins** is pleased to announce the association of **Scott Donaldson** with the firm for the practice of law. Offices are located at 2620 6th Street, P.O. Box 2263, Tuscaloosa, Alabama 35403, phone 759-1226.

J. Knox Argo, **Frederick T. Enslin**, **John M. Holloway, Jr.**, and **M. Wayne Sabel** are pleased to

announce their association for the general practice of law under the firm name of **Argo, Enslin, Holloway & Sabel, P.C.** Offices are located at 300 South Hull Street, Montgomery, Alabama 36104, phone 834-2460.

James M. Morton, II, and **Samuel Maples** are pleased to announce their partnership, with offices at 1716 14th Avenue South, Birmingham, Alabama 35205.

Nancy Davis, **James E. Cox** and **William A. Cleveland** are pleased to announce the formation of a partnership for the practice of law under the firm name of **Davis, Cox & Cleveland**. Offices are located at 337-B East Magnolia, Auburn, Alabama 36830, phone 821-1908.

Richard Wilson & Associates

Registered
Professional
Court Reporters

132 Adams Avenue
Montgomery, Alabama 36104

264-6433

SAVE 30-60%

USED LAW BOOKS

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

WE BUY — SELL — TRADE

Law Book Exchange

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

Four Alabama and Federal Trial Practice Form Books Available for Immediate Shipment . . .

- ALABAMA AND FEDERAL PLAINTIFF DISCOVERY FORMS
- ALABAMA AND FEDERAL MOTION FORMS
- ALABAMA AND FEDERAL ORDER AND JUDGMENT FORMS
- ALABAMA AND FEDERAL COMPLAINT FORMS

Part of a series of trial practice form books by **Robert Sellers Smith** and **Joan McIntyre**.

The price of each of these books is **\$59.95** plus postage and handling.

MADISON PUBLISHING COMPANY, INC.
223 EAST SIDE SQUARE
HUNTSVILLE, ALABAMA 35801
(205) 533-5040

Often First Investigations Don't Do Your Case Justice



Even a slight oversight in initial accident reports can make a deciding difference in your case. For a follow-up investigation and valid, reliable testimony by a well-established expert, contact:

ALBERT MEDINA

Traffic Accident Consultant/Reconstructionist

Accident Investigation Court Testimony
Speed Estimates Accident Reconstruction
Lamp Examination Photographs
Collision Analysis

P.O. Box 17332 • Montgomery, Alabama 36117
(205) 277-7929



Riding the Circuits

Coffee County Bar Association

In a recent meeting of its members, the Coffee County Bar elected Merrill Shirley, president; Bruce McLean, vice-president; and Paul Young, Jr., secretary-treasurer. The association also honored its immediate past president, Dale Marsh, and immediate past secretary-treasurer, John Dowling, for their loyal and dedicated service to the Coffee County Bar.

Houston County Bar Association

The Houston County Bar Association recently participated with the Dothan school system to promote an awareness of the law and the way the state's legal system works. As part of that program, the Alabama Supreme Court was invited to Dothan to hear oral arguments May 3; in addition, a reception in honor of the court was held the night before.

Mobile Bar Association

The Mobile Bar Association honored nine of its members for serving 50 years in the legal profession. Seven of those nine were present at the regular MBA monthly meeting held March 15 at The Admiral Semmes. These individuals represent a wide range of legal experience.

Garet Van Antwerp Aldridge was in the banking business for approximately 40 years and now is in the private practice of law.

R.H. "Pete" Allen was a corporate officer with International Paper Company for over 30 years.

Judge Allan R. Cameron was appointed the first full-time United States magistrate of the U.S. District Court.

Judge Robert E. Hodnette, Jr., is the presiding circuit judge of the 13th judicial district.

Ralph Kennamer spent a number of years as U.S. attorney for the southern district of Alabama and city attorney for the cities of Mobile and Prichard.

Albert J. Tully has practiced law with the same law partner for 47 of those 50 years.

Janella J. Wood holds the distinction of being the first female in Mobile to reach the 50-year milestone and possibly the first in Alabama.

George E. Stone, Jr., and Bart B. Chamberlain, Jr., were unable to attend the meeting, but also were honored for their contributions to the legal profession.

Eight of the "honored nine" are graduates of the University of Alabama Law School Class of 1935 (Mrs. Wood was the only female). In fact, there were 14 Mobilians who graduated with the class of '35.

Each honoree was given a framed certificate, signed by MBA President Ben H. Kilborn, to commemorate the occasion.



Seven of the nine members of the Mobile Bar Association honored for 50 years of service in the legal profession

Bar Briefs



Williams named dean of Cumberland

Parham H. Williams, Jr., director of the University of Mississippi Law Center and Dean of the University of Mississippi Law School, has been named dean of Cumberland School of Law of Samford University.

The appointment of Williams culminates a 13-month search to select a successor to former Dean Donald E. Corley, who resigned in February 1984 to return to full-time teaching in the law school. Brad Bishop, a veteran of 14 years on the Cumberland faculty, has served as interim dean.

Williams has been director of the Mississippi Law Center since its establishment in 1973. The center broadens the legal education concept of the Law School and combines the resources of the School of Law, Law Library, Law Research Institute, Court Education Program, Institute of Continuing Legal Education and Court Reporting Program.

Williams was dean of the Mississippi School of Law for two years prior to the establishment of the Law Center concept. Previously, he served as associate dean, assistant dean and administrative as-

sistant of the School of Law, beginning in 1965.

Active in state, regional and national associations, Williams has served in such roles as commissioner of the Law Enforcement Assistance Commission (1972-76), commissioner of the National Conference of Commissioners on Uniform State Laws (since 1971), a member of the ABA Committee on Prosecutorial Standards (1981-82) and chairman of the Mississippi Governor's Blue Ribbon Committee on Criminal Prosecutions (1981-82). He has been chairman of the Mississippi Supreme Court Advisory Committee on Rules since 1983.

Williams holds Bachelor of Arts and Juris Doctor degrees from the University of Mississippi and a Master of Laws from Yale University. He was recipient of a Sterling Fellowship for study at Yale in 1964 and a Fellowship for Advanced Study in Law School Administration at New York University in 1968.

LL.M. in taxation— Montgomery 1985-87

The University of Alabama School of Law again is sponsoring a graduate program in tax. This program is designed to serve practicing Alabama lawyers interested in obtaining, on a part-time basis, the LL.M. in taxation degree.

The program consists of six semesters spanning two academic years, with two classes per semester. Two-hour classes begin August 24, 1985, and the first semester concludes December 14. The program will continue through summer semester 1987. Location of this cycle of the program is Montgomery (it previously has been held in Birmingham and Mobile), with the exact site to be announced later.

Tuition is as follows:

	One Course	Two Courses
Resident	\$250	\$392
Non-resident	378	648
Resident audit	179	250
Non-resident audit	243	378

The above charges do not cover books and materials.

For more information or application materials, contact:

Admissions Office
School of Law
Box 1435
University, AL 35486-1435
(205) 348-5440

Litigation Section Organization to be considered

Tennent Lee, chairman of the Task Force to Organize a Litigation Section, announced plans for a meeting open to all interested attorneys to be conducted during the bar's annual meeting in Huntsville, July 25-27. Said Lee, "There is presently no section which addresses the needs and problems of all litigators no matter in which forum they practice or on which side of the courtroom they sit. The proposed litigation section will take an interdisciplinary approach to those problems facing the trial bar, as distinguished from the existing sections such as Labor Law, Practice and Procedure, Criminal, Antitrust, Family, Bankruptcy and Administrative Law, which are devoted to substantive and procedural problems peculiar to those areas." Possible goals are:

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

Litigators interested in attending the meeting should write to Mr. Lee at P.O. Box 68, Huntsville, Alabama 35804. Those interested, but unable to attend, should let him know of their interest so their names can be added to the list of potential section members.

The First American
Spirit

A Part of the Legal Community
SINCE 1889



Harris County Courthouse, Houston

For nearly a century First American Title Insurance Company has been an important part of the legal community. The spirit of cooperation, the experience and attitude of mutual assistance in working with the legal

profession has made this independent title company the nation's third largest.

From the old Harris County Courthouse in Houston, Texas to the Pacific and Atlantic seaboard, First American and the spirit is ready!

The First American

Spirit



First American Title Insurance Company

STATE OFFICE: 1529 FOURTH ST., NEW ORLEANS, LA 70115 • (504) 895-9911

NATIONAL HEADQUARTERS: 114 E. FIFTH ST., SANTA ANA, CA 92701 • (714) 558-3211

SERVING TITLE INSURANCE NEEDS THROUGHOUT THE UNITED STATES

Affiliated with The First American Financial Corporation

HUNTSVILLE — Heritage and High Tech

by
Helen C. Smith

Editor's Note: Huntsville, the Rocket City, has been chosen as the site of the 1985 Alabama State Bar Annual Meeting.

Huntsville is a subtle blend of diverse elements, a study in contrasts. Upon arrival, one is captivated by the mountains with the panorama below of the cotton fields and sprawling city. The old is juxtaposed with the new, antebellum mansions are silhouetted against Rocket City skyscrapers.

The city is a panoply of cultures and nationalities. Huntsville has been the mountain home of the illustrious German scientist, Werner Von Braun, and the setting for James Michener's novel, *Space*. On the other side of town and time, Leroy Pope Walker, secretary of war for the Confederacy, lived in the Twickenham area (as do his great-grandchildren today).

This gentle mixing of hills and dales, old and new, continental and country, offbeat and traditional, makes a city where the tempo is fast, but the ambiance is slow. One can feel the electricity of the fast-growing high technological industry and yet seek solace in genteel parlours on Adams Street, where time stands still.

The charm of our city lies in her contradictions. The contrasts emerge when exploring Huntsville. She is a gracious lady who, with one foot planted firmly in the past, steps confidently into the future. One can visit Constitution Hall Park, the birthplace of Alabama statehood — and step back into the 19th century. From there, one can take a short journey to the Marshall Space Flight Center, "the launching pad" of our modern space flight program — and step into the 21st century.

Experience the essence of Huntsville, Alabama — Rocket City, USA.

Old and New

Old Start with the old, the tried and true. Huntsville Heritage Tours, owned

by Leslie Crowson and Jayne Lowry, conduct private and group tours. For a detailed look at Huntsville's two downtown historic areas, these ladies lead both driving and walking tours. They may be contacted at 539-6218.

If you wish to discover downtown's main sights on your own, stop by the Madison County Travel and Tourism Board office and pick up a copy of "A Walking Tour of Huntsville, Alabama." The Tourism Board is located in the Central Bank Building on West Side Square; phone 534-0638.

Historical Sites not to be Missed

- Constitution Hall Park (309 Madison Street, 532-7551)
- Twickenham Historic Preservation District
- Leroy Pope Walker House (403 Echols Avenue)
- Railroad Museum
- Howard Weeden House and Museum (300 Gates Avenue, 536-7718)
- Maple Hill Cemetery
- Mooresville, Alabama (Highway 20 between Decatur and Huntsville)

New To get an out-of-this world experience, visitors to Huntsville should not miss the Alabama Space and Rocket Center. The space program is capsulized in this unique museum. It has movies, displays and rides illustrating the space technology that has evolved in the 20th century. It is a window to the 21st century. Do not miss this! Located on Highway 20 West. Phone: 837-3400.

For an in-depth look at the space program, Marshall Space Flight Center is a must. This was where Werner Von Braun designed the first rockets that would blast our astronauts into space and catapult Huntsville into the space age. The tours originate from the Alabama Space and Rocket Center. Phone: 837-3400.

Other 20th Century Places to Go:

- Von Braun Civic Center — for your entertainment needs
- Madison County Courthouse — mosaic depicting Huntsville's history and development
- Huntsville Athletic Club — indoor tennis
- Huntsville Country Club — golf

Hills and Dales

Hills The Monte Sano Mountain Scenic Overlook located on Governor's Drive offers the best bird's eye view of Huntsville.



Helen C. Smith attended Mississippi State College for Women and graduated cum laude from the University of Alabama. She is married to C. Lynwood Smith, Jr., circuit judge for the 23rd judicial circuit, and is a travel conference coordinator with Cook Travel Agency in Huntsville.

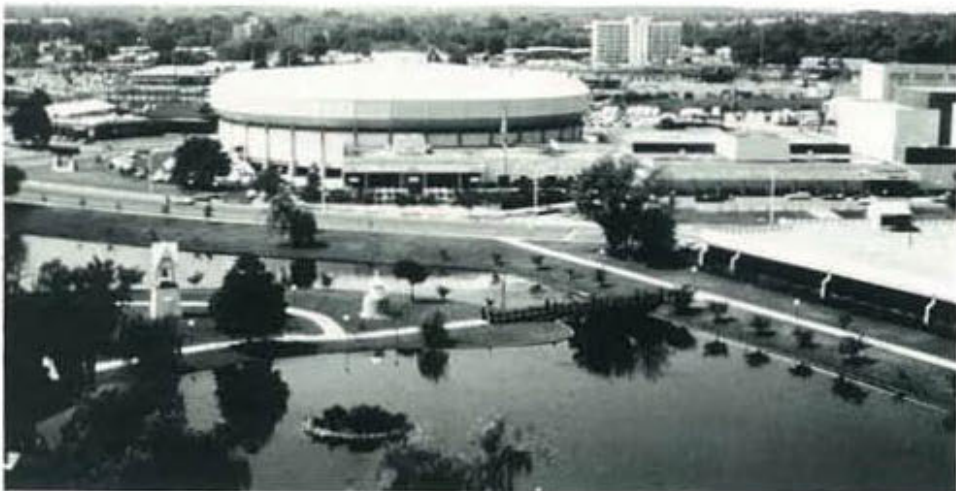
Other Mountain-Top Experiences:

- Bankhead Parkway Scenic Overlook
- Burritt Museum, located atop Monte Sano
- Green Mountain Nature Trail
- Space Walk — a nature walk across the mountain
- The Cross on Monte Sano



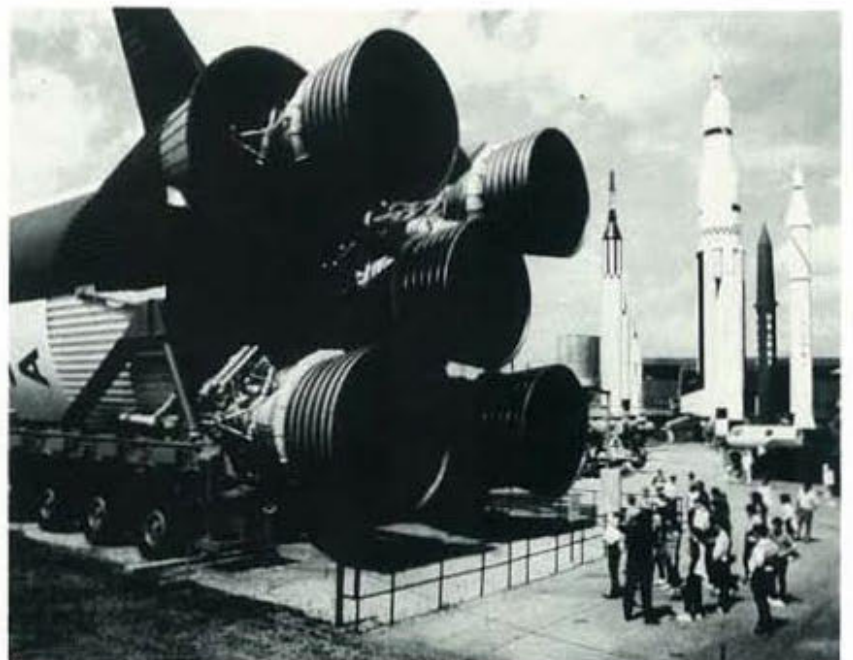
Top right: Clement Comer Clay — chaired committee of 15 drafting the state's constitution — his law office has been recreated as part of the historical interpretation of Constitution Hall Park.

Top left: Two views of Von Braun Civic Center — the site of the bar's 1985 Annual Convention



Bottom left: Constitution Hall — 1819 meeting site for 44 delegates from 22 counties writing the Alabama Constitution

Bottom right: For movies, displays and rides illustrating 20th century space technology, do not miss the Alabama Space and Rocket Center.



Dales Big Spring International Park is adorned with gifts to Huntsville from all over the world. This is a beautiful place for a romantic stroll or feeding the ducks — a favorite with the children.

Other Unique Experiences in the Valley:

- Jones Valley and Farm
- Three Caves — an old quarry off Hermitage Avenue
- Paint Rock Valley — a picturesque drive

Country and Continental (Cuisine)

Country The mecca of Huntsville politics is Eunice's Country Kitchen. It is a "down-home" breakfast at its best. The specialty of the house is country ham, biscuits and either red-eye or sawmill gravy. What really makes the place special is Eunice Merrill — a warm, charming lady who makes everyone feel at home.

More Country Cookin' and Local Color:

- Gibson's — Barbecue, ribs
- Mullin's — Hamburgers, hot dogs, chili dogs
- Oakwood Bakery — Nutrition-based baked goods
- Greenbriar (Highway 20 between Decatur and Huntsville) — Catfish, barbecued chicken
- Boots — Football atmosphere; steaks
- Twickenham Station — Steaks, fresh fish

Continental Two unique places serving cuisine from nations hemispheres, and palates, apart immediately come to mind. The Ol' Heidelberg has a Tyrolean atmosphere and authentic Bavarian cooking. A specialty of the house is a delicate Weiner Schnitzel. The other, The House of Mandarin, has a comfortable Far Eastern atmosphere and delicious hot and spicy Chinese food. Jackson Yuan, the owner, is a Chinese counterpart to Eunice Merrill. He knows his guests by name and has a smile and a hug for all.

Additional Continental Cuisine for Discriminating Palates:

- The Rib Cellar at the Jet Port
- Shogun Japanese Steak House
- Lofton's at the Hilton
- The Heritage Club — A private club, but a member may take you

- The Fogcutter — Steaks
- TGI Friday's — Sunday Brunch
- Roy Gonzalez Mexican Restaurant
- Twickenham Station

Off-Beat and Traditional (Shopping)

Traditional Lawren's is a favorite of Huntsvillians for finding that perfect gift. To their dismay, many people shop out of town to find something unique only to come home and find it tucked in a corner of Lawren's. Do not visit Lawren's unless you have plenty of time. It has the added advantage of being within walking distance of the Convention Headquarters.

Traditional Shopping Near the Convention Site:

- Randolph & Swan (Fine jewelry, gifts)
- The Elf Shelf (Dolls, dollhouses, miniatures)
- Juliann's (Traditional women's clothing)
- Kay's Cupboard (Antiques)
- Willa's (Traditional and haute couture)
- Pappagallo (Shoes, clothing)
- Harrison Brothers store and museum on the Courthouse Square (crafts, gifts and museum in a perfectly res-

tored early 1900s hardware and general store atmosphere)

Off-Beat The Kaffeeklatsch and Books as Seeds are establishments appealing to eclectic tastes. Books as Seeds has just a hint of counterculture about it, which keeps it from having a stuffy bookstore feeling.

If caffeine is what you are after, the Kaffeeklatsch has it. It is located downtown and is open during the day, serving pastries and numerous coffee blends.

Off-beat Places to Go:

- Finnegan's — authentic Irish pub
- Tony Mason's — Do not go if you cannot take a joke
- Comedy Spot — top name entertainers
- Cheers — waiters in costume
- Bowties — contemporary dancing
- Monte Sano Mill — bakery and eatery
- Ike's — 1950s hot rod atmosphere

When you come to Huntsville bring plenty of shoes: Walking shoes for stepping back in time; dancing shoes for kicking up your heels; and tennis shoes for keeping up with the pace of this rapidly growing city. □

ALABAMA BAR INSTITUTE FOR CONTINUING LEGAL EDUCATION

Oil, Gas, and Mineral Law Institute

Friday, May 24, 1985, 8:30 - 4:15

Law Center Moot Court Room Tuscaloosa, Alabama

ABICLE is pleased to have as a faculty member CHARLES J. MEYERS of Gibson, Dunn & Crutcher in Denver, Colorado. Mr. Meyers is an authority in the field of oil and gas and is best known for his *Treatise on Oil and Gas* and *Cases on Oil and Gas Law* written with H. R. Williams. He will speak on "The Law of Covenants Implied in Oil and Gas Leases."

Other Outstanding Faculty Members Include:

Conrad P. Armbrrecht, II
Armbrrecht, Jackson, DeMouy,
Crowe, Holmes & Reeves
Mobile, Alabama

Norton W. Brooker, Jr.
Lyons, Pipes & Cook
Mobile, Alabama

Rae M. Crowe
Armbrrecht, Jackson, DeMouy,
Crowe, Holmes & Reeves
Mobile, Alabama

Price: \$75.00

John Grower
Brunini, Grantham, Grower &
Hewes
Jackson, Mississippi

Edward H. Hubbard
Hawkeye Oil & Gas, Inc.
Tuscaloosa, Alabama

Thomas L. Krebs
Thomas, Taliaferro, Forman, Burr &
Murray
Birmingham, Alabama

For further information:

P.O. Box CL
University, AL 35486
205/348-6230



Young Lawyers' Section

by
Robert T. Meadows, III
YLS President



With the request from the state bar for this article for publication, it occurs to me the 1984-85 year of the Alabama Young Lawyers' Section rapidly is drawing to a close. Much has been accomplished through the outstanding efforts of a number of dedicated young lawyers throughout the state. As of this writing, however, much remains to be accomplished prior to the end of this administration.

Conference on the Professions

Randolph P. Reaves of Montgomery spearheaded the Conference on the Professions held in Gulf Shores March 22 and 23. A number of professional disciplines were represented. Most of the individuals attending were members of professional licensing boards in Alabama. The thrust of the conference was to advise these individuals on the current state of the law in terms of administrative proceedings regarding licensing. The seminar was, in my estimation, very well received by those in attendance. As always, Randy Reaves did an excellent job, and he is to be commended.

Alabama Youth Legislature

The first weekend in April the Alabama Youth Legislature/Judicial Program convened in Montgomery. This program is designed to educate young people around the state concerning the legislative and judicial branches of the

government. James Anderson spearheaded this effort on behalf of the Young Lawyers and, as usual, has done a very fine job.

Bridge the Gap Seminar

Friday, April 26, and Saturday, April 27, the Young Lawyers sponsored a "Bridge the Gap Seminar" for new and inexperienced lawyers in Birmingham at the Civic Center. James Miller was in charge of this and arranged an outstanding array of speakers imparting their wisdom to lawyers on "nuts and bolts" topics.

ABA Affiliate Outreach Meeting

May 10 and 11, 1985, the American Bar Association will hold its Bar Leadership Institute. This is sponsored by the Young Lawyers' Division of the American Bar Association and will be held this year at St. Petersburg Beach. The Young Lawyers will send several representatives to that particular meeting to discuss such things as fundraising and projecting of the young lawyers, organizing the state young lawyers' sections, media and press relations, legislative action, publications, missing children projects, disaster legal assistance, Law Week and other topics of interest to your Young Lawyers' Section.

Law Week

As I am sure you all know, Law Day has blossomed into a week-long celebration. This year Law Week will be celebrated during the first week of May. The theme for Law Week '85 is "Liberty and Justice for All." The Young Lawyers' Section of the Alabama State Bar, in conjunction with the American Bar Association and the state bar itself, has a number of materials available for local young lawyers' sections and local bar associations to use in formulating their plans. By the time this article goes to press, the majority of you will have received notice of the availability of these programs and, I hope, the materials which you need from Lynn McCain, who is in charge of the Law Day/Law Week Programs for the Young Lawyers' Section.

Sandestin Seminar

The weekend of May 17 and 18, 1985, the Annual Sandestin Seminar sponsored by the Young Lawyers again will take place at Sandestin, Florida. This year promises to be, as in years past, a very enjoyable occasion both socially and intellectually. The committee chaired by Charles Mixon and Caine O'Rear has put together an outstanding program for this particular weekend. By now you should have received brochures regarding this particular weekend and I hope you will

make your plans to be with us. If you have any suggestions as to how we can improve this particular seminar in the future, contact me, Charlie or Caine.

Bar Admissions Ceremony

Sometime this month the Young Lawyers' Section will host a second bar admissions ceremony for new admittees to the bar. This ceremony will officially induct into our number those individuals who have taken and passed the bar examination administered in February of this year. Myra Baker will be in charge of this and, based on the success of the fall admissions ceremony, I am sure this program will be excellent.

Annual Bar Convention

The 1984-85 year will culminate with the Annual Bar Convention to be held in Huntsville. This meeting will be held at the Von Braun Civic Center the last weekend in July. The Young Lawyers' Section will sponsor another "Bridge the Gap Seminar" to be held immediately prior to that particular convention, and we encourage all "young lawyers" to attend.

New Committees

At the end of the bar convention in Huntsville, Bernie Brannan, president-elect, will assume the reigns of the Young Lawyers' Section. I am sure Bernie will have a number of committee assignments opening up during the year available to any who are interested. If you would like to become an active participant in the Young Lawyers' Section of the Alabama State Bar, please contact Bernie Brannan at his office in Montgomery. □

NOTICE

ALL ADS AND ARTICLES
FOR THE
JULY ISSUE
OF THE ALABAMA LAWYER
MUST BE SUBMITTED BY
MAY 31, 1985

CLE News



by
Mary Lyn Pike
Assistant Executive Director

1984 compliance

Approximately 63% of Alabama's bar members (4,833) were subject to the CLE requirement in 1984. Others were exempt from the requirement: 1,742 nonpracticing members; 625 attorneys over the age of 65; and 400 attorneys admitted to the bar during 1984. All except attorneys over 65 however, were required to file the 1984 CLE reporting form provided by the Mandatory CLE Commission.

As of the December 31 filing and compliance deadline, 76% of bar members had filed CLE reports. By February 28, all but 250 of those required to submit reports had done so. Ninety-three of those not submitting reports set out valid reasons for failure to comply on time and were granted extra time by the MCLE Commission.

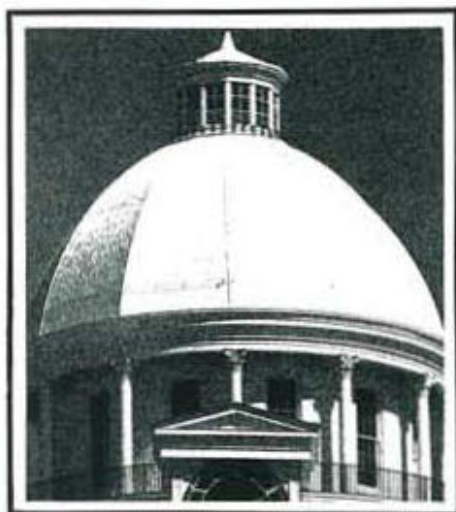
Forty-nine attorneys engaged in active practice in Alabama during 1984 failed to submit reports of compliance or set out valid reasons for their failure to do so. Because reminders from their bar commissioners and the MCLE Commission went unanswered, it was necessary to certify them to the Disciplinary Commission for possible suspension from the practice of law. Fifteen percent of these had enough cred-

its from 1983 to meet the 1984 requirement, but had not filed the required report.

Summer and CLE

Summer is a good time to combine a vacation with a CLE seminar. The CLE calendar elsewhere in this issue contains a sampling of the many opportunities available. Among them are seminars on trial practice, labor law, construction law, family law and tax law being offered in such diverse places as Dallas, Chapel Hill, Boston, Reno, Toronto and San Francisco. Additionally, the MCLE Commission has approved many other programs being conducted this summer and can provide assistance in locating seminars on topics of interest to you.

As always, educational programs approved for CLE credit will be offered during the Alabama State Bar's annual meeting. Huntsville's Von Braun Civic Center is the site for this year's meeting, which begins with an all-day seminar Thursday, July 25. Bar sections will present interesting and educational programs Friday, July 26. It should be possible to earn up to 10 CLE credits during the meeting. We look forward to seeing you there. □



LEGISLATIVE WRAP-UP

by
Robert L. McCurley, Jr.

Law Institute Bills Pending in Legislature

The Alabama Law Institute has presented one major revision, the Alabama Eminent Domain Code, and some minor amendments to the Professional Corporation Act, Nonprofit Corporation Act and Administrative Procedure Act. In addition, the institute has prepared amendments to Alabama's income tax law affecting divorce and an amendment to the settlement and release statute.

Institute-Prepared Legislation

Eminent Domain

The Eminent Domain Code revision is sponsored in the Senate (S. 287) by Senator Frank Ellis of Columbiana and in the House of Representatives (H. 113) by Representative Jim Campbell of Anniston. The revision will not be effective until January 1, 1986. For a review of this bill see the Legislative Wrap-up in the March 1985 edition of *The Alabama Lawyer*.

Pro Tanto Settlements

For years, judges and trial lawyers have been concerned with the validity of pro tanto settlements under Section 12-21-109, *Code of Alabama* 1975. This bill adds to the section "and all judgments entered pursuant to pro tanto settlements." This bill is sponsored by Senator Jim Smith (S. 46) and Representatives Mike Box and Beth Marietta (H. 220).

Divorce — Tax

Effective January 1, 1985, the federal rules were changed concerning the definition of alimony and recognition of gain on transfers of property incident to a divorce. However, current Alabama laws recognize the rules in effect on January 1, 1982. The legislature is taking steps to modify the

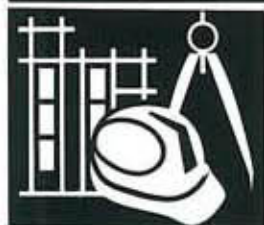
Alabama law to bring it into conformity with the federal law. The bills are sponsored by Senator Ted Little (S. 152) and Representatives Beth Marietta, Michael Onderdonk, Michael Box, Jim Campbell, John Tanner, Bill Fuller and Lloyd Coleman (H. 406).

Administrative Procedure

The Administrative Procedure Act became effective and fully operative October 1, 1983. During the past year and a half, as agencies have been working with the administrative procedure law, the need for several clarifying amendments became apparent. This bill is the result of recommended changes from lawyers, state agencies and the joint committee on Administrative Regulation Review. It clarifies provisions for the pardon and parole board, industrial relations and appellate courts, as well as the effective date provisions. The bill is sponsored by Representative Jim Campbell (H. 116). □



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



CONSTRUCTION AND DESIGN LAW

MONTHLY DIGEST SERVICE

CONSTRUCTION AND DESIGN LAW DIGEST is a comprehensive and informative analysis of the 1500-plus construction and design cases reported each year in the U.S.

Each case discussed is clearly summarized under specific topic headings for practical, easy-to-use reference. Expert critical commentary, practice tips and useful advice are included for important and unusual cases. **CDLD** is written by the National Institute of Construction Law, Inc. Editorial Board. **CDLD** is organized under such topics as:

- contract formation
- subcontractual relations
- lenders and financing
- tests and inspections
- rights and remedies
- termination
- claims and damages
- arbitration

11 Monthly Issues Including Binder and Cumulative Hardbound Volume
Annual Subscription \$395.00*

MULTI-VOLUME TREATISE

CONSTRUCTION AND DESIGN LAW is the first comprehensive, in-depth discussion of the law related to the construction and design industry. When complete, this estimated 6-volume treatise will cover every aspect of construction and design law.

This treatise is based on research of every reported case in the U.S. dealing with construction and design since 1940. **Volume One** of **CONSTRUCTION AND DESIGN LAW** is now available. Its contents include lenders and construction financing, contract documents, inspections and tests, interest, insurance, and governing law.

Volume One \$85.00* © 1984

**TO SUBSCRIBE TO THESE IMPORTANT
NEW PUBLICATIONS, CONTACT YOUR
SALES REPRESENTATIVE OR CALL
TOLL-FREE 1-800-446-3410.**

THE
MICHIE COMPANY



For customer service contact:
JAMES R. SHROYER
P.O. Box 717
Pelham, Alabama 35124
(205) 326-9899

*plus shipping, handling and sales tax where applicable

Income Taxation of Wrongful Death Proceeds in Alabama

by
David M. Wooldridge

The Internal Revenue Service recently ruled in Revenue Ruling 84-108 damages for wrongful death in Alabama are fully taxable to the recipient for federal income tax purposes. The ruling was given only prospective effect and will apply to proceeds received pursuant to releases or judgments executed after July 15, 1984. In so ruling, the IRS singled out bereaved families in Alabama for this harsh treatment alone among all other states. It also reversed its decades-old, published position such damages are tax-exempt. Wrongful death proceeds in every other state in the nation are still exempt from federal income taxes.

The reason for this sudden change of position is as unclear as the change itself is unjustified. If ultimately sustained, the family of a decedent killed in Alabama will receive radically different treatment than families of decedents killed anywhere else in the United States. In general, the amount of the award such families in Alabama will receive will be cut in half by the federal tax levy, while families elsewhere will receive the full award. And even this harsh result will not be applied uniformly throughout Alabama. The family of a decedent killed in Alabama by a federal employee will receive damages tax-free, because they will be recovering under the Federal Tort Claims Act. If the same decedent had been killed in

Alabama by someone else, the family would be taxable under the IRS ruling and would retain only about half of the proceeds after taxes. The ruling thus represents an intolerable and unjustified burden placed on the citizens of Alabama and falls most heavily on those Alabama residents who are least prepared to shoulder such a burden, the surviving family of the deceased.

Since the 1920s under section 104 or its predecessors, the Internal Revenue Code has provided gross income does not include the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness. Congress obviously recognized the inequity of adding the additional burden of taxation on persons already suffering from such injuries. Damages received under wrongful death statutes have long been recognized as included within the term "any damages received . . . on account of personal injuries" and have been uniformly excluded from gross income.

Prior to 1984, the IRS also recognized punitive damages in death actions, such as those received under Alabama's wrongful death statutes, were included within the term "any damages" and were tax exempt. As recently as 1975, the IRS reviewed the taxation of wrongful death proceeds in a state where "a series of court decisions had established that payments

made under the wrongful death act were punitive in nature." In a short and straightforward analysis, Revenue Ruling 75-45 concluded:

Section 104 of the Code is a specific statutory exclusion from gross income within the "except as otherwise provided" clause of section 61(a). Section 104(a)(2) excludes from gross income "the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness" [emphasis in original]. Therefore, under section 104(a)(2) any damages, whether compensatory or punitive, received on account of personal injuries or sickness are excludable from gross income. [Rev. Rul. 75-45].

Revenue Ruling 75-45 reaffirmed a uniform policy of long-standing, which

David M. Wooldridge, a member of the Birmingham firm of Sirote, Permutt, Friend, Friedman, Held & Apolinsky, also is an adjunct professor with the University of Alabama Schools of Law and Accounting. He received his J.D. from the University's School of Law in 1975 and his LL.M. in taxation from the New York University School of Law the next year.

has been relied upon for decades by taxpayers. The effect of this policy was to treat all wrongful death damages received by bereaved families throughout the United States as tax exempt, regardless of the formulation of any particular state's wrongful death statutes. The result was similar to the treatment accorded life insurance proceeds under section 101 of the Internal Revenue Code.

Shortly after 1975, internal IRS documents began to circulate suggesting a change of the IRS's position with respect to wrongful death damages when the damages were punitive in nature, i.e., primarily with respect to Alabama. In spite of the fact wrongful death damages serve the same economic purpose for all bereaved families, the IRS saw an opportunity to raise revenue by reversing its position.

In reaching its earlier conclusion in Revenue Ruling 75-45, the IRS had considered the punitive versus compensatory distinction in an internal memorandum, G.C.M. 35967. This memorandum concluded:

We do not think that the general rule of looking at the nature of damages and the nature of the items for which the damages are a substitute in order to determine whether damages are includable in gross income is applicable under Code §104(a) (2).

The memorandum focused on the exclusion under section 104 of "any" damages in concluding punitive damages were tax exempt.

However, by 1978, the IRS had begun to rethink its position in another memorandum, G.C.M. 37398. Here the IRS noted:

Although the conclusion reached in Rev. Rul. 75-45 is based on a plausible interpretation of the statutory language, we now believe the contrary conclusion is more appropriate. Although the word "any" is broad enough to cover punitive as well as compensatory damages we think the better view is that section 104(a) (2) does not apply to punitive damages since such damages are not received "on account of personal injuries or sickness" but rather on account of the defendant's culpability.

The IRS finally concluded in 1984 to reverse its position, after this long administrative review process. Its inter-

nal memorandum G.C.M. 39278 supporting Revenue Ruling 84-108 followed the rationale of the 1978 memorandum in concluding punitive damage awards should be taxable. However, the rationale was premised on a fact situation quite different than that presented under the wrongful death statutes of Alabama. The facts contemplated an individual who received both compensatory and punitive damages in a libel action. The compensatory damages were said to "fully, fairly and adequately compensate" the taxpayer for the injury suffered to him. On these facts, the IRS concluded there was no basis upon which to exclude the punitive damages from the income of the taxpayer in question. It is extraordinary the fact pattern of G.C.M. 39278

was used as the basis for reversing Revenue Ruling 75-45, which dealt with quite different facts.

It should be emphasized Revenue Ruling 84-108 does not cite any new authority for the change in position by IRS. Rather, it cites two cases in existence prior to the 1975 ruling, cases which were discussed in the internal memoranda supporting the 1975 ruling. The cited case of *Starrels v. Commissioner*, 304 F.2d 574 (9th Cir. 1962) did not even address the compensatory versus punitive damage issue with respect to section 104. The case considered amounts received by a taxpayer in return for her consent to the portrayal of her father, herself and other members of her family in a proposed movie. In passing, the court considered

The Alabama Bar Directory



Subscriptions Available for the ALABAMA BAR DIRECTORY

AN OFFICIAL PUBLICATION OF THE ALABAMA STATE BAR
Advance subscriptions only \$7.50 which includes postage

An official directory of the Alabama State Bar is planned for publication in late July 1985. The directory will contain alphabetical and geographical listings of attorneys with addresses and telephone numbers, plus valuable information of daily use by attorneys. A copy will be furnished without cost to each member of the bar.

Additional subscriptions for your office staff are available at an advance cost of \$7.50 per copy. A limited number of extra copies will be printed.

Any questions concerning subscriptions, content or advertising may be made to committee chairman Dorothy Norwood, P.O. Box 157, Montgomery, AL 36101, phone 261-4609.

The committee needs your support now. Please order your copies in advance.

Desk Book Committee
Alabama State Bar
P.O. Box 671
Montgomery, AL 36101

Please reserve _____
copies of the *The Alabama Bar Directory* for me. My check, in payment of \$7.50 per copy, is enclosed. Bill me.

NAME _____
ADDRESS _____
CITY _____
STATE _____ ZIP _____

NOTE TO POTENTIAL ADVERTISERS Anyone desiring to advertise in the directory should contact the committee.

whether damages for invasion of privacy could be excluded under section 104. In broad dicta, the court stated "damages paid for personal injuries are excluded from gross income because they make the taxpayer whole from a previous loss of personal rights — because, in effect, they restore a loss to capital." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), dealt with taxation of punitive damages having nothing to do with section 104 or wrongful death actions.

There can be no question Alabama's wrongful death statutes are unique in the sense that damages recoverable under them are punitive in nature, and the amount of damages relates to the culpability of the defendant. Although the statutes themselves do not expressly provide these attributes, sections 6-5-391 and 6-5-410 *Code of Alabama*, 1975, the case law of this state has consistently ruled them to be so. See *Merrell v. Alabama Power Company*, 382 So. 2d 494 (Ala. 1980).

However, although the statute's "great purpose" is "to prevent homicides," the Alabama Supreme Court has recognized "the damages, 'tis true, go to the estate of the party slain, and, in effect, are compensatory. . . ." *S. and N. Alabama Railroad Company v. Sullivan*, 59 Ala. 272 (1877). Wrongful death proceeds are not a fine, payable to the state, but are in fact damages payable to the heirs of the deceased. The widow and orphans of the decedent receive no other compensation arising from the acts of the defendant himself. As the court has recognized, the effect of such damages is compensatory in at least a general sense.

Revenue Ruling 84-108 is not a conclusive interpretation of the law. It is, in a sense, simply the published position of an adversary party, the IRS. However, the IRS's interpretations of the Internal Revenue Code are accorded special weight and status under the law. Intentional disregard of its rulings can lead to civil penalties, unless such action is based on a studied conclusion there is a reasonable basis the ruling is invalid.

The IRS's position in Revenue Ruling 84-108 presently is being challenged on at least three fronts. First, heirs directly affected by the IRS ruling in Ala-

bama have challenged the IRS's position, by disregarding the ruling and filing their returns without including the damages in income or by claiming refunds of taxes paid in compliance with the ruling. A judicial determination eventually can be expected. In an effort to achieve a quicker result, other efforts to try to have the IRS's position reversed have commenced with the treasury department and with members of congress. The bar should be alert to any opportunity to support these efforts to obtain a reversal of Revenue Ruling 84-108 and to restore Alabama to parity with respect to taxation of bereaved families.

“There can be no question Alabama’s wrongful death statutes are unique in the sense that damages recoverable under them are punitive in nature, and the amount of damages relates to the culpability of the defendant.”

The IRS ruling works an unjustified and inequitable discrimination upon the State of Alabama and its residents and represents misguided federal income tax policy. It is important to remember a bereaved family is likely to receive only such damages as may be awarded under the wrongful death statutes. This is likely to be the family's only "compensation," in a very real sense. If these proceeds are fully taxable, then the family will net as little as one-half of the gross amount of these proceeds. Recipients of wrongful death proceeds in other states and recipients under the Federal Tort Claims Act thus will be awarded amounts, after taxes, substantially in excess of the ordinary Alabama citizen. The IRS's po-

sition ignores the true compensatory nature of wrongful death proceeds and focuses too narrowly and too formalistically on the measurement of those damages. In view of the quite arguable construction of section 104, which would conclude all wrongful death proceeds are nontaxable, the IRS's discriminatory and overly legalistic conclusion is unjustified.

In reaching its conclusion, the IRS ignores the analogous tax exemption of life insurance proceeds under section 101, Internal Revenue Code. Under this section, all proceeds of life insurance received by a beneficiary are exempt from federal income taxation. This is so, regardless of whether such proceeds compensate the beneficiary for any measurable damages and without regard to the amount of those damages. In fact, it can be assumed the amount of life insurance proceeds bears no relationship to any measurable amount which the beneficiary could prove compensated him for the loss of the decedent. Certainly section 101 establishes a pattern of congressional intent when taken together with section 104, as previously construed, that results in the tax exemption of proceeds payable to beneficiaries in the event of death. Such a statutory framework is entirely justified as a matter of congressional policy and should be respected by the Internal Revenue Service in its construction of section 104 regarding wrongful death proceeds.

The IRS position implies all punitive damages are the same, and they all differ in kind from compensatory damages. It implies compensatory damages are "good," restorative receipts, and all punitive damages are windfalls deserving of taxation.

Alabama wrongful death damages are "punitive" in the sense the amount of the award is determined by the jury by measuring the culpability of the defendant. Such a measurement recognizes the futility and artificiality of measuring monetarily the value of a human life. Alabama's wrongful death damages are awarded on the basis of simple negligence, just as the "compensatory" damages of other states are awarded. They are not "additional" damages awarded over and above "just" compensation because of willful and

wanton misconduct, as are punitive damages for wrongful death in some other states. They are the only damages received due to the injuries inflicted on the decedent by the defendant.

In Alabama any tort claim of the decedent for his personal injuries (including his pain and suffering) ceases to exist upon his death. It merges into the wrongful death claim brought by his executor. Thus, damages recoverable by the decedent of a clearly compensatory nature are displaced by operation of law in Alabama by damages under the wrongful death statutes that are "punitive." Does this render the award less compensatory? Is the family now supported by these damages unjustly enriched or made more than whole by the nature of Alabama's wrongful death statutes? The author would certainly hope not.

Alabama practitioners should be cognizant of two possible means of avoiding taxation of wrongful death damages in Alabama, even if the IRS position is upheld. In each instance the basis of the taxpayer's claim is the damages were not awarded under the

wrongful death statute. First, if the taxpayer's decedent survives the death-causing injury for any length of time, the taxpayer may argue the monetary award was received primarily for the decedent's pain and suffering endured prior to death. In that event, the award would be deemed compensatory and not punitive. The recent Alabama Supreme Court decision of *Benefield v. Aquaslide 'N' Dive Corp.*, 406 So.2d 873 (Ala. 1981), makes it possible to recover for the decedent's pain and suffering when the plaintiff's claim is based in contract. Because it is unlikely there will exist an express contract between the decedent and the tortfeasor, the plaintiff will have to proceed in most instances under a theory of implied

contract. The addition of such a theory to complaints and demand letters would be appropriate to preserve the argument for tax purposes that a particular award is received for the decedent's pain and suffering. Second, although the law is reasonably well-developed in Alabama, a taxpayer also might argue under extraordinary circumstances there exists a common law action for wrongful death. The taxpayer could argue, under the common law, awards for wrongful death are compensatory and therefore excluded under Section 104(a)(2) of the Tax Code. See *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970); *Gaudette v. Webb*, 362 Mass. 60, 284 N.E. 2d 222, (1972). □

ATTORNEY COLLECTION System:

Uses IBM System 36 or IBM Datamaster, sends 3 different collection letters. Files small claims, circuit, district court suits, multiple suits and bankruptcy. Total fees interest and more. We tailor to suit your needs. Inexpensive and easy to operate. Contact Beth Smitherman at Smith, Burton and Associates, 1800 Hackberry Lane, Suite A, Tuscaloosa, AL 35401. (205) 752-1325.

 **SMITH,
BURTON
& ASSOCIATES, INC.**
1800 HACKBERRY LANE, SUITE
TUSCALOOSA, ALABAMA 35401 A

AT MVT WE DO ONLY ONE THING— AND WE DO IT WELL.

At Mississippi Valley Title we admit we're singleminded. That's because the only thing we deal in is title insurance. And since that's the only kind of insurance we sell, we're the best in the south at meeting your title insurance needs.

In fact, we're the industry leader in title insurance. We've got a staff of professionals with years of experience and are fully computerized to serve you fast and efficiently.

Come to Mississippi Valley Title. Even though we only do one thing—we do it better than anyone else.

Mississippi Valley Title Insurance Company



Home office:
Jackson, MS 39205



Wholly owned subsidiary of Title Insurance Company of Minnesota.

Recent Decisions

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

Recent Decisions of the Supreme Court of Alabama—Civil

Contracts . . .

exculpatory clauses affecting the public interest are invalid

Morgan v. South Central Bell Tel. Co., 19 ABR 964 (February 22, 1985). Morgan, a Yellow Pages subscriber, sued South Central Bell claiming negligence, fraud and breach of contract because South Central Bell omitted Morgan's name from a Yellow Pages' advertisement. The advertising order contained an exculpatory clause which limited its liability for errors to the "amount of charges for the advertisement which was omitted." The trial court held the exculpatory clause was valid and enforceable. The supreme court disagreed and held the clause affected the public interest and was invalid. The supreme court quoted six criteria to use to determine the type of agreement in which an exculpatory clause is invalid as contrary to public policy. The criteria are:

"(1) It concerns a business of a type generally thought suitable for public regulation. (2) The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some member of the public. (3) The party holds himself out as willing to perform this service for any member of the public who seeks it or at least any member coming within certain established standards. (4) As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation pos-

sesses a decisive advantage of bargaining strength against any member of the public who seeks his services. (5) In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract or exculpation and makes no provision whereby a purchaser may pay additional fees and obtain protection against negligence. (6) Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents."

Evidence . . .

motion *in limine* discussed

Liberty National Life Ins. Co. v. Beasley, 19 ABR 1073 (March 1, 1985). In this case, the supreme court discussed the motion *in limine* and its application to proffered evidence. The court stated an appellant who suffers an adverse ruling on a motion made *in limine* preserves this adverse ruling for

post-judgment and appellate review *only* if he objects to the introduction of the proffered evidence and assigns specific grounds therefor at the time of trial, unless he has obtained express acquiescence of the trial judge that subsequent objection to evidence proffered at trial and the assignment of grounds therefor are not necessary. The office of a motion *in limine* is not to obtain a final ruling upon the ultimate admissibility of evidence, but rather it is to prevent the proponent from displaying potentially prejudicial matter to the jury before the trial judge has ruled upon its admissibility in the context of the trial itself.

Insurance . . .

automobile undergoing maintenance is not in "dead storage"

Broadway v. Great American Ins. Co., Inc., 19 ABR 918 (March 1, 1985).



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



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

In a case of first impression in Alabama, the supreme court held an automobile temporarily put away for the purpose of undergoing maintenance cannot be considered in "dead storage." Consequently, the vehicle is still a "motor vehicle" as defined in the homeowner's policy, and any injury arising out of the "ownership, maintenance, use, loading or unloading" is excluded from coverage. The policy also provided a vehicle in "dead storage is not a motor vehicle."

The insured vehicle had been stored in the insured's shed for over three months without being driven. However, when the accident occurred, the insured had just removed its engine and was attempting to prime the carburetor to start the engine when it backfired and injured a bystander. Relying on Florida authorities, the supreme court reasoned the term "maintenance" utilized in the liability exclusion and the term "dead storage" utilized in the definition of a motor vehicle are mutually exclusive. In other words, a motor vehicle in "dead storage" is one which is not undergoing "maintenance." The supreme court also stated the accident occurred as the result of maintenance even though the injury occurred while the insured was attempting to start the engine and no work was being performed on the engine when the injury occurred.

Insurance . . .

homeowners, replacement value versus actual cash value

State Farm Fire and Cas. Co., Inc. v. Ponder, 19 ABR 899 (February 15, 1985). State Farm issued a homeowners policy covering a dwelling and obligating it to pay the lessor of two amounts: either the cost of repair or replacement or the actual cash value of the damage. The policy also provided in paragraph 3c(3) the insured could disregard the replacement cost, make claim on the actual cash value basis and then within 180 days after loss make claim for an additional loss on a replacement cost basis. State Farm maintained once the insured elects to rebuild he is "locked into a replace-

ment cost basis" and loses the option under paragraph 3c(3). The insured and the supreme court disagreed.

After the loss, the insured and State Farm obtained estimates on a cost of replacement basis. State Farm's estimate was \$58,444.84, and State Farm paid the insured this amount. The insured actually began repair work himself and estimated it would cost \$45,000 to replace the dwelling. The jury returned a verdict in favor of the insured for an additional \$25,000. The supreme court noted replacement cost is a relatively new addition to homeowners policies. If the house is destroyed, the insured has the option to rebuild it, within the limits of coverage, even though the cost may exceed the actual cash value of the dwelling. The policy does not require the insured to forfeit the actual cash value coverage if he elects the optional replacement costs.

Municipal corporations . . . section 11-47-192 statement is not required in contract actions

Sumlin Construction Co., Inc. v. City of Prichard, 19 ABR 779 (February 8,

1985). In 1980, the City sued Sumlin for breach of contract. In 1982, Sumlin filed a counterclaim alleging breach of the same contract. On motion of the City, the trial court dismissed the counterclaim for failure to file a claim with the City as required by Section 11-47-23, *Code of Ala.* 1975. The City argued neither a statement of claim nor a complaint was filed within the two-year period.

The supreme court disagreed, noting first the counterclaim relates back to the time the original plaintiff's claim arose under Rule 13(c), ARCP, in that the City filed suit within the two-year period. The counterclaim is timely. The supreme court also noted this court has stated a complaint may serve as a claim for payment in tort action, Section 11-47-23. Moreover, since Section 11-47-192, *Code of Ala.* 1975, does not apply to contract actions, the practice of allowing a complaint to serve as a statement of claim in such cases is even more reasonable.

Title insurance . . . duties of a title insurance company outlined

Upton v. Mississippi Valley Title Ins.

TURN YOUR REAL ESTATE PRACTICE INTO A \$PROFITS\$ CENTER WITH THE LANDTECH 86 REAL ESTATE CLOSING SYSTEM*

(COMPUTER SOFTWARE FOR USE BY ATTORNEYS)

- ★ PREPARES ALL CLOSING DOCUMENTS
- ★ HANDLES ALL TYPES OF CLOSINGS
- ★ CALCULATES APRR AND AMORTIZATION SCHEDULE AUTOMATICALLY (EVEN ARM AND GPARM LOANS)
- ★ PRINTS ALL DISBURSEMENT CHECKS



*RUNS ON MOST POPULAR MICROCOMPUTERS

CONTACT: RICHARD GOEPEL
BIRMINGHAM: 870-0748
MONTGOMERY: 264-6202
AUBURN: 821-0999

— EXCELLENCE BY DESIGN —

Co., 19 ABR 984 (February 22, 1985). Upton sued Mississippi Valley alleging breach of contract and negligence because Mississippi failed to search circuit court records to discover an unrecorded and undisclosed easement. Mississippi Valley issued a title policy to Upton and contended the policy excluded from coverage any "easement not shown by the public records." The term "public records" is defined in the policy as "those records which by law impart constructive notice of matters relating to said land." Mississippi Valley, therefore, contended the policy obligated it to search *only* the records of the probate court because those are the only public records which by law impart constructive notice of easements. Mississippi Valley also contended a title insurer has no common law duty to search the records of circuit clerks and registers.

The supreme court agreed, stating the only law they could find which declared certain records shall impart constructive notice of matters relating to land are Sections 35-4-51 and 63, *Code of Ala.* 1975. These sections refer *only* to the probate court. The supreme court also found no authority in Alabama imposing a common law duty on title insurance companies to search circuit court records. The supreme court has stated title insurance companies in Alabama are not required by law to maintain tract indexes in a county in which it does business.

Recent Decisions of the Supreme Court of Alabama—Criminal

The legal standard in circumstantial evidence cases

Ex parte Calvin Lynn Williams v. State, 19 ABR 874 (February 15, 1985). Williams was indicted on charges of burglary in the third degree and theft in the second degree. A jury trial resulted in his being found guilty of both charges, and the court of criminal appeals affirmed. The supreme court reversed, holding the state's evidence did not meet the legal standard in circumstantial evidence cases.

Justice Beatty, writing for a unanimous court, held a person charged with a felony could not be convicted on circumstantial evidence unless the evidence excludes to a moral certainty every other reasonable hypothesis but that of the guilt of the accused. No matter how strong the circumstances, if they can be reconciled with the theory some other person may have done the act, then the defendant is not shown to be guilty by that full measure of proof which the law requires in circumstantial evidence cases.

Juvenile proceedings . . . more is required than *Miranda*

Darrell D. Whisenant, 19 ABR 654 (January 25, 1985). The supreme court held in Whisenant that prior to the state's admission of a juvenile's confession, either at trial or at a transfer hearing, the state must prove compliance with ARJP 11(A) (4), which provides:

"(A) When the child is taken into custody, he must be informed of the following rights by the person taking him into custody:

- (1) he has the right to counsel;
- (2) if he is unable to pay a lawyer and if his parents or guardian have not provided a lawyer, one can be provided at no charge;
- (3) he is not required to say anything, and anything he says may be used against him; and
- (4) if his counsel, parent or guardian is not present, he has a right to communicate with them, and, if necessary, reasonable means will be provided for him to do so."

In this case, Whisenant was not advised he had a right to communicate with his parent or guardian as required by the juvenile rules. Accordingly, his statement was inadmissible.

Trafficking in marijuana . . . lesser included offense

Kerr v. State of Alabama, 19 ABR 1142 (March 8, 1985). The supreme court in a *per curiam* opinion granted the defendant's request to review the court of criminal appeals' affirmance of his conviction for violating §20-2-80

(trafficking in marijuana). The supreme court's grant of certiorari was based upon the defendant's claim the trial court erred in refusing his requested jury instructions on lesser included offenses. A divided supreme court reversed and remanded.

In *Kerr*, the evidence at trial would support a finding of either §20-2-70 or §20-2-80 (trafficking). The fact the indictment was returned under §20-2-80 (trafficking) and the further fact the evidence was sufficient to support a guilty verdict pursuant to that higher offense do not preclude the giving of a lesser included offense charge.

In reversing, the supreme court reaffirmed its ruling in *Fulghum v. State*, 291 Ala. 71, 277 So.2d 886 (1973), where in the court held:

"A defendant who is accused of the greater offense is entitled to have the court charge on the lesser offenses included in the indictment *if there is any reasonable theory from the evidence which would support the position.*" (Emphasis ours.)

Coercion of a verdict . . . the danger of a modified *Allen* charge

Ex parte Betty Morris v. State of Alabama, 19 ABR 615 (January 11, 1985). Betty Morris was indicted, in separate indictments, on several charges of embezzlement. After a trial on the first indictment, she was acquitted. Following a jury trial on the second indictment, she was found guilty. That judgment was affirmed by the court of criminal appeals which found, specifically, the trial court had not coerced a verdict from the jury.

After deliberating approximately four hours, the jury asked to meet with the court, and the following transpired:

"THE COURT: Ladies and gentlemen, I have got a note saying that you can't agree. I want to say this to you and I don't want to come across in the wrong way, but you need to get down to business in this thing because I'm not about to declare a mistrial in this case today.

A JUROR: Judge Key, I'm the holdup and if I have to stay down here until 5:00 o'clock, I'll have to tell a lie . . .

THE COURT: We are not talking

about 5:00 o'clock this afternoon. I mean 5:00 o'clock Friday afternoon. Because I mean business about this thing."

Under Alabama law, a trial judge may urge a jury to resume deliberations and cultivate a spirit of harmony so as to reach a verdict as long as the court does not suggest which way the verdict should be returned and no duress or coercion is used. In *Morris*, the trial judge's knowledge of the serious misgivings of one of the jurors in acquiescing in the guilty verdict, coupled with the judge's expressed determination to get a unanimous verdict from the 12 jurors, made his final words of "encouragement" coercive.

Justice Jones, writing for the majority, held when examined in the full context of the judge's instructions to the jury, the cumulative effect of his admonitions to the jury were, indeed, coercive and went beyond the "spirit of harmony" sought to be accomplished by the giving of an acceptable *Allen* charge. For that reason, it was error for the trial judge to deny the defendant's motion for mistrial.

Recent Decisions of the Supreme Court of the United States

Due process requires an indigent defendant be furnished with state-provided psychiatric evaluation

Ake v. Oklahoma, No. 83-5424; 53 U.S.L.W. 4179 (February 26, 1985). Ake, an indigent, was charged with first-degree murder and rape. At his arraignment, in an Oklahoma trial court, his behavior was so bizarre the trial judge, *sua sponte*, ordered him to be examined by a psychiatrist. Shortly thereafter, the examining psychiatrist found the defendant to be incompetent to stand trial and suggested he be committed. After commitment for six weeks to the state mental hospital, the defendant was found to be competent on the condition he continued to be sedated with an anti-psychotic drug.

During a pretrial conference, the defendant's attorney advised the court he would raise insanity as a defense

and requested a psychiatric evaluation at state expense to determine the defendant's mental state at the time of the offense, claiming the defendant was entitled to such an evaluation by the Constitution.

The trial court denied the defendant's motion for a psychiatric evaluation. At trial, the jury rejected the insanity defense, and the defendant was convicted on all counts. At the sentencing phase, the state asked for the death penalty on the murder counts, relying on the examining psychiatrist's testimony to establish the likelihood of the defendant's future dangerous behavior. The defendant had no expert witness to rebut his testimony or to give evidence in mitigation of his punishment, and he was sentenced to death. The Oklahoma Appellate Courts affirmed.

The supreme court, speaking through

Justice Marshall, held an indigent state defendant who makes a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, is entitled under the Fourteenth Amendment's Due Process Clause, to a state-provided psychiatrist to examine him and assist in evaluation, preparation and presentation of his defense. The court added the defendant is entitled to similar psychiatric assistance for the sentencing phase of a capital case if the state introduces psychiatric evidence as to the defendant's future danger to society.

Because the case involved a man's sentence to death, the supreme court could have resolved the matter, as many expected, by saying due process requires access to a psychiatrist because "death cases are different." What is significant about the *Ake* decision is the supreme court's holding appears to

WE WANT YOU TO JOIN OUR SPEAKERS BUREAU!

The Committee on Lawyer Public Relations, Information and Media Relations is instituting a statewide speaker's bureau to provide speakers for civic organizations, schools, churches and other interested groups. The committee will compile a list of all lawyers in the state who are interested in serving on the speaker's bureau and will endeavor to provide speakers from the same community or general area from which a request for a speaker is received. All requests will be handled through the Alabama State Bar Headquarters. If you are interested in serving as a member of the speaker's bureau please fill out the following form and return it to the Alabama State Bar, P.O. Box 4156, Montgomery, Alabama 36101.



SPEAKER'S BUREAU APPLICATION

Name _____

Firm Name (if applicable) _____

Address _____

City _____ State _____ Zip _____

Telephone _____

Please list subjects on which you are willing to speak:

1) _____

2) _____

3) _____

sweep beyond capital cases; the nine pages in which Justice Marshall recites the court's holdings and its legal underpinnings do not, even once, mention the words "capital punishment." Instead Justice Marshall went to *Gideon v. Wainwright*, 372 U.S. 335, and the cases following it and distilled a general principle "a criminal trial is fundamentally unfair if the state proceeds against an individual defendant without making certain he has access to the raw materials integral to the building of an effective defense." That language eventually may prove to cover far more than psychiatrists.

The Fourth Amendment and student searches

New Jersey v. T.L.O., No. 83-712; 53 U.S.L.W. 1109 (January 15, 1985). A teacher at Piscataway High School in New Jersey observed Terry Lee Owens (the "T.L.O.") and another girl smoking cigarettes in the girls' restroom March 7, 1980. School rules prohibited smoking in the restroom.

The students were taken before the

assistant principal. The students denied they had been smoking. Based upon the observations of the teacher, the vice principal ordered Owens to give him her purse. He dumped the contents onto a desk and found a metal pipe, empty plastic bags, a plastic bag with marijuana in it and an index card reading "people who owe me money," followed by a list of names and \$40 cash.

Justice White, writing for a five-member majority, indicated the Fourth Amendment applied to public school officials and the "*en loco parentis*" doctrine does not alter the application of the Fourth Amendment. However, the supreme court concluded a search warrant or even probable cause is not required for a school search. Weighing the students' legitimate private privacy interest against the substantial interest of teachers and administrators in maintaining discipline, Justice White concluded the "legality of a search of a student should depend simply upon the reasonableness under all the circumstances of the search."

Hence, the Fourth Amendment's prohibition against unreasonable searches and seizures as applied to searches of students by a public school official requires only the "search be reasonable under all the circumstances."

The extension of *Ross*

U.S. v. Johns, No. 83-1625; 53 U.S.L.W. 4126 (January 21, 1985). Under *United States v. Ross*, 456 U.S. 798 (1982), law enforcement officials who have probable cause to search a law-

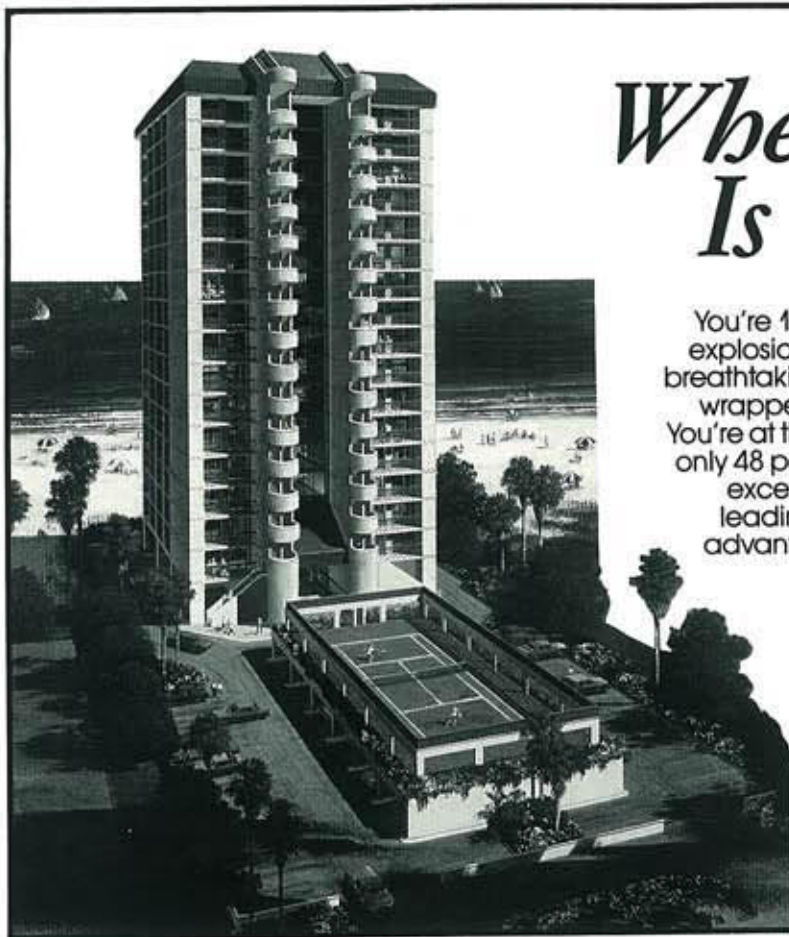
**POLYGRAPH
EXAMINATIONS**
FOR ATTORNEYS, JUDGES, AND
GOVERNMENTAL AGENCIES

GARY D. COOPER
B.S., M.S., A.C.P.

**FIDELITY POLYGRAPH
CONSULTANTS**

2216 10TH COURT SOUTH
BIRMINGHAM, AL 35205

322-3069



Where The World Is Your Oyster

You're 18 stories up in the sky. You can see for miles. An explosion of colors intermingle daily to create the most breathtaking sunrises and sunsets on earth. Evenings are wrapped in gentle breezes and bathed in moonlight. You're at the Grand Marquis. An exclusive community of only 48 perfectly-constructed units, Grand Marquis is an excellent investment superior to similar properties in leading resorts like Destin, with tax and depreciation advantages if you buy in 1985. For brochure detailing Grand Marquis' many amenities, call collect (205) 948-7263 or write Box 346, Gulf Shores, AL 36542.

The Grand Marquis

CLE opportunities

may

9-10

WORKER'S COMPENSATION
Municipal Auditorium, Mobile
Sponsored by: Alabama Department of
Industrial Relations
Credits: 11.1 Cost: \$75
For Information: (205) 261-2868

INSTITUTE ON WILLS AND PROBATE
The Registry, Dallas
Sponsored by: Southwestern Legal
Foundation
Credits: 32.1 Cost: \$595
For Information: (214) 690-2377

9-11

TAX SEMINAR
Grand Hotel, Point Clear
Sponsored by: Alabama Bar Institute for CLE
For Information: (205) 348-6230

9-19

**SOUTHEAST REGIONAL TRIAL
ADVOCACY INSTITUTE**
UNC School of Law, Chapel Hill
Sponsored by: National Institute for
Trial Advocacy
Credits: 84.5 Cost: \$1250
For Information: (612) 644-0323

13-17

LABOR LAW AND LABOR ARBITRATION
The Registry, Dallas
Sponsored by: Southwestern Legal
Foundation
Credits: 32.1 Cost: \$595
For Information: (214) 690-2377

16-17

CRIMINAL TRIAL ADVOCACY
Houston
Sponsored by: Association of Trial Lawyers
of America
For Information: 1-800-424-2727

17 friday

SEMINAR ON THE GULF
Sandestin, Destin
Sponsored by: Alabama State Bar Young
Lawyers' Section and
Alabama Bar Institute
for CLE
For Information: (205) 348-6230

23-24

CONSTRUCTION CONTRACTS
The Warwick Post Oak, Houston
Sponsored by: Practising Law Institute
Credits: 13.2 Cost: \$390
For Information: (212) 765-5700



24 friday

OIL, GAS AND MINERAL LAW
Law Center, Tuscaloosa
Sponsored by: Alabama Bar Institute for CLE
For Information: (205) 348-6230

may 30-june 1

APPELLATE ADVOCACY
Hyatt Cambridge, Boston
Sponsored by: American Bar Association
Credits: 18.9 Cost: \$475/members;
\$500/nonmembers
For Information: (312) 988-6215

june

2-7

BASIC COURSE IN TRIAL ADVOCACY
Washington, D.C.
Sponsored by: Association of Trial Lawyers
of America
Credits: 45.9
For Information: 1-800-424-2725

9-14

**FAMILY LAW AND DOMESTIC
RELATIONS ISSUES**
Judicial College Building, Reno
Sponsored by: National College of
Juvenile Justice
Credits: 25.8 Cost: \$225
For Information: (702) 784-6012

10-14

ADVANCED BUSINESS TAX PLANNING
Villanova University School of Law, Villanova
Sponsored by: ALI-ABA
Credits: 33.8 Cost: \$550
For Information: (215) 243-1600

13-14

TRIAL TACTICS
The Westin, Toronto
Sponsored by: Defense Research Institute,
Inc.
For Information: (312) 944-0575



17-21

SUMMER PROGRAM FOR LAWYERS I

Estate Taxation and Planning:
Fundamentals
Antitrust: Recent Developments and
Trends
Real Property Secured Transactions
Economics for Lawyers
Recent Developments in Administrative
Law
Negotiations: Theory and Practice
Legal Research Update
Boalt Hall, Berkeley
Sponsored by: University of California
School of Law
For credits and information: (415) 642-5880

19-21

FEDERAL TAXATION

Hyatt, Birmingham
Sponsored by: American Institute on
Federal Taxation
Credits: 20.0 Cost: \$300
For Information: (205) 251-1000

20 thursday

THE SECURED CREDITOR IN COURT

The Westin St. Francis, San Francisco
Sponsored by: Practising Law Institute
Credits: 6.6 Cost: \$185
For Information: (212) 765-5700

21 friday

TAX CONSIDERATIONS IN REAL ESTATE TRANSACTIONS

Montgomery
Sponsored by: National Business Institute, Inc.
Credits: 7.4 Cost: \$96
For Information: (715) 835-8525

21-22

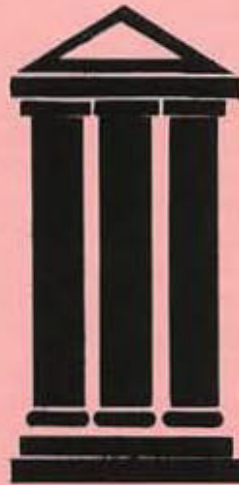
ADMIRALTY LAW

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

24-28

ENVIRONMENTAL LITIGATION

University of Colorado, Boulder
Sponsored by: ALI-ABA
Credits: 36.6 Cost: \$550
For Information: (215) 243-1600



SUMMER PROGRAM FOR LAWYERS II

Estate Taxation and Planning: Advanced
Antitrust: Recent Developments and
Trends
Real Property Secured Transactions
Economics for Lawyers
Constitutional Law: Recent Developments
Estate Planning Workshop
Legal Research Update
Boalt Hall, Berkeley
Sponsored by: University of California
School of Law
For credits and information: (415) 642-5880



ADVANCED LABOR AND EMPLOYMENT LAW

Stanford University School of Law, Palo Alto
Sponsored by: ALI-ABA
Credits: 34.8 Cost: \$550
For Information: (215) 243-1600

july

4-11

ANNUAL MEETING

Sheraton, Washington, D.C.
Sponsored by: American Bar Association
(312) 988-5000

25 thursday

UPDATE '85

VonBraun Civic Center, Huntsville
Sponsored by: Alabama State Bar Young
Lawyers' Section
Credits: 6.0 Cost: Included in convention
registration fee
For Information: (205) 269-1515

26 friday

SECTION MEETINGS

VonBraun Civic Center, Huntsville
Sponsored by: Alabama State Bar Sections
Credits: 1.5 each Cost: Included in
convention registration fee
For Information: (205) 269-1515

fully stopped automobile may conduct a warrantless search of any containers found inside concealing the object of the search. Now, the United States Supreme Court rules, seven to two, *Ross* authorizes a warrantless search of packages several days after they were removed from trucks federal agents had probable cause to believe contained marijuana. In *Johns*, the warrantless search of the packages was conducted three days after they were taken from vehicles by government agents and stored in a government warehouse. Justice O'Connor, writing for the majority, declares neither *Ross*, nor any other case, establishes any requirement a vehicle search occur "immediately" as part of the vehicle inspection or "soon thereafter." The court critically noted a requirement of contemporaneity was specifically rejected in *Texas v. White*, 423 U.S. 67 (1975) and in *Chambers v. Maroney*, 399 U.S. 42 (1970).

When does the rule in *Edwards* apply?

Shea v. Louisiana, No. 82-5920; 53 U.S.L.W. 4173 (February 20, 1975). In *Edwards v. Arizona*, 451 U.S. 477 (1981), the supreme court ruled a criminal defendant's rights under the Fifth and Fourteenth Amendments were violated by the use of his confession obtained by police-instigated interrogation — without counsel present, after he requested an attorney. The *Shea* case presented the issue of whether the ruling in *Edwards* is applicable to a case pending on direct appeal in the state courts at the time *Edwards* was decided. Justice Blackmon delivered the opinion of the court which held the rule established in *Edwards v. Arizona*, *supra*, applies to cases pending on direct appeal at the time *Edwards* was decided.

Investigative detention

United States v. Sharpe, No. 83-529; 53 U.S.L.W. 4346 (March 20, 1985). In a far-reaching decision, the supreme court rejected the contention a twenty-minute stop was unreasonable when the police acted diligently, and the accused's actions contributed to the added delay about which he complained.

A DEA agent, while patrolling a highway in an area under surveillance

for suspected drug trafficking, noticed an apparently overloaded pickup truck with an attached camper traveling in tandem with a Pontiac. The defendant, Savage, was driving the truck and the defendant, Sharpe, was driving the Pontiac. After following the two vehicles for about 20 miles, the agent decided to make an "investigative stop" and radioed the South Carolina Highway Patrol for assistance. When they attempted to stop the two vehicles, the Pontiac pulled over to the side of the road, but the truck continued on, pursued by the highway patrol. After identifying himself as a DEA agent and obtaining identification from Sharpe, the DEA agent was unable to contact the state officer to see if he had stopped the Pontiac so he radioed the local police for help. In the meantime, the highway patrol had stopped the truck, questioned Savage and told him he would be held until the DEA agent arrived. The agent, who had left the local police with the Pontiac, arrived at the scene approximately 15 minutes after the truck had been stopped. The officers confirmed their suspicion the truck was overloaded and smelled of marijuana. The officers opened the rear of the camper without Savage's permission and observed a number of burlap-wrapped bales resembling bales of marijuana. The agent then placed Savage under arrest and returned to the Pontiac and also arrested Sharpe.

In evaluating the reasonableness of an investigative stop, the supreme court used a *Terry v. Ohio*, 392 U.S. 1, 20, approach to examine "whether the officer's actions were justified at its inception and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Chief Justice Burger, who delivered the opinion of the court, held in assessing whether detention is too

long in duration to be justified as an investigative stop, it is appropriate to examine whether the police diligently pursued a means of investigation likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. Here, the DEA agent diligently pursued his investigation, and clearly no delay, unnecessary to the investigation, was involved. □

Executive Director's Report

(continued from page 113)

upon our insurance committee's recent evaluation of the bar's former endorsed carrier's experience in Alabama. One claim has been paid for \$1,000,000 with legal expenses totalling another \$160,000, while \$40,000 in post-judgment interest remains at issue. Twenty-six other claims have been paid, and total premium dollars for the year were approximately \$1,360,000. This is only one carrier's experience. Real estate matters and missed statutes of limitations are problem areas.

Convention Registrations We recently concluded the pre-registration process for the midyear conference and will be entering the annual meeting registration period shortly after you read this. *Please register early!* This enables us to make more adequate meeting arrangements, including adequate food and beverages, meeting space and printed materials.

Hotel reservations must be made by way of your convention registration form. If you wait until the week before the Huntsville meeting, July 25-27, 1985, you will not have accommodations at the Huntsville Hilton and probably will not be able to get a ticket for Saturday afternoon's visit to the Jack Daniel Distillery in Lynchburg, Tennessee. We always have followed a liberal cancellation, with full refund, policy. Please do not wait.

Final Procrastination I resolve to meet my column deadline for the July issue as this is being written on my very last day for submission for the May issue. I plead guilty, too. □

— Reginald T. Hamner

NOTICE

ALL ADS AND ARTICLES
FOR THE
JULY ISSUE
OF THE ALABAMA LAWYER
MUST BE SUBMITTED BY
MAY 31, 1985

Committees Continue Pursuit of Excellence

Midyear meeting

"Our cause transcends self-interest." Judge Simon Rifkin's recent comment on lawyer professionalism seemed especially valid as 36 committees and task forces met President Byars' charge that progress reports be given during the 1985 midyear meeting of the bar. Members interested in learning the range of activities constituting the bar's "pursuit of excellence" may receive a booklet of the reports by writing to Diane Weldon, Committee Secretary, Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101 or by calling (205) 269-1515.

Governance hearing held

In a hearing open to all Alabama attorneys, members of large and small local bar associations, other interested bar members and several bar commissioners met with the **Committee on Governance of the Alabama State Bar** during the midyear meeting. Issues considered were the structure of the Board of Commissioners of the Alabama State Bar and methods of nominating and voting for president-elect.

The Birmingham Bar's delegation, led by president J. Mason Davis, presented a resolution calling for "proportionate representation of the attorneys practicing in Jefferson County and other urban areas to more realistically reflect the proportion of those attorneys to the total number of attorneys practicing in the state." This sentiment was echoed by several Mobile, Montgomery and Tuscaloosa attorneys present. Currently, each judicial circuit elects one representative to the board.

Addressing concerns of young lawyers, a representative of the Birmingham Bar Young Lawyers' Section stated 800 members (44%) of the Birmingham Bar Association are 35 years of age or younger and should be represented on the board.

A young lawyer from Montgomery stated being out of the office and in-

curing hotel, travel and other costs, in addition to paying the required registration fee, in order to vote for president-elect is especially difficult if not impossible for many young attorneys struggling in today's economy.

Another attorney likened the registration fee to a poll tax and the travel requirements to obstacles historically placed before blacks in their efforts to vote. It was pointed out membership in the Alabama State Bar is mandatory, yet voting to elect its leader is limited to those who are able to attend the annual meeting.

A sampling of midyear reports

Computerization of bar records and the operation of bar headquarters is the primary goal set by the **Committee on Programs, Priorities and Long-Range Planning**. "Effective long-range planning commences with ready access to a database," according to chairman Harold Speake. The committee is preparing recommendations on types of equipment needed and available, plus whether to lease or purchase it.

"The recent focus of the **Indigent Defense Committee** has been on implementation of a program to recruit volunteer counsel to represent indigent capital defendants," reported chairman Dennis Balske. Douglas Arant is chairing a recruitment committee, and private funding for training of volunteers is being sought. An advisory board of criminal defense lawyers with expertise in this area will be established. According to Balske, "We must move quickly, because there are a number of inmates on Alabama's death row who do not have counsel."

"Liberty and Justice for All" was the theme for **Law Day**, May 1, 1985. The state bar committee reported its decision to act as a support and resource service for local Law Day chairmen, encouraging each local bar president to appoint such a person and providing resource materials for publicity and

activities focused on the theme. Said chairman Carol Wolfe, "Most of the committee members have been active in Law Day planning and activities in the past and therefore could offer personal suggestions and ideas for local bar activities." Each local chairman received pre-recorded public service announcements, camera-ready advertisements and a catalog of other Law Day materials available from the American Bar Association.

The **Unauthorized Practice of Law Committee** reported handling 43 cases since its appointment July 1984. Dale Marsh, chairman, stated 12 instances of unauthorized practice had been resolved without formal legal action, where the offending party had performed an isolated act and there was no evidence of repetition. Two formal *quo warranto* suits are pending, and four matters have been turned over to district attorneys. In three instances, the committee found no evidence of unauthorized practice; three cases require further investigation. □

MLP

Book Review

(continued from page 114)

loosa attorney and former secretary of the board of trustees of the University of Alabama, has written a preface to the *Reminiscences* relating some previously unknown material about Porter's years with the University of Alabama. Porter served for 16 years as land commissioner of the university, for a period as the university attorney and twice as a member of its board of trustees. It was through Porter's careful legislative affiliations the University of Alabama, even today, receives funds from Alabama state banks. This work, published through arrangements with Portals Press, is available from the editor through "Instant Heirloom Books," 1616 Second Avenue, Tuscaloosa, Alabama, 35401 for \$17.50, including postage and handling.



1 Even though the weather was dreary and rainy, the program for the "kick-off" of the 1985 Midyear Conference promised to be enlightening and entertaining.



2 Alabama State Bar President Walter R. Byars hosted the second local bar leaders conference of his administration. Fifteen presidents took advantage of the opportunity to let the state bar hear their views on a number of issues.

1985 Midyear Conference Highlights



3 President Byars and Montgomery Mayor Emory Folmar (far right) greeted U.S. Secretary of Defense Caspar Weinberger, just prior to Friday's luncheon.



4 At the head table for Friday's luncheon were, left to right, Midyear Meeting Chairman William I. Hill; Congressman William C. Nichols; State Bar Vice-president Joe C. Cassidy; Congressman William L. Dickinson; State Bar President Walter R. Byars; U.S. Secretary of Defense Caspar W. Weinberger; Chief Justice C. C. Torbert, Jr.; Lt. Gen. Thomas C. Richards, Commander, Air University, Maxwell AFB; State Bar President-elect James L. North; U.S. Senator Jeremiah Denton; Montgomery Mayor Emory Folmar; and State Bar Commissioner (15th circuit) John B. Scott, Jr.



5 The secretary of defense received a copy of the book *Alabama* from President Byars, as a token of the bar's appreciation.



6 Approximately 250 Alabama lawyers participated in Friday afternoon's seminar on the defense of DUI cases led by John T. Kirk of Montgomery and Charlie D. Waldrep of Birmingham.



7 Later, a panel of distinguished judges and lawyers gave an update on discovery in state and federal courts. Pictured, left to right, are attorney Champ Lyons, Jr.; Supreme Court Justice Janie L. Shores; attorney Louis E. Braswell; seminar organizer Terry K. Childers; attorney Thomas S. Lawson, Jr.; Montgomery Circuit Judge William R. Gordon; and U.S. District Judge Truman Hobbs. *Materials from Friday's seminar can be purchased from the Alabama State Bar.*



8 Early risers William I. Hill, midyear meeting chairman, and Clarence L. McDorman chatted . . .



9 . . . as others helped themselves to a hearty buffet breakfast Saturday morning.



10 Reporting on activities of the Indigent Defense Committee was its chairman, Dennis Balske, of Montgomery. Almost 30 midyear reports were given Saturday.



11 U.S. Court of Appeals (11th circuit) Chief Judge John C. Godbold gave an entertaining introduction of Saturday's luncheon speaker, Judge Patrick E. Higginbotham, fifth circuit, U.S. Court of Appeals.



12 Saturday's luncheon speaker, Judge Higginbotham, is a native of Alabama, received both his undergraduate and law degrees from the University of Alabama and is a member of the Alabama State Bar.

Review of Uninsured and Underinsured Motorist Law in Alabama

by
James W. Garrett, Jr., and
F. Chadwick Morris

With the development of the automobile as a necessary element in modern society, there came the unavoidable consequence of injury. The injuries often would be to innocent parties left with the difficult task of recovering from the wrongdoer. If the responsible party financially was unable to compensate for the injuries, the victim often would bear the burden of the loss. This problem of assuring compensation to traffic accident victims triggered several statutory compensation systems eventually evolving into the present day uninsured motorist statutes. 45 *Couch on Insurance 2d*, 620 (1981)

The first financial responsibility law was passed by the state of Connecticut in 1925. This statute, and others like it, forced motorists to produce evidence of financial responsibility after an accident occurred. The statutes also required a satisfaction of any future judgment which was a result of the automobile injury. Long, *The Law of Liability Insurance*, 24.01. The pitfalls of this legislation readily became apparent. The determination of financial responsibility occurred after the acci-

dent, and there was no assurance to the innocent victim he would be compensated. The only advantage resulting from the statutes was the requirement if the responsible party was able financially to satisfy a judgment, that judgment would be satisfied.

The problems with these initial statutes resulted in the passing of the first compulsory motor vehicle liability insurance legislation. These statutes required proof of financial responsibility or liability insurance before a motor vehicle could be registered. This solved the problems of the earlier financial responsibility laws, but still did not assure recovery for innocent victims. *The Law of Liability Insurance*, supra. §24.02; Keaton, *Insurance Law*, §8.6(e) (1976). The injured party still would be unable to recover for his injuries if the accident occurred with an unregistered car or if the financial position of the owner changed subsequent to registration.

In order to meet these new problems, many states developed unsatisfied judgment funds. These funds were an attempt to provide limited payment to accident victims who could not collect

on unsatisfied judgments. By 1954, several insurance companies were offering unsatisfied judgment endorsements. The endorsements required proof the judgment was uncollectible and usually excluded default judgments. These endorsements were a faltering step toward providing some compensation to the innocent highway victim.

These financial responsibilities and compulsory insurance laws are common throughout the 50 states. The Alabama version of these statutes is reflected in *Code of Ala.* §32-7-1 through §32-7-22. The purpose of enacting the Alabama Uninsured Motorist Act was to close the gap between financial responsibility and compulsory insurance legislation. *State Farm Auto Cas. Co. v. Griffin*, 51 Ala. App. 426, 286 So.2d 302 (1973).

The First Alabama Uninsured Motorist Act and Significant Case Interpretations

From this historical background developed the modern day uninsured motorist statutes. In 1965, the Alabama Legislature passed its version of uninsured motorist protection with §32-7-23 *Code of Ala.* 1975. The act states:

"No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or

James W. Garrett, Jr., is a native of Montgomery and a member with the firm of Rushton, Stakely, Johnston & Garrett. He graduated from the University of Alabama School of Law in 1971.

F. Chadwick Morris obtained both his undergraduate and law degrees from the University of Alabama. He was admitted to the Alabama State Bar in 1984 and practices with the firm of Rushton, Stakely, Johnston & Garrett.

death set forth in subsection (c) of §32-7-6, under provisions approved by the Commissioner of Insurance for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer. (Acts 1965 No. 866, P. 1614.)"

The Alabama Uninsured Motorist Act was amended effective January 1, 1985, but for the most part case law interpreting the 1965 act is valid still. The interpretations reflect the Alabama Supreme Court's willingness to liberally construe the statute to provide coverage for uninsured motorist events. This broad interpretation of the uninsured motorist statute may be traced to the lack of detailed language about specific application of the act.

Initially, the statute puts the burden of providing protection on the insurance carrier. This is done by requiring the carrier to provide uninsured motorist coverage unless such coverage is rejected specifically by the insured. The rejection of coverage by the insured must be evidenced by writing, and a verbal rejection prior to the execution of the policy will be invalid. *Insurance Co. of North America v. Thomas*, 337 So.2d 365 (Ala. Civ. App. 1976). In the corporate setting, rejection of uninsured motor coverage in writing by a predecessor corporation will not bind the subsequent corporation. *Key v. Robert M. Duke Ins. Agency*, 340 So.2d 781 (Ala. 1976)

Once an injury has occurred, the plaintiff has two essential elements which must be proved. First, the plaintiff must show he legally is entitled to recover damages. This has been interpreted to mean the insured must be able to establish fault on the part of the uninsured motorist, which gives rise to the damages, and the plaintiff must be able to prove the extent of those damages. *State Farm Mutual Auto Ins. Co.*

v. Griffin, 51 Ala. App. 426, 286 So.2d 302 (1983). Second, the party making claim for uninsured motorist coverage must prove the vehicle which injured him was uninsured. *LeFevre v. State Farm Mutual Auto Ins. Co.*, 527 F. Supp. 492 (N.D. Ala. 1981). The determination of who is an uninsured motorist must be based on the fact of the particular accident and the existing law in regard to insurance contracts, but the insurance policy must be consulted. *USF&G v. Perry*, 361 So.2d 594 (Ala. 1978); *Mathis v. Auto-Owners Ins. Co.*, 387 So.2d 166 (Ala. 1980). There is substantial law on the definition of an uninsured motorist, but the amendment to the act makes some changes in this definition. *Willbourn v. Allstate Ins. Co.*, 293 Ala. 466, 305 So.2d 372 (1974); *Criterion Ins. Co. v. Anderson*, 347 So.2d 384 (Ala. 1977); *O'Hare v. State Farm Mutual Auto Ins. Co.*, 432 So.2d 1300 (Ala. 1983)

When the insured makes a claim under his uninsured motorist provisions, it is not necessary to obtain a judgment against the uninsured motorist. *State Farm Ins. Co. v. Griffin*, 51 Ala. App. 426, 286 So. 2d 302 (1973). The uninsured status may be proved by the insurer's investigation. Testimony by the defendant's insurance adjuster he investigated the collision involving the plaintiff's vehicle and did not find a policy of liability insurance in force on the other automobile is sufficient to provide a scintilla of evidence on which to submit to the jury the issue of whether the driver was an uninsured motorist.

The tendency of the court in uninsured situations, as in general insurance law, has been to construe ambiguities against the uninsured motorist carrier who is the drafter of the contract. While the act has been amended, it would appear most prior interpretations are applicable under the new amendment. One example of the courts' policy interpretation deals with "phantom drivers." After the passage of the original Uninsured Motorist Act, insurance companies often found themselves with claims based on the insured's allegations an unidentified driver forced him off the road causing the accident. In response to these problems, the carriers attempted to require physical con-

tact before the uninsured motorist provisions would take effect. The court held this physical contact requirement was in derogation of the statute and was void. *State Farm Fire & Cas. Co. v. Lambert*, 291 Ala. 645, 285 So.2d 917 (1973). The Alabama Court of Civil Appeals, however, has upheld a policy condition requiring the insured file a statement under oath regarding the facts of the accident involving the phantom driver. *Ala. Farm Bureau Mutual Cas. Ins. Co. v. Cain*, 421 So.2d 1281 (Ala. Civ. App. 1982).

Another example of the courts' broad interpretation of the act concerns government-owned vehicles. Because of the fact these vehicles are owned by the government, they generally do not have liability insurance coverage. The insurance carrier, to protect itself from liability, attempted to exclude government-owned vehicles from the definition of uninsured vehicle. The Alabama Supreme Court held the purpose of the Uninsured Motorist Act is to provide coverage for the protection of persons insured against injury. The Uninsured Motorist Act does not authorize the exclusion of government-owned vehicles, and no such exclusion may be created under the policy. *In Re: Gwen Higgins*, 291 Ala. 462, 282 So.2d 301 (Ala. 1973). The court appears to be saying if the uninsured motorist definition is to exclude government vehicles, then that exclusion must be adopted by the state legislature.

The court has not invalidated every policy exclusion. One common policy provision defines "uninsured motor vehicle" as a vehicle other than a motor vehicle owned by or furnished for the regular use of the named insured. This provision would exclude coverage for an accident between two vehicles owned or operated by the named insured or a member of his household. Such provisions have been upheld by the Alabama courts. *Lammers v. State Farm Mutual Automobile Ins. Co.*, 48 Ala. 36, 261 So.2d 757 (Civ. App. 1972)

Because of the large body of case law dealing with policy provisions and exclusions, the practitioner is well advised to review closely the uninsured motorist provisions of the policy and apply those provisions to the particular facts of each case. The above-cited pro-

visions and exclusions are merely a sampling of the available case law in Alabama. This is one area of the law an attorney may find a number of cases similar to his own fact situation.

While Alabama courts have liberally construed the Uninsured Motorist Act with regard to policy exclusion, the courts have strictly enforced notice requirements. An insurer clearly is entitled to notice of the suit against an uninsured motorist by the insured. *Almeida v. State Farm Mutual Ins. Co.*, 53 Ala. 175, 298 So.2d 260 (Civ. App. 1974). The basis for this rule is a judgment against the uninsured motorist may be conclusive, or at least admissible evidence, against the insurer in a subsequent action under the uninsured motorist provisions of the insurance policy. Procedural due process requires the insurer have notice of the action and he be given the right to intervene. *Almeida*, supra

As a practical matter, the insurance carrier should intervene in the action against the uninsured motorist and file a cross-claim against the negligent driver. *Davis v. Hartford Ins. Co.*, 456 So.2d 302 (Ala. 1984). This entitles the insurance company to a jury charge that even if a judgment is rendered against the carrier the burden of satisfying that judgment eventually will rest with the negligent driver. *Davis*, supra. Intervention ordinarily is not an issue because the insurance carrier usually is made a party to the original action. This serves the dual purpose of forcing the uninsured motorist issue and providing the carrier with notice. If an insured fails to comply with the notice of legal action provision of his automobile liability policy, he will not be entitled to recover under the uninsured motorist provisions. *Almeida*, supra

One issue which continually has attracted the interest of practitioners is "stacking." An insured, and usually an insured's household member, is permitted to stack benefits under uninsured motorist provisions of his insurance contract where he has paid separate premiums for each vehicle insured under one multi-vehicle policy. *Lambert v. Liberty Mutual Ins. Co.*, 331 So.2d 260 (Ala. 1976). The insured has paid for such coverages, and the courts have held recovery should not be limit-

ed to the coverage available to the vehicle involved in the accident.

The rationale upon which stacking of insurance coverage has been justified for the named insured is inapplicable to a person who is insured only by virtue of his occupancy in the vehicle. Such a person is covered under uninsured motorist provisions only if the particular vehicle he occupies is specifically included under the coverage of some policy. *Lambert*, supra. The reason for such a holding results from the abuse which could occur if such limitations were not imposed. In *Fuqua v. Travelers Ins. Co.*, 734 F.2d 616 (11th Cir. 1984), an employee of an automobile dealer attempted to stack coverages on 27 automobiles on which the dealer had insurance policies containing uninsured motorist provisions. The court held the employee was a permissive user, not a named insured under the policy, so he was not entitled to stack the policies. He could not stack the 27 policies because his coverage was a result of occupancy and not a result of paying premiums.

While the Alabama courts have liberally allowed stacking of an insured's coverages they have refused to expand the recently developed tort of bad faith to uninsured motorist claims. *Quick v. State Farm Mutual Automobile Ins. Co.*, 429 So.2d 1033 (Ala. 1983). In *Quick*, the court held there could be no bad faith claim based upon the failure to pay an uninsured motorist claim because there is no obligation to pay the claim until the insured proves the necessary elements of recovery. The basis of this decision can be found from the following language:

"Thus, until the liability of the uninsured motorist has been determined, the insurer and the insured occupy an adversary position toward each other."

Quick, at 1035. See also *Bowers v. State Farm Mutual Automobile Ins. Co.*, 460 So.2d 1288 (Ala. 1984).

The insurance carrier, however, may be subject to a claim for fraud in handling claims. In *Ex parte State Farm Mut. Auto Ins. Co.*, 482 So.2d 861 (Ala. 1984), the insured charged State Farm fraudulently engaged in a scheme to deny benefits. The plaintiff alleged State Farm had retained a clause in its poli-

cies limiting its liability to one uninsured motorist coverage when the Alabama courts had made such a clause invalid. *Safeco Ins. Co. of America v. Jones*, 286 Ala. 49, 243 So.2d 935 (1970). The court held if this scheme could be proved, the carrier would be guilty of fraud.

The New Uninsured Motorist Act — Underinsured Coverage

January 1, 1985, the Alabama Legislature's Amendment to the Uninsured Motorist Act became effective. The most significant change of this amendment is the adoption of underinsured motorist coverage. The legislature did this by changing the definition of "uninsured motor vehicle." The act describes an uninsured motor vehicle as follows:

"(B) The term uninsured motor vehicle shall include, but is not limited to, motor vehicles with respect to which: (4) the sum of the limits of liability under all bodily injury liability bonds and insurance policies available to an insured person after an accident is less than the damages which the injured person is legally entitled to recover."

This allows for a negligent driver to be considered an uninsured motorist to the extent there is not enough insurance to fully cover the injured parties' damages.

Assume "A" has liability insurance with uninsured motorist coverage. "B" has liability insurance with limits of \$50,000. If "B" negligently causes an accident with "A" and "A" is entitled to recover \$100,000, "B" would be considered an uninsured motorist for the excess of his own liability coverage.

The second major change effected by this statute is a limitation on stacking. The act states:

"(C): The recovery by an injured person under the uninsured provisions of any one contract of automobile insurance shall be limited to the primary coverage plus such additional coverage as may be provided for additional vehicles, but not to exceed two additional coverages within such contract."

This section changes the old act by

putting a limit on the amount of stacking. Before this amendment, an insured could stack covered vehicles under any one insurance contract where the insured was considered a primary insured. Under the next act, the primary insured is limited to a total of three vehicles per insurance contract, the primary coverage plus two additional vehicles. The insured could not stack 10 vehicles under one policy. The interpretations under the old act determining primary and secondary insureds would appear to be applicable to the amendment.

One other change effected by this amendment concerns the limits of liability. Prior to the change, uninsured motorist provisions were required to provide coverage of \$10,000 per person and \$20,000 per accident. Under the new law, the coverage must provide \$20,000 per person and \$40,000 per accident.

This new act could present several interesting problems. Assume "A" and "B" have an automobile accident. "B" is at fault and indicates to the police he has liability insurance coverage. Under ARCP 26(B)(2), the amount of coverage under any insurance agreement is not subject to discovery. Under the above fact situation, if "A" is injured severely, "B" could become an uninsured motorist if his policy limits are not sufficient to compensate "A" for his damages. In order for there to be a determination of the uninsured motorist claim, the policy limits of "B" would become a main issue of the case, but may or may not be subject to discovery.

A second interesting problem may develop from similar facts. Assume "B" negligently causes an accident injuring "A." "B" has insurance, but "A" is unsure of the policy limits. Under Alabama law, an injured party must notify his carrier of a possible uninsured motorist claim. If "A" is injured severely, a possible uninsured motorist claim arises. Is "A" required to put his carrier on notice of a possible claim because he does not know the limits of "B's" policy? As a practical matter, the injured party should protect his interests by notifying the carrier of the accident and possible claim. Notification of the accident alone, without specific mention of the possible uninsured mo-

torist claim, probably would be enough because the risk of such a claim always would exist. It might be wise for the insured to name his own carrier in any possible action because this would serve the dual purpose of notification and naming an insurance company as a defendant.

Until the Alabama courts have interpreted the duties and responsibilities existing between carrier and insured under the new underinsured motorist amendment to the act, all plaintiff attorneys would be well advised to notify the plaintiff's own carrier of a possible claim before filing any automobile accident litigation. Since defendant's insurance limits may be un-

discoverable, the plaintiff's carrier and the plaintiff himself may be unaware of potential underinsured motorist claims. Such notice should prevent a later defense by plaintiff's carrier it had no notice or opportunity to defend by intervention or otherwise. Additionally, it can be assumed plaintiff's carrier, upon notice of litigation, will make demand upon the defendant carrier to settle within defendant carrier's limits. The duties between carrier and insured, as well as the responsibilities between primary and excess carriers, are unclear at present and can be defined only through future decisions of the Alabama appellate courts. □

Everybody Wants To Be Creative.

A lot of people claim to be skilled in the leasing business, but when I made a careful inspection, there was quite a crack in the foundation! Creative Leasing has skill with over 50 years experience. And because I leased my car, I saved enough money to treat myself to some of life's little pleasures. Creative Leasing can custom design a plan to meet your specific needs including maintenance and insurance. That's why everybody wants to be creative! Creative Leasing.



Huntsville	536-3547
Tuscaloosa	345-6494
Montgomery	264-8421
Birmingham	251-0137



A Look at Alabama State Bar Headquarters

by
Susan Shirock DePaola
and Keith B. Norman

For many attorneys, the Alabama State Bar headquarters is somewhat of a mystery. Few of us have the opportunity to visit the headquarters, and our membership largely is unaware of the people who make up the staff of the headquarters and the efforts they are making on our behalf.

This article aims to make the bar headquarters come alive with the people and faces keeping it going. It is our hope that by getting to know the people behind the walls, Alabama lawyers will feel more comfortable in contacting them and making use of the services they provide to our membership.

In any article of this type, a perspective on the status of the Alabama State Bar is in order. When the Alabama Bar Association was first formed in 1879, it had less than 100 attorneys. In 1923, when it became a state agency, there were about 500 attorneys who were members; in 1984, the membership had grown to 5,816 regular members; in addition, there were 1,752 special members.

The bar is a state agency whose funds are controlled by the legislature, although they do not come out of the state general fund. Rather, the bar is funded by the money received from licenses purchased by attorneys in the state. These license fees are placed in a special fund for use by the bar. The budget of the bar has grown; in 1969, the budget was less than \$200,000; in 1984, the regular budget was approximately \$753,000.

Although membership fees increased to \$100 in 1979, the cost of providing many services to members of the bar has risen dramatically, far outstripping the amount of revenue generated by membership fees. For example, in 1984, although the bar had revenues of \$707,686, disbursements amounted to more than \$753,429. It is estimated the revenues for 1985 will amount to \$725,715, while disbursements are anticipated to be more than \$771,261.

We hear so much about the growing number of lawyers, and the statistics compiled by the bar bear out that news. In 1964, there were only 92 new admittees to the bar. By 1982, this number had grown to 487 new admittees per year. Along with the growth in numbers of new admittees to the bar, it appears the bar is getting younger. Currently, more than one-half of the members of the Alabama State Bar are under 35 years of age.

As bar membership grew, so grew the number of headquarters employees. In 1969, the association had five full-time employees. In 1984, there were 15 full-time employees at the state bar headquarters.

Of course, we all have seen the growth of this publication, *The Alabama Lawyer*, to its current format. The old format was designed to serve as a kind of "law review publication" at a time when the University of Alabama and Cumberland Law School did not have law review publications. With the advent of law reviews

at both law schools, it was no longer necessary for *The Alabama Lawyer* to serve this function. Thus, a decision was made to shift to a format which the editors believe is more easily readable and interesting to practicing members of the bar. The shift to the new format was a bold move in a profession where tradition often attains almost religious dimensions.

Members of the bar also have seen the growth of continuing legal education into being an integral part of each member's professional life. Alabama was one of the leaders in the country in adopting mandatory CLE, being the eleventh state to undertake this program. There also has been a geometric growth in committee membership, as well as an increase in the number of special interest areas addressed by the bar.

With this growth, we believe the bar headquarters provides increased assistance to its membership. We hope this look inside the Alabama State Bar gives each member a glimpse of the staff and the services provided to its members in the state.



**Reginald T. Hamner —
Executive Director/Secretary**

Reggie has been executive director of the bar since June 1969. He has seen the growth of its staff from four members in 1969 to 15 in 1984.

Reggie also has seen a "legal explosion" during his tenure with the bar. Among the more notable changes are the change in the system of pleading, the establishment of the unified court system and the growth in the sheer numbers of lawyers practicing in the state.

The bar now provides services virtually unheard of prior to 1969. Included among these is the lawyer referral service, which now has a full-time person responsible for its functioning. Reggie also says there is an increased awareness regarding ethics among the general population and attorneys. The biggest complaint he hears from the general public is they often have no idea of what their attorney is doing on a particular case and cannot get in touch with the attorney in order to secure information about a case.

Reggie is proudest of the annual meetings put on by the bar. The Alabama State Bar has one of the highest attendance rates for its membership at annual meetings in the country, generally averaging about 15 percent of its members attending each annual meeting. The annual meetings include professional opportunities for continuing education, as well as committee meetings and social events.

Reggie, in the next five years, is looking toward increased computerization and mechanization of the bar headquarters. Currently, they are "drowning in paperwork," particularly in the area of admissions and continuing legal education. He also would like to see an increase in the amount of assistance the bar can provide to small law firms or solo practitioners in the area of technology for law office management. In addition, he states the board of bar commissioners is beginning to focus on more long-range planning for the bar, and he believes this will be of tremendous importance in the years to come.

Reggie recently served as president of the Alabama Council of Association Executives and as president of the National Association of Bar Executives in 1978-79. He also earned Certified Association Ex-



Top: Executive Director/Secretary Reggie Hamner with Administrative and Financial Secretary Margaret Boone

Center: Admissions Secretary Norma Robbins

Bottom: Assistant Executive Director Mary Lyn Pike (right) and Membership Secretary Diane Weldon



ecutive (CAE) certification in 1975 and has been recertified through 1987.

**Margaret Boone —
Administrative and Financial
Secretary**

Margaret has been with the bar for seven years. Her main responsibility is to maintain all financial records for the Alabama State Bar and Alabama State Bar Foundation. She also processes all invoices for payment and the payroll for the bar. As secretary to the executive director, her responsibilities include assisting

in the preparation of all annual meetings, maintaining personnel files and handling the executive director's correspondence.

Margaret is a native of Prattville; she and her husband have three sons. Prior to working for the bar, she worked in the Planning and Programming Department of the Civil Air Patrol at Maxwell Air Force Base in Montgomery.

**Mary Lyn Pike —
Assistant Executive Director**

Mary Lyn assumed the new role of assistant executive director January 1 of this year. Her responsibilities include di-

recting the mandatory continuing legal education program of the bar and coordinating the work of the bar's committees. In the three years she has been with the bar, Mary Lyn, along with Diane Weldon, has helped to implement the mandatory CLE program and make sure it functioned smoothly. Although getting attorneys to keep their own CLE records probably has been the most frustrating aspect of her job, Mary Lyn says she enjoys getting to meet attorneys from all over the state.

Mary Lyn makes a strong pitch for computerization, particularly with respect to the CLE program. "In order to adequately serve our membership, our whole operation needs to be computerized. If we were to computerize, we would send CLE transcripts at the end of the year. The transcript would indicate an attorney attended this course or that course. If accurate, the attorney would then sign it and send it back, or if it was not accurate, the attorney could correct it and send it back corrected. The Georgia Bar Association presently is doing this."

A native of Tuscaloosa, Mary Lyn has three degrees from the University of Alabama. She has an undergraduate degree in psychology, a master's degree in clinical psychology and a law degree.

**Diane Weldon —
Secretary to Director of MCLE**

Diane has dual responsibilities. She is secretary to the assistant executive director/director of the continuing legal education program, and she is the committee secretary. She has been with the bar since 1978, when she came as a student as part of a business office education course. In 1982, she became a full-time staff member and has been with the CLE program since its inception. She handles all correspondence relating to continuing legal education and maintains all CLE records and files. She keeps up a running list of all programs and sponsors and handles any telephone inquiries regarding programs available. Diane looks forward to the day the bar moves to computerization of records. Currently, all CLE records are kept by hand because the bar does not have computer facilities available to deal with them.

As committee secretary, she schedules

committee meetings, assists committee chairmen in sending out meeting notices and maintains all committee records.

**Norma Robbins —
Admissions Secretary**

Norma's job puts her in contact with all prospective members of the bar. Consequently, she is one of the most well-known employees there. Her primary responsibility is processing all student and bar application materials. This begins at the time a person enters law school and continues through the time he or she is admitted to the bar.



**Top: General Counsel Bill Morrow
Center: Secretary to the general counsel Vivian Freeman
Bottom: Assistant General Counsel John Yung**

Norma assists the board of bar examiners in administering the bar exam. She processes the results and certifies to the Alabama Supreme Court those candidates successfully completing all requirements for admission to the bar. According to Norma, one of the more interesting aspects of her job is the chance to become acquainted with so many different people. She states the most frustrating part of her job, though, is in dealing with bar applicants who fail the bar exam.

Although she is a native of Kentucky, having been born in Loyal, Kentucky, Norma's family moved to Montgomery



while she was very young. Prior to working with the bar, Norma worked for the State Revenue Department, the State Highway Department and First Baptist Church of Montgomery. She has been with the bar since 1979.



**Margaret Dubberley —
Publications Director**

When Jen Nowell was stolen away from us by the Louisiana State Bar Association, we retaliated against First Alabama Bank of Montgomery by capturing their in-house employee publication editor, Margaret Dubberley. Margaret joined the Alabama State Bar headquarters as the publications director in October 1984, and at this point says she is "still trying to become acquainted with all of the production aspects of *The Alabama Lawyer*, as well as becoming acquainted with the Alabama State Bar itself." Her focus as director of *The Alabama Lawyer* is on editing and artwork, as well as the solicitation of manuscripts and advertising. Margaret works closely with the editor and editorial board of *The Alabama Lawyer* and is responsible for the budget of the publication division.

Margaret is a graduate of Auburn University at Montgomery and holds a bachelor's degree in applied communications; while at AUM, she served as an editor of *the Aumnibus*, the university's student newspaper.



**Ruth Strickland —
Publications and Membership
Assistant**

Ruth has been employed with the bar since September 1982. She has observed a change in the managing editor during this time, as well as the advent of the new format of *The Alabama Lawyer*. Ruth manages the money for *The Alabama Lawyer*, including billings for advertising and bi-monthly financial reports to the board of editors.

In addition, Ruth is especially busy from September through December with membership duties, handling business licenses and special membership categories. As membership assistant, she is responsible for all membership records and handles all membership correspondence and inquiries.

Like many others at the bar, Ruth is also busy during bar examination time, assisting in the administration of the exam.

Ruth is a native of Eufaula and attended Andrew College in Cuthbert, Georgia.

Gale Skinner —

**Lawyer Referral Secretary
and Receptionist**

Gale has been at the bar for three years, and her primary responsibility is handling the lawyer referral service. This includes not only keeping records for the program, but also the actual referral of clients to one of the more than 300 attorneys statewide participating in the program. Each day, approximately 30 to 50 referrals are given to clients who either telephone the bar or come by in person. Gale says, "Clients call who are referred by Legal Services, for example, and don't really know why they are calling, and you just have to take time with each one and find out what their problem is."

The client tells Gale the county or city in which he needs an attorney and the nature of the legal problem, i.e., divorce, real estate, etc. She then refers the client to the next attorney on the list from that area, specializing in that particular area of law. In addition to her duties as the lawyer referral secretary, Gale routes and screens all telephone calls to the state bar headquarters.

Gale also maintains the records for the Alabama Bar Reporter. This includes handling the subscriptions and indexing and typing the headnotes for each case.



**Wayne Summerlin —
Graphic Arts Supervisor**

Wayne started with the bar in 1966 as its graphic arts supervisor under the direction of Judge John B. Scott, Jr. He left after approximately one year, but returned in 1982 to his current position. His department is responsible for the production of the *Alabama Bar Reports* on which each Alabama lawyer depends so heavily. He also does all of the mailings for the bar, including that of *The Alabama Lawyer's*. Wayne's perspective of the bar is somewhat unique in that he saw it in 1966 and has returned to see the changes that have taken place in the 1980s. He says the most significant changes relate to the growth of the bar: The staff has tripled, the headquarters has outgrown its buildings and they still need more space and more people.

**Top: Lawyer Referral Secretary and
Receptionist Gale Skinner**

**Center: Publications Director Margaret
Dubberley (standing) with Publica-
tions Assistant Ruth Strickland**

**Bottom: Graphic Arts Supervisor
Wayne Summerlin**



**William H. Morrow, Jr. —
General Counsel**

Of all current staff members, Bill has been at the bar the longest, assuming the position of general counsel for the bar in 1965. Prior to this, Bill practiced law with his father for a short time in Lanett and in Miami, Florida, for nine years. Bill received his college degree from Davidson College in North Carolina, after his schooling was interrupted initially by a stint in the Armed Services during World War II. He received his law degree from Harvard Law School.

As general counsel, Bill's responsibilities include investigating petitions for reinstatement, requests for formal written ethic opinions, informal requests received by telephone and the investigation and prosecution of individuals engaged in the unauthorized practice of law. Bill also has been responsible for defending the state bar with respect to challenges to its

Top: Secretary to assistant general counsels Candy Fraley with Tammy Tatum, secretary

Bottom: Assistant General Counsel Alex Jackson

admissions policies. He concedes one of the most time-consuming responsibilities of the office of general counsel is the answering of hundreds of requests for ethics opinions.

As general counsel, Bill acts as staff liaison to task forces and committees as directed by the president of the bar. This includes legal research, preparation of memoranda of law and the general assistance of the various committees of the bar, as needed.

**Vivian Freeman —
Secretary to the General Counsel**

As secretary to the general counsel, Vivian has the responsibility of processing both requests for written formal opinions and all petitions for reinstatement by attorneys who have been disbarred or suspended from the practice of law. She also processes all complaints against attorneys received by the bar, as well as complaints concerning non-lawyers en-

gaged in the unauthorized practice of law. Vivian likewise is responsible for typing all briefs which the general counsel files in the state and federal appellate courts.

A native of Columbus, Georgia, Vivian attended both Auburn University and Troy State University. She has been employed with the bar for four years.

**John A. Yung, IV —
Assistant General Counsel**

John is responsible for reviewing complaints filed against members of the bar and assigning the complaints for investigation. For all complaints he undertakes to investigate, he makes a recommendation to the Disciplinary Commission as to disposition. He drafts admonitions, reprimands, censures and formal charges for the commission, as well as for various local grievance committees, and represents the bar at hearings before the Disciplinary Board and on appeals before the Supreme Court of Alabama. John has been with the bar for four and one-half years.

John is a graduate of Auburn and of the University of Alabama School of Law and has a LL.M. from the Georgetown University Law Center.

**Alex Jackson —
Assistant General Counsel**

Alex began his employment with the bar in 1980. Prior to joining as assistant general counsel, Alex had been a practicing attorney in Clanton since 1974. He received his college education at the University of North Carolina, Chapel Hill, and his law degree at the University of Alabama.

Alex's responsibilities include the investigation of grievances filed against attorneys and the prosecution of disciplinary charges brought against attorneys. Alex also serves as counsel to various committees of the bar, including the Permanent Code Commission and the Committee on Lawyer Advertising. Alex spends a great deal of time traveling around the state speaking to various bar associations about the grievance process of the state bar.

With respect to his responsibilities, Alex says he hopes the lawyers of the state understand self-policing is in the best interest of the profession. "If we

don't take care of policing ourselves, and we are not thorough in self-policing, it could be taken away from us and we would be responding to federal agencies in Atlanta or Washington."

In the five years Alex has been assistant general counsel, the number of grievances filed has doubled. Unfortunately, while the caseload doubled, the staff remained the same size. Alex does find his job challenging, however, because of the sophisticated clientele with which he deals. "All my defendants are lawyers. When you deal with lawyers, they seem to know all the answers."

**Candy Fraley —
Secretary to Assistant
General Counsels**

An individual who feels he has a complaint regarding services provided by an attorney, and calls or visits the Center for Professional Responsibility of the bar, is likely to be referred to Candy. Candy talks to people with complaints and to attorneys and local grievance committees wanting information regarding the complaint procedure. Candy works closely with John Yung and Alex Jackson, investigators for the Disciplinary Commission, and types reports, pleadings and other numerous documents relating to pending investigations.

Candy says this is the first job she has had in the legal field, and it is "totally different" from anything she has ever done. Each attorney in the bar can second that thought!

Tammy Tatum — Secretary

Tammy is the newest addition to the staff of the Alabama State Bar. A native of Deatsville, Tammy graduated from Marbury High School and attended George Wallace Community College and Auburn University at Montgomery. Her responsibilities with the bar are handling the complaints and grievances filed with the bar and preparing files on the complaints for referral to the disciplinary committee. Having worked in a doctor's office prior to joining the state bar office, Tammy states the medical and legal fields are quite different.



Susan Shirock DePaola, an associate with the Montgomery firm of Pappanastos, Samford & Blanchard, also is a member of the board of editors of The Alabama Lawyer. She has an undergraduate degree in biology from the University of Michigan, a doctorate in education from Auburn University and a J.D. from the University of Alabama School of Law.



Keith B. Norman, a native of Opelika, obtained his undergraduate degree from Duke University and his law degree from the University of Alabama. He was admitted to the Alabama State Bar in 1981 and now practices with the Montgomery firm of Balch, Bingham, Baker, Ward, Smith, Bowman & Thagard. Keith also is a member of the board of editors of The Alabama Lawyer.

BE A BUDDY

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



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

Local Bar Activities and Services Buddy Program Application

Name _____

Firm Name (if applicable) _____

Address _____

City _____ State _____ Zip _____

Telephone _____

New Lawyer

Experienced Lawyer

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

Opinions of the General Counsel

William H. Morrow, Jr.

QUESTION:

"If an attorney representing a public entity which comes within the scope of §13A-14-2, *Code of Alabama*, 1975, (Sunshine Law) makes a good faith professional judgment that to confer with his client concerning pending or foreseeable litigation or other purely legal matters in a meeting open to the public, and in all probability, directly or indirectly, to counsel for an adversary of the public entity, would be prejudicial to the best interests of his client, must the attorney insist upon conferring with his client in closed or executive session?"

ANSWER:

Yes.

DISCUSSION:

§34-3-20(4), *Code of Alabama*, 1975, provides:

"It is the duty of attorneys:

(4) To maintain inviolate the confidence and at every peril to themselves to preserve the secrets of their client."

Ethical Consideration 4-1 provides:

"Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance."

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

"(A) 'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the

client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

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

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

Disciplinary Rule 4-101(C)(4) provides:

"A lawyer may reveal:

(4) *Confidences or secrets when required by law*, provided that a lawyer required by a tribunal to make such a disclosure may first avail himself of all appellate remedies available to him." (emphasis added)

Rules of Disciplinary Enforcement, Preamble, in part provides:

"The Supreme Court of Alabama has inherent responsibility to supervise the conduct of attorneys who are its officers and in furtherance thereof it promulgates the following Rules of Disciplinary Enforcement superseding all other rules and statutes pertaining to disciplinary enforcement heretofore promulgated or enacted."

§13A-14-2(a), *Code of Alabama*, 1975, provides:

"(a) No executive or secret session shall be held by any of the following named boards, commissions or courts of Alabama, namely: Alabama public service commission; school commissions of Alabama; board of adjustment; state or county tax commissions; any county commission, any city commission or municipal council; or any other body, board or commission in the state charged with the duty of disbursing any funds belonging to the state, county or municipality, or board, body or commission to which is delegated any legislative or judicial function; except, that executive or secret sessions may be held by any of the above named boards or commissions when the character or good name of a woman or man is involved."

A number of states has enacted statutes variously described as the "Freedom of Information Act," the "Sunshine Law" or the "Right to Know Law." We will refer to such statutes herein as "public meeting" statutes. Some statutes contain specific exceptions that meetings between a public entity and its counsel concerning pending or impending litigation need not be open to the public. Other statutes which contain no specific exception concerning the

attorney-client confidences and secrets, nevertheless, have been construed to permit closed or executive meetings between a public entity and its counsel concerning pending or impending litigation. The inherent and ultimate power to determine what constitutes ethical conduct on the part of an attorney vests in the judicial department of state government and a statute which declares conduct as ethical which the judicial department of state government has proscribed as unethical may be considered an unconstitutional legislative invasion into a judicial function.

In the case of *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App. 2d 41, 69 Cal. Rptr. 430 (1968) the court was called upon to construe a "public meeting" statute which provided in part: "All meetings of the legislative body of a local agency shall be open and public. . . ." This statute (Brown Act) allowed executive or closed sessions only to consider (a) matters affecting the national security and (b) employment and dismissal of personnel. The trial court entered a preliminary injunction enjoining the Sacramento Board of Supervisors from holding any executive or closed sessions or meetings. On appeal the appellate court modified the injunction to read as follows:

"This preliminary injunction shall not prevent the Sacramento County Board of Supervisors from consulting privately with the county counsel or other attorney representing the board under circumstances in which the lawyer-client privilege conferred by sections 950 through 962 of the California Evidence Code may lawfully be claimed." 263 Cal. App. 2d at 59.

The appellate court observed:

"If client and counsel must confer in public view and hearing, both privilege and policy are stripped of value. Considered in isolation from the Brown Act, this assurance is available to governmental as well as private clients and their attorneys. 263 Cal. App.2d at 54.

Government should have no advantage in legal strife; neither should it be a second-class citizen.

'Public agencies face the same hard realities as other civil litigants. An attorney who cannot confer with his client outside his opponent's presence may be under insurmountable han-

dicaps. A panoply of constitutional, statutory, administrative and fiscal arrangements covering state and local government expresses a policy that litigating public agencies strive with their legal adversaries on fairly even terms. We need not pause for citations to demonstrate the obvious. There is a public entitlement to the effective aid of legal counsel in civil litigation. Effective aid is impossible if opportunity for confidential legal advice is banned.'

Settlement and avoidance of litigation are particularly sensitive activities, whose conduct would be grossly confounded, often made impossible, by indiscriminating insistence on open lawyer-client conferences. In settlement advice, the attorney's professional task is to provide his client a frank appraisal of strength and weakness, gains and risks, hopes and fears. If the public's 'right to know' compelled admission of an audience, the ringside seats would be occupied by the government's adversary, delighted to capitalize on every revelation of weakness. A lawyer worth his salt would feel a *sense of treachery* in disclosing that kind of appraisal. (8 Wigmore op. cit. §2291, p. 553.) To him its conduct in public would be shocking, unprofessional, unthinkable. He would prefer to fight the lawsuit to its bitter end. Frustration would blunt the law's policy in favor of settlement, and financial imprudence might be a compelled path. 263 Cal. App. 2d at 55-56. (emphasis added by court)

ALABAMA LAWYERS RESEARCH SERVICE

The University of Alabama School of Law Clinical Program

LEGAL MEMORANDA CONFIDENTIALLY PREPARED AT
REASONABLE RATES BY SELECTED LAW STUDENTS
UNDER ATTORNEY SUPERVISION.

912 Fourth Avenue Tuscaloosa, AL 35401 (205) 348-6904

MEDICAL EXPERTS FOR: MEDICAL and HOSPITAL MALPRACTICE PERSONAL INJURY

1150 Board Certified *eminently qualified* medical experts in all specialties, nationwide and Alabama, who review medical records and testify. We review, approve, and *guarantee* all reports you receive.

- Flexible fee options: from \$150.
- Experience: 9 years and 8000 cases for 4000 satisfied attorneys.
- Local references.
- FREE books by our Medical Director, one with foreword by Melvin Belli.
- FREE detailed case consultation with our Senior Medical Director.

A WORD OF ADVICE:

The call, our books and literature and *detailed* telephone consultation with our Medical Directors are FREE. Spend five minutes of your time and learn what a competent Medical-Legal Consulting Service can do for your practice and clients.

TOLL FREE 800-336-0332
(703) 437-3333

The Medical Quality Foundation
The American Board of Medical-Legal Consultants
11345 Sunset Hills Road, Reston, VA 22090

In declaring the public's right to be informed, they do not necessarily propel the public legal adversary into the lawyer-client conference clad in the robes of good citizenship." 263 Cal. App. 2d at 57.

The court cautioned attorneys and public bodies could not circumvent an "open meeting" statute on the pretext the meeting was solely for legal consultation concerning pending or impending litigation when, in truth and in fact, the matters for discussion were such that the public should have access thereto.

In the case of *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 1969) the court was called upon to construe a "public meeting" statute which did not specifically permit closed or executive sessions where the public body consulted with its attorney concerning pending or impending or contemplated litigation. However, the court held that such "public meeting" statute did not prohibit closed or executive meetings under circumstances which to allow an open meeting would force the attorney to violate the Canons of Ethics adopted by the Supreme Court of Florida. The opinion contains the following:

"First of all, as has been noted, the act on its face provides for no exceptions; and unless there is a constitutional impediment to such a mandate it is conclusive. Nevertheless, appellee takes the position that it may . . . go into secret consultation with its attorney on all legal matters." 222 So. 2d at 474.

There is one aspect of the attorney-client relationship, . . . in which there are obligations which bind the attorney; and the aspect involves his duties in the conduct of pending or impending litigation. His professional conduct in these matters is governed by the Canons of Ethics which are promulgated by the Supreme Court under the integrated Bar system in this state. Section 23 of Art. V of the Florida Constitution, F.S.A., gives 'exclusive' jurisdiction to the Supreme Court in the disciplining of attorneys; and this disciplinary power necessarily includes the exclusive province to proscribe rules of professional conduct the breaching of which renders an attorney amenable to such discipline.

The legislature therefore, is without any authority to directly or indirectly interfere with or impair an attorney in the exercise of his ethical duties as an attorney and officer of the court.

[T]he attorney has the right and duty to practice his profession in the manner required by the canons unfettered by clearly conflicting legislation which renders the performance of his ethical duties impossible. He cannot be put in the untenable position of choice between a violation of a statute or a violation of a specific canon insofar as they *clearly conflict*. We can perceive of the possibility of instances when there may be conflict between the two as they

may relate to privacy and confidentiality in the handling of pending or anticipated litigation.

This is brought into focus, for example, if we consider the potential effect of extending the 'open meetings' concept to a consultation between a governmental agency and its attorney involving settlement or adjustment of a matter in pending or contemplated litigation.

It is our conclusion, therefore, the legislature is fully aware of its constitutional limitations and did not intend, by the enactment of chapter 67-356, to place attorneys in a position of having no alternative but to violate the Canons of Ethics. 222 So. 2d at 475-477.

In the case of *Minneapolis Star and Tribune Company v. Housing and Redevelopment Authority in and for the City of Minneapolis*, 246 N.W. 2d 448 (1976) the Supreme Court of Minnesota held the Minnesota "public meeting" statute did not preclude the Housing and Redevelopment Authority from holding closed or executive meetings to consult with its attorney concerning pending or contemplated litigation. The court pointed out the separation of powers provision of the Minnesota Constitution vested inherent and exclusive power in the Supreme Court of Minnesota to define what constituted ethical action on the part of attorneys. A newspaper and its executive editor sought an injunction prohibiting this public agency from holding closed meetings.

The court quoted Ethical Consideration 4-1 and observed:

"In this area requiring a delicate balancing of public interests, our conclusion was reached only after a thorough consideration of the record, which discloses that the members of HRA were involved in active and immediate litigation in their capacity as members of a public agency and also, in one case, as an individual. The advisory meetings with the attorney were necessary to perhaps attain a settlement ultimately beneficial to the agency, the individual, and the general public.

The attorney-client exception is therefore operable in this matter to fully implement the confidentiality of the relationship. A basic understanding of the adversary system indicates that certain phases of litigation strategy may be impaired if every discussion is available for the benefit of opposing parties who may have as a purpose a private gain in contravention to the public need as construed by the agency." 246 N.W. 2d at 454.

In the case of *Oklahoma Association of Municipal Attorneys v. State of Oklahoma*, 577 Pac. 2d 1310 (1978) the Supreme Court of Oklahoma was called upon to construe and interpret two Oklahoma statutes. One statute extended the attorney-client privilege to both natural and artificial persons including public entities. Another statute, a "public meeting" statute, required open meetings of public bodies

"unless otherwise specifically provided herein." An opinion of the attorney general held since the "public meeting" statute contained the language "unless otherwise specifically provided herein" a public body could not hold closed sessions even for the purpose of obtaining legal advice concerning a pending investigation, litigation or proceeding. The Supreme Court of Oklahoma held in construing the two statutes, executive sessions could be held for confidential communications between a public body and its attorney if the communications concerned a pending investigation, claim or action, and disclosure of the matter discussed would seriously impair the ability of the public body to process the claim or to conduct the pending investigation, litigation or proceeding in the public interest, and the public body, with the advice of its attorney, could determine whether it would be proper to hold executive sessions for such purposes. In the opinion the court stated:

"The issue presented is whether the Legislature abrogated the attorney-client confidentiality and the right of public bodies to confer privately with their attorneys concerning pending or impending litigation. 577 Pac. 2d at 1314.

Petitioners assert that if our open meeting laws are construed so as to prohibit public bodies from privately discussing pending or impending litigation, they constitute a statutory impediment to the otherwise usual relationship between an attorney and his client thus rendering it substantially more difficult for them as public

bodies to successfully maintain or defend civil actions on behalf of the public interest. Petitioners maintain that public bodies should not be placed at a disadvantage in conducting the public business, as against their legal adversaries and that the public is entitled to effective legal counsel when it is involved in litigation but such is impossible if a public body may not confer privately with its attorney. At the center of this argument is the concept of attorney-client confidentiality. 577 Pac. 2d at 1313.

We have at issue two competing policy commitments, the need to have the public's business conducted in the open, and the principle of attorney-client confidentiality. 577 Pac. 2d at 1313-1314.

We find a Legislative design whereby executive sessions may be held for confidential communications between a public body and its attorney, but only if the communications concern a pending investigation, claim, or action, and disclosure of the matters discussed would seriously impair the ability of the public body to process the claim or conduct the pending investigation, litigation or proceeding in the public interest. The public body, with the advice of its attorney, would determine whether it would be proper to hold executive sessions for the purposes above set forth." 577 Pac. 2d at 1315.

Cf. Laman v. McCord 432 S.W. 2d 753 (Ark. 1968)

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

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

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

AM SOUTH



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

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

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

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

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

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

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

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

In the case of *Sutter Sensible Planning, Inc. v. Board of Supervisors of Sutter County*, 122 Cal. App. 3d 813; 176 Cal. Rptr. 342 (1981) the court was called upon to construe California's "public meeting" statute (Brown Act). Several individual landowners who opposed the construction of a food processing plant petitioned the trial court for a writ of mandamus directing the county board of supervisors to vacate its approval of an environmental impact report. It was also claimed the county board of supervisors had violated the Brown Act. The court held the county board of supervisors was entitled to confer privately with county counsel, since it reasonably inferred that a statement by counsel for the plaintiffs that the environmental impact report before it had significant defects which precluded the board from legally approving it was a threat of a specific lawsuit. In so holding, the court noted the Brown Act did not abrogate the evidentiary privilege of attorney-client confidential communication.

The court quotes at length from *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, supra. The contention was made the county board of supervisors could not confer in private with their attorney since there was not in existence an actual pending lawsuit. In responding to this contention, the court observed:

"Relying on our statement in *Sacramento Newspaper Guild* that, because of its effect of suppressing public access, the protections given a public agency's confidential communications must be 'strictly construed' (Id., at p. 58), plaintiffs argue that in the absence of actual pending litigation, the board was not entitled to seek legal advice in private. The board had been told by an attorney representing several plaintiffs (some of whom had sued the county successfully once before in connection with the same property) that the EIR before it had a number of significant defects which precluded the board from

legally approving it or the project. In these circumstances, in the face of what it reasonably inferred was a threat of a quite specific lawsuit, the board needed no pretext for deciding to confer with the county counsel." 122 Cal. App. 3d at 825.

We hasten to observe we are without jurisdiction or authority to decide issues of law. Therefore, the construction and interpretation of §13A-14-2, *Code of Alabama*, 1975, is the prerogative of an appropriate court. Furthermore, should the statute be construed literally and preclude a public entity from conferring in closed or executive session with its counsel concerning legal matters, the ancillary question as to whether or not the statute is an unconstitutional legislative invasion of a judicial function, is also for the courts.

The scope of this holding is extremely narrow, namely, if an attorney for a public entity makes a good faith professional judgment that to consult with his client concerning a legal matter and permit such consultation to be open to the public and thus, in all probability, to counsel for an adversary of the public entity, would violate certain provisions of the Code of Professional Responsibility, specifically but not limited to, Disciplinary Rule 7-101(A) (3) which in pertinent part provides "A lawyer shall not intentionally . . . prejudice or damage his client during the course of the professional relationship . . .", he must insist upon consulting with his client in closed or executive session. □

NOTICE

ALL ADS AND ARTICLES
FOR THE
JULY ISSUE
OF THE ALABAMA LAWYER
MUST BE SUBMITTED BY
MAY 31, 1985



UNITED COMPANIES
FINANCIAL CORPORATION

REALLY GOOD NEWS

Here's a lender making 20 year loans with FIXED interest rates. Not variable, FIXED FOR 20 YEARS. Commercial — Investment loans, first mortgages.

Properties: Office buildings, shopping centers, light industrial. New construction, rehab. properties, or existing buildings.

United Companies is a one-billion dollar, financial company listed on AMEX.

Phone:
(205) 979-0367

Andrew T. Graybar, CCIM
Suite 106-A
100 Century Park South
Birmingham, AL 35226

Disciplinary Report

Transferred to Disability Inactive

- December 26, 1984, attorney **Kenneth W. Gilchrist** of Etowah County was transferred to disability inactive status due to his being incapacitated from continuing the practice of law by reason of mental infirmity or illness.

Private Reprimands

- A lawyer was privately reprimanded for having failed to carry out a contract of employment with a client, in violation of DR 7-101 (A)(2), by having failed to initiate court action to recover past due child support and having alimony increased on behalf of his client, after having given assurances he would "file the papers immediately."

The following reprimands took place March 2, 1985.

- An Alabama lawyer received a private reprimand for violation of Disciplinary Rules 6-101(A) and 7-101(A) (1). The Disciplinary Commission found the attorney had willfully neglected a legal matter entrusted to him and had failed to seek the lawful objectives of his client by failing, for nearly two years, to prepare a settlement agreement in a marital dispute, to notify his client of a scheduled court hearing and to keep his client advised as to the progress of the matter he was conducting for her.

- A lawyer was privately reprimanded for having been guilty of "misrepresentation," in violation of DR 1-102(A) (4), by having signed his client's name to what purported to be a verified civil complaint, having signed his own name as notary public thereon, having signed his client's name to a Petition to Employ the Services of Attorney in the same matter, having signed his name as a witness to the client's signature on that petition and having then filed both documents with the circuit court.

- A lawyer was privately reprimanded for having engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(A) (6), by having failed to provide his local grievance committee with a written response to a complaint filed against him by a client, despite three written requests from the grievance committee he respond to the complaint.

- An Alabama lawyer was privately reprimanded for making false accusations against a circuit judge, knowing the statements were false and further know-

ing the statements would be published in a newspaper. The commission found the attorney's conduct to be in violation of Disciplinary Rule 8-101(B).

- A lawyer was privately reprimanded for having failed to promptly pay over money collected for a client, in violation of DR 1-102(B) (4), by having deducted as attorney fees one-third of the amount recovered for the client in a rule nisi proceeding for past due child support and alimony, (after having already received a \$400 attorney fee awarded by the court in the matter against the client's ex-spouse), though the client had not previously consented to the one-third deduction and had not been given prior notice there would be any deduction made.

- A lawyer received a private reprimand for violation of DR 5-101(C) of the Code of Professional Responsibility. The Disciplinary Commission found the attorney had periodically counseled with a client in regard to various matters, including domestic problems, over a period of 15 to 16 years, only to later represent the client's former wife in a domestic proceeding directly related to the subject matter of the attorney's earlier conversations with the client. The Disciplinary Commission found the attorney's conduct constituted a conflict of interest in violation of Disciplinary Rule 5-101(C) in that the attorney represented a party to a cause after having previously represented an adverse party or interest in connection therewith.

- An Alabama lawyer received a private reprimand for violation of Disciplinary Rule 6-101(A) and 6-102(A) of the Code of Professional Responsibility. The Disciplinary Commission determined this attorney accepted an accident case for a client, failed to file the action within the period provided by the statute of limitations and then issued a check to his client in settlement of the case from his own personal account. The commission found the attorney willfully neglected a legal matter entrusted to him and attempted to exonerate himself from, or limit, his ability to his client for his personal malpractice, in violation of the Code of Professional Responsibility.

- A lawyer was privately reprimanded for having been guilty of willful neglect, in violation of DR 6-101(A), by having undertaken to represent a client in appealing a criminal conviction, but then having failed to file a brief on behalf of the client with the court of criminal appeals, and having failed to provide the state bar with a satisfactory explanation in the matter.

Public Censures

The following censures took place March 2, 1985.

• Mobile lawyer **Walter L. Davis** was publicly censured for having engaged in conduct adversely reflecting on his fitness to practice law, willfully neglecting a legal matter entrusted to him, failing to carry out a contract of employment entered into with a client for professional services, accepting a retainer from a client to handle the legal adoption by the client of the client's granddaughter, failing to pursue the matter for the client, promising the client to refund the retainer paid, but failing to refund the same to the client.

• **Jerome Tucker** of Birmingham was publicly censured before the Board of Commissioners of the Alabama State Bar for violation of Disciplinary Rule 7-101(A) (1) of the Code of Professional Responsibility. Mr. Tucker previously had been engaged to represent a client in a civil action in the U.S. District Court for the northern district of Alabama and failed, on several different occasions, to submit pleadings and comply with court orders regarding his client's case. The commission determined Mr. Tucker's neglect of his client's case represented a failure to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules and further determined a public censure would be appropriate discipline for the stated violation.

• Montgomery attorney **Elno A. Smith, Jr.**, was publicly censured by the Board of Commissioners of the Alabama State Bar for violation of Disciplinary Rules 1-102(A) (4), 1-102(A) (5), 1-102(A) (6), 6-101(A), 7-101(A) (1) and 7-101(A) (2) of the Code of Professional Responsibility. Mr. Smith earlier had been retained to handle a criminal appeal case and was found to have been late in filing appropriate appellate papers; he further was found to have misrepresented the status of the case to his client. The Disciplinary Commission of the Alabama State Bar determined Mr. Smith should receive a public censure for these violations of the code.

SMITH-ALSOBROOK & ASSOC.

EXPERT WITNESS SERVICES

- Machine guarding
- Traffic accident reconstruction
- Tire consulting
- Industrial accidents
- Construction accidents
- Safety and procedure analysis
- Fire & arson investigation

BOBBY D. SMITH, B.S., J.D., President

P.O. Box 3064 Opelika, AL 36801 (205) 749-1544

Introduce Your Clients to a Valuable Service.

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

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

Contact **Dr. John H. Davis III**, 60 Commerce St., Suite 1018, P.O. Box 2310, Montgomery, AL 36103
(205) 262-6751.

**We do more
than print the law—
we put it
into perspective...**

...both in our law books and our computer data service

Whether it's with ALR, Am Jur, USCS, L Ed— or Auto-Cite®, our computer formatted research service—your research will go faster and more efficiently with Lawyers Co-op in your library.

Our law books and our computer research service are made to mesh with each other and your needs. Let your LCP representative show you what's possible and affordable in legal research.

Here's what the LCP Total Client-Service Library® offers the Alabama attorney.

LCP localized books for Alabama:

Alabama Pattern Jury Instructions—Civil Trial Handbook for Alabama Lawyers

LCP national books:

Am Jur 2d	U.S. Supreme Court Reports, L Ed
Am Jur Legal Forms 2d	USCS
Am Jur Pleading & Practice Forms	Federal Procedural Forms, L Ed
Am Jur Proof of Facts	Federal Procedure, L Ed
Am Jur Trials	Bankruptcy Service, L Ed
ALR System	

Contact your LCP representative:

Central Alabama
Brian Rooks
(205) 871-6348

South Alabama
Ed Dorgan
(205) 982-0784

Northwest Alabama
Charles T. Hickerson
(615) 799-2599

Russell County
Randy King
(404) 428-3500



THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Apartment Building, Rochester, New York 14694

In Memoriam

John Milton Coxwell

John Milton Coxwell, of Monroeville, died February 9, 1985, at the age of 69. He was born at Monroeville in 1915, the son of John Mitchell Coxwell, then clerk of the circuit court, and Lillie W. Coxwell.

He was educated in the public schools in Monroeville, Mobile and Decatur, Georgia. He received his undergraduate degree from Emory University in Atlanta and was a member of the class of 1939 at the University of Alabama School of Law.

He served his community professionally, spiritually, publicly and civically for over 45 years. John practiced civil law on a wide and varied scale and served as county solicitor for Monroe County from 1942 to 1975, when he retired as a supernumerary district attorney, an office he held until his death. He was a Mason, a Shriner and an elder and deacon of the Monroeville Presbyterian Church. He was affiliated with the Democratic Party for many years and in that regard served as a delegate to Democratic National Conventions in 1944 and 1952 and as chairman of the Monroe County Democratic Executive Committee for several terms.

John's life witnessed many changes in his hometown and county, including changes in the membership of the practicing bar, his stories of whom frequently entertained lawyers and judges of all ages.

As a lawyer, John was committed to professional excellence and courtesy to all people, regardless of their station in life. His office was considered by all lawyers as a place of respite, where one was consistently and cheerfully wel-

comed. He was especially aware of the problems faced by young lawyers and was never too busy to lend advice and assistance to a young lawyer in need.

John Coxwell is survived by his wife, Frances Hodge Coxwell; his son and law partner, J. Milton Coxwell, Jr.; a sister, Jewell M. Coxwell; and two grandchildren, Will and Stewart.

The bench and bar of the 35th judicial circuit, joining many others throughout the state, deeply mourn the passing of our fellow lawyer and friend, John Coxwell.



Jack Crenshaw

When Jack Crenshaw died January 17, 1985, at 80 years of age, there were inevitable comparisons to the passing of Bear Bryant. Like Coach Bryant, Jack worked and won at the profession he loved until only a few months before his death, and it seemed impossible to think of him as being "retired" for any extended time.

Traditional memorials contain many of a man's honors and accomplishments, and for Jack Crenshaw, that

list would be both long and varied. While Jack was in some ways the most traditional of lawyers, he was in others the most innovative, unusual and, indeed, unique of lawyers and human beings; a traditional listing somehow seems inadequate. It is hard for a "younger" practitioner, who knew and worked with Jack only over the last 20 years of his career, to appreciate fully the span of a career longer than many men's entire lives.

Jack belonged in some ways to two different worlds, from a practice in the years after World War I to the pace of the 1980s. Despite handling scores of cases before the Alabama Supreme Court and the U.S. Supreme Court and dozens of major trials, if asked to point out the case of which he was proudest over that long span, he would not have reminisced about long-ago triumphs of common-law pleading or battles against railroads, but would have pointed to a case which he began at the age of 75—a long, massive and complex case action involving three appeals, scores of hearings and a prolonged trial. At an age when most of us would expect to have ended our active professional lives, Jack was relishing the novelty of the case, the combat over important issues and the satisfaction of representing his clients fully and well.

Amazingly, Jack entered college at the sophomore level at the age of 15 and had been admitted to the bar by 1926, full of academic honors including Phi Beta Kappa; he was then the youngest person admitted to that scholastic society.

As a traditionalist, Jack always had a strong preference for practicing law strictly by the rules of procedure. He simply felt it was both proper and easier to follow the rules and formalities,

and he did so without any intent to cause difficulties. He was at the same time the soul of personal and professional courtesy in almost an old-world sense.

Jack was a fierce professional antagonist and readily expected his opponents to be the same. He would have had nothing but contempt for an adversary who did not professionally represent his client.

His fellow practitioners often have said the only task more professionally demanding than being Jack's opponent was to be his associate counsel. His energy, will, creativity and drive never faltered, and he never hesitated to take on the most difficult tasks himself.

It is not surprising he should have been honored by his profession. He served as president of the Montgomery County Bar, as a proctor and bar examiner for the state bar, as a special justice of the Alabama Supreme Court; he was an author of numerous legal articles, a member of the faculty of the Law Science Academy and a longtime member of the American and Alabama Trial Lawyers Associations. Less well-known — and less traditional, I think — were his services to his profession, his church and his community in other ways. Jack readily talked of his own early difficulties with, and conquest of, alcohol, and he quietly helped many of his fellow lawyers to deal with similar problems. He never was too busy to see and counsel with someone in trouble, and there are many successful lives who have been rescued by him.

He was equally dedicated to his church, serving as a deacon, an elder, a Sunday school teacher and a trustee of the Presbyterian Home for Children. He was a trustee of the local Shrine Temple and Masonic Home, as well as involved in such diverse activities as the American Lung Association (by which he was honored with the Heacock Award in 1981) and the Chamber of Commerce.

Jack's great recreational love, golf, was characteristic of him. He won the Southern Intercollegiate Championship in 1923 and continued to play until just months before his death. While he recognized age kept him from hitting the ball as far, he refused to concede he

could not continue to learn and improve.

Although he enjoyed describing himself as "arrogant, conceited and mean," his friends, wife Vern, his son and his daughter and, in truth, his professional adversaries, knew at the core, he was none of those things. He was something of a renaissance man — a scholar, a sportsman, an author, a jurist, a brilliant and accomplished professional and a guide in his church, family and community. He was uniquely dedicated, hardworking and tenacious. He did not rely on brilliance of intellect alone, but also on thoroughness, devotion and hard work. Jack Crenshaw was a "character" in the sense of a unique, special individual, and this profession will miss him. There are far too few among us of his stature as a lawyer and a man.



Mobile Press Register file photo

William Rudolph Favre, Jr.

On Christmas Day 1984, William Rudolph "Ruddy" Favre, Jr., a distinguished member of the Alabama State Bar, died.

Ruddy was born in Mobile, Alabama, February 8, 1928, the son of William R. Favre, Sr., and Nellie Beroujon Favre. He graduated from Spring Hill College in 1950, having been enrolled in the ROTC program there. On his graduation from college he was commissioned as a second lieutenant in the United States Army and served his country during the Korean War. He then entered the University of Alabama Law School and received his LL.B. degree in 1956.

Following his graduation from law school, he was employed in the legal department of Waterman Steamship Company. From 1961 until 1967 he was associated with and then a partner in the law firm of Tonsmeire, McFadden and Favre, his practice being confined to real estate law. For the next two years he was a partner in the firm of Diamond, Lattof and Favre, specializing in admiralty law.

In July 1969, he was appointed assistant United States attorney and from July 1969 until his death he handled criminal prosecutions for the U.S. attorney's office for the southern district of Alabama. Although he virtually had no prior experience in the field of criminal law, he quickly became an expert in trying criminal cases for the government. He successfully prosecuted some of the most important, complicated criminal cases in the history of the court under U.S. Attorneys Charles White-Spunner, William (Billy) Kimbrough and Jeff Sessions.

He has been recognized by his peers as one of the outstanding assistant U.S. attorneys in the nation, a distinction which but few merit and an honor which but few attain.

Ruddy participated in sports activities throughout his life. At the time of his death he was and had been for many years an avid, low-handicap golfer. He was a star shortstop for the Murphy High School and Spring Hill College Varsity Baseball Teams and the American Legion Baseball Team. While at law school he was an outstanding player on the Sigma Chi fraternity softball team. He was the catcher on the Government Street Methodist Church softball team, champions of the church league. There was a "good Catholic" helping the good Methodists, because Ruddy practiced his Catholic faith throughout his life and at the time of his death had been a longtime member and regular attendant of St. Pius X Catholic Church.

In November 1952, Ruddy married Catherine Percy; they had two daughters. Ruddy always was a devoted family man and advisor.

His daughters said, "He always taught us to be fair and honest," and that was the way Ruddy conducted his

entire life, never with pride, but always with dignity.

His sage advice was sought by and given to other members of the U.S. attorney's staff and investigative agents of the federal government, not only on legal matters but personal matters as well.

Ruddy leaves surviving him his wife, Catherine Percy Favre; his daughters, Deborah Favre Bender and Laura Favre Hicks; two grandsons, David and Benton Bender; all of Mobile; and a sister, Nell Favre Harris, of Pascagoula.

The life of William Rudolph "Ruddy" Favre, Jr., is recognized as one of deep dedication to his church, his family, the bar, his community, his state and his country, and his death represents a great loss to each.

The Mobile Bar Association extends its deepest sympathy to the family of Mr. Favre.



George Mortimer Harrison, Jr.

George Mortimer (Tim) Harrison, Jr., of 1805 Northside Drive, Dothan, Alabama, died at the age of 43 in a Pensacola, Florida hospital December 30, 1984, after a short illness.

Tim was born and reared in Dothan. He was a graduate of Dothan High School and attended Marion Military Institute. He received an A.B. and a Juris Doctor degree from the University of Alabama. He served in the United States Army from 1965 until 1968 on the staff of the judge advocate and was separated from the service at Fort Rucker, Alabama, with the rank of captain. Tim had been a member of

the law firm of Merrill & Harrison in Dothan since 1968, and was an able lawyer and a member of the Houston County Bar Association, the Alabama Bar Association, the American Bar Association and the Defense Lawyers Association of Alabama.

Tim invariably was interested by, and always interesting to, the people with whom he worked, lived and played. He was a superb sportsman and fished and hunted with contagious enthusiasm and enjoyment. No man ever had better company than in Tim Harrison. His quick wit and ready smile made him delightful company. He will be sorely missed by his many friends.

The members of the Houston County Bar Association regret the untimely death of Tim Harrison and record our appreciation for his high legal ability and sparkling personality. His memory will be cherished, and his passing has been a great loss to this bar association.



Robert Browder Stewart

January 27, 1985, Robert Browder Stewart died suddenly at his home in Montgomery. He was in the 70th year of his life and was vigorous and active for his age. All who knew him feel a keen sense of loss and sadness at his passing. He is survived by his wife, June Lofgren Stewart, and two daughters, Mary Kay (Mrs. Adrian) Culebro of Mexico City, Mexico, and Carol (Mrs. Douglas) Harper of Norfolk, Virginia.

In 1953, Bob Stewart was one of the

founders of the law firm of Jones, Murray & Stewart. He still was active in the firm of Jones, Murray, Stewart & Yarbrough at the time of his death. From 1956 to 1964 he served as chairman of the Montgomery County Democratic Committee, and in 1960 he was elected president of the Montgomery County Bar Association. He also was a member of the Alabama State and American Bar Associations and the American Judicature Society. For ten years he was deputy circuit solicitor of the 15th Judicial Circuit.

Bob was the best organized lawyer with whom this writer has dealt closely. His mental organization of legal problems and facts was astounding. He was capable of quickly switching from the tedious preparation of the most complicated legal document to the trial of a fast-moving damage suit. His care and attention to detail were exemplified in many of his representations, including Hank Williams and his estate, as well as many large corporations. Bob guided the merchandising of the Williams music which, it is said, during at least one year sold more than the music of any performer or group other than that of Glenn Miller.

Bob graduated from Sidney Lanier High School and received his bachelor of arts degree in economics and English from Davidson College in Davidson, North Carolina. He earned his law degree from the University of Alabama in 1940. Bob also did graduate work at the University of Virginia and at Stanford University.

Bob served in the Army Air Corps from 1942 to 1946. He was a legal officer with the Corps, serving in Japan and Korea; he left the military with the rank of captain. He was a member of Trinity Presbyterian Church and numerous social and fraternal organizations, including Phi Beta Kappa.

Bob's law firm, his fellow lawyers and all who knew him long will miss this distinguished legal scholar. As one of his longtime associates expressed it, he was "the cream of the crop — so smart, so busy, but never too busy to take time to be a friend."

Robert E. Varner
United States District Judge
Former partner in law firm of
Jones, Murray & Stewart 1958-1971

Classified

Notices

services

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

STRUCTURAL ENGINEER/Consultant/Failure Analyst/Expert Witness, Ph.D. in applied mechanics. Alabama registered professional engineer. Experience in codes & standards, product liability, failure analysis of industrial equipment and structures, construction, marine, pipeline and pressure vessels. National/International experience. Dr. Samuel J. Brown, P.E., QED Corp., P.O. Box 1275, Crosby, Texas 77532. (713) 328-5538.

LEGAL RESEARCH HELP. Attorney with seven years' experience in legal research/writing. Access to University of Alabama and Cumberland libraries. West-law searches available. Prompt deadline service. \$35/hour. Sarah Kathryn Farnell, 1905 Woodlane Place, Birmingham, Alabama 35216. Phone 979-3648. **No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.**

LEGAL RESEARCH and writing service: Licensed attorney, B.A. in English, *Law Review* associate editor, former federal district court clerk, former Alabama Supreme Court clerk. Access to Cumberland library. Rate \$35/hour. Irene Grubbs, 988-8521 (locally call greater Birmingham). **No representation is**

made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.

books for sale

FOR SALE: A complete set of Alabama Reported Cases (mixed volumes of Southern, Alabama and Alabama Appellate Reporters); Alabama Digest; Shephard's. Call or write Dan Warnes, P.O. Drawer 906, Guntersville, Alabama 35976, phone 582-6914.

FOR SALE: Alabama Digest: Southern Reporter 1 & 2; Federal Reporter 1 & 2; Federal Supplement; F.R.D.; U.S. Led 1 & 2; Am Jur 2d, Am Jur Legal Forms 2d; ALR 2, 3, 4 & Federal; Williston on Contracts 3d, complete tax library. For all your law book needs: The Lawbook Exchange, Ltd., buys & sells, 135 W. 29th Street, New York, New York 10001, (212) 594-4341.

FOR SALE: Southern Reporter, 2d vols. 226-442, \$1,500; Code of Alabama, \$345; CJS, \$1,000. Other state and federal publications available. Georgia Law Book Co., P.O. Box 548, Sylvester, Georgia 31791.

FOR SALE: West Fed. Forms, Vol. 1-16; Fed. Procedural Forms, Lawyers Edition, Vol. 1-16; and Trauma, all up to date. Crownover & Black, P.O. Box 2507, Tuscaloosa, Alabama 35403, phone 349-1727.

FOR SALE: Criminal Law Series; AmJur Proof of Facts; AmJur Legal Forms; Southeastern Transaction Guide; Federal Procedure Forms; AmJur Trials; Personal Injury — Actions, Defenses & Damages. Contact Malone & Totten, P.O. Box 729, Athens, Alabama 35611, phone 232-1287.

FOR SALE: Southeastern Transaction Guide (20 volumes) completely updated, \$450. Call (205) 763-3502 or (703) 560-7067, or contact W.E. Roberts at P.O. Box 164, Lincoln, Alabama 35096.

THE ALABAMA LAWYER CLASSIFIEDS

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

RATES:

Members: No charge
Nonmembers: \$35 per insertion of fifty (50) words or less
\$.50 per additional word

DEADLINES:

Classified copy and payment must be received no later than the first day of the month prior to publication date, with no exceptions.

MAILING:

Send classified advertising copy and your check, made out to *The Alabama Lawyer*, to:

Alabama Lawyer Classifieds
c/o Margaret Dubberley
P.O. Box 4156
Montgomery, AL 36101

positions offered

MEDIUM SIZED FIRM with large tax practice seeks tax lawyer with two to five years' experience in fringe benefits, ERISA and closely held businesses. LL.M. preferred. All inquiries kept confidential. Reply to Hiring Partner, Sirote, Permutt, et al., P.O. Box 55727, Birmingham, Alabama 35255.

MEDIUM SIZED FIRM with large tax practice seeks tax lawyer for its Huntsville office. Two to five years' experience in general corporate law and taxation. LL.M. preferred. All inquiries kept confidential. Reply to Hiring Partner, Sirote, Permutt, et al., P.O. Box 55727, Birmingham, Alabama 35255.

position wanted

MISSISSIPPI licensed oil and gas corporate attorney seeking to relocate to south Alabama area. 35, married, one child. Total six years' experience covering property, contracts, SEC, blue-sky and NASD compliance. Please reply to P.O. Box 2101, Natchez, Mississippi 39120.

miscellaneous

ANIMAL CRUELTY LAW: Attorneys wanted to form new section on animal rights/cruelty law and cases. For more information contact James R. Foley, 221 East Side Square, Suite 3A, Huntsville, Alabama 35801. Phone: 534-4589.

FARM FOR SALE: Greene County, Alabama, 1,298 acres. Farm, cattle, hunting land. Three miles south of Eutaw, Alabama, on Highway 11. Fenced, two houses, two wells, several farm buildings. Seven ponds stocked with bass and bream, also deer, turkey, quail and small game hunting. See by appointment. Phone 956-3131.

WORD PROCESSING equipment: IBM displaywriters: three Textpack 4 (two with Reportpack), one Textpack 3, two Textpack 2; four 5218A02 printers with automatic sheet feed. Best offer. Inquiries and offers directed to P.O. Box 1109, Mobile, Alabama 36633.

FOR SALE: Gulf Shores — house directly on the Gulf, sleeps 10, fully equipped. Call 836-0922, 833-2245 or write for brochure to Steve Harris, 7211-1st Avenue North, Birmingham, Alabama 35206.

ATTENTION!

ATTENTION ALL POETS

Once again, *The Alabama Lawyer* is sponsoring a writing contest exclusively for members of the Alabama State Bar and law students. This time, however, instead of submitting your short stories, we want your best and most memorable poetry. We want you to enter!

Specifications: Those entering either must be members in good standing of the Alabama State Bar or students attending a law school within Alabama.

Subject matter is completely to participant's choosing. Poems must be on 8½" x 11" paper, typed and double-spaced.

The deadline for receiving entries is September 30, 1985. The winning poem, and possibly others, will appear in the November 1985 issue of *The Alabama Lawyer*. Individuals are limited to one (1) poetic entry, but also may participate in *The Alabama Lawyer's* photography contest.

Participants are urged to submit entries early, rather than wait until the closing date.

Send two copies to:

The Alabama Lawyer
P.O. Box 4156
Montgomery, AL 36101

*Please include your name and a telephone number where you may be reached during the day.

ATTENTION ALL AMATEUR PHOTOGRAPHERS

The Alabama Lawyer is always on the lookout for color slides, transparencies or prints to use as cover shots for the journal.

Specifications: Photographs must be shot vertically, for enlargement purposes. *The Alabama Lawyer* is interested in outdoor Alabama seasonal scenes, law-related subjects (such as courthouses, etc.) and anything else you feel would make an "eye-catching" cover.

The Alabama Lawyer will attempt to return all photographs not used for covers, if requested, but will not be held responsible for those misplaced. Be sure to send an index card with your address and subject matter of enclosed photograph to:

The Alabama Lawyer
P.O. Box 4156
Montgomery, AL 36101

*Please include your name and a telephone number where you may be reached during the day.



LEGAL PRINTING



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

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

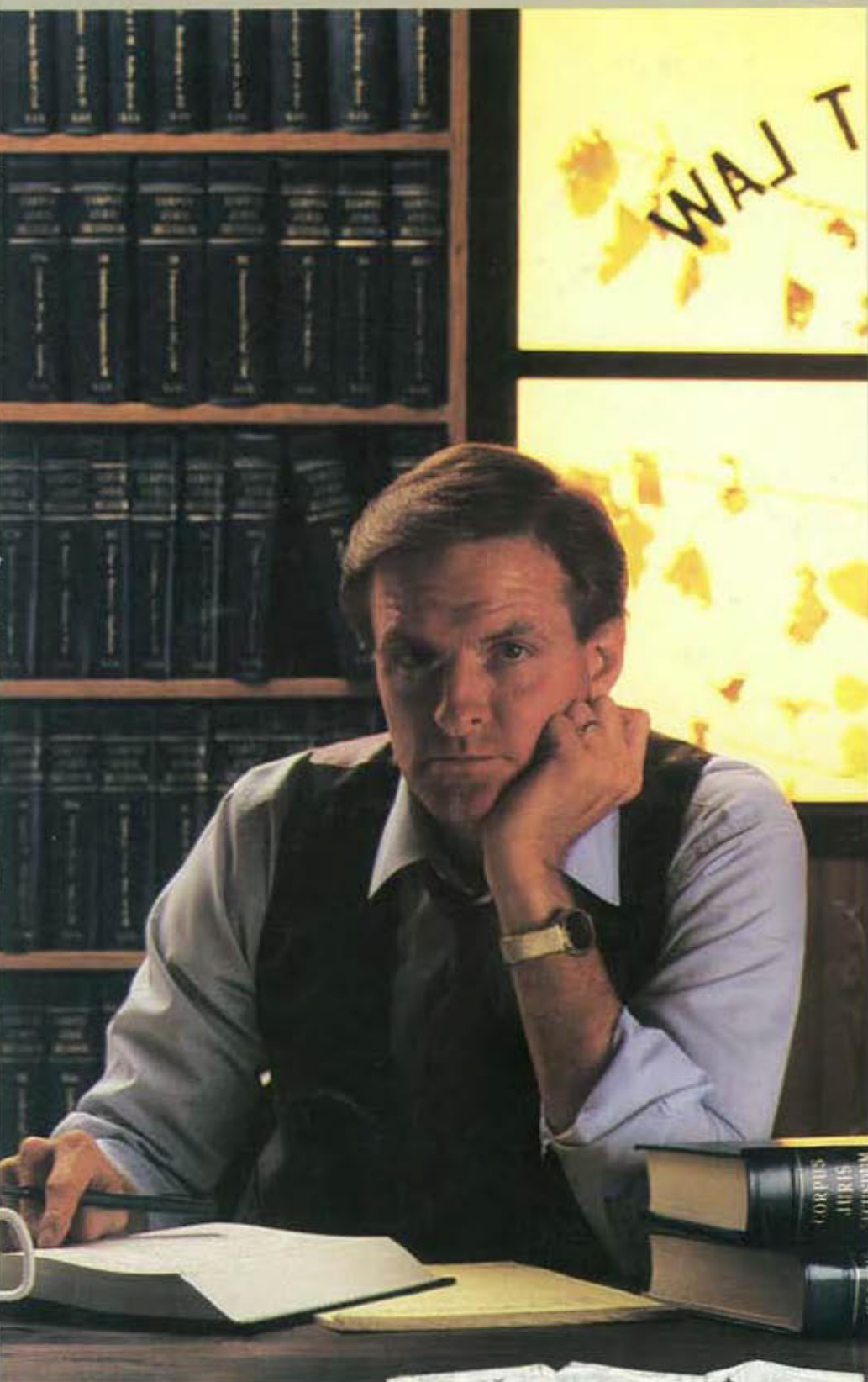


BIRMINGHAM PUBLISHING COMPANY

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



The Master's Tools



Fine tools. In the hands of a master they can shape a quality instrument, bring life to a slab of stone or coax a new rose from a handful of earth.

You find masters in every profession. They're the ones at the top or on their way. They've mastered their craft and the tools they use.

For an attorney, those tools are on the shelves of his library.

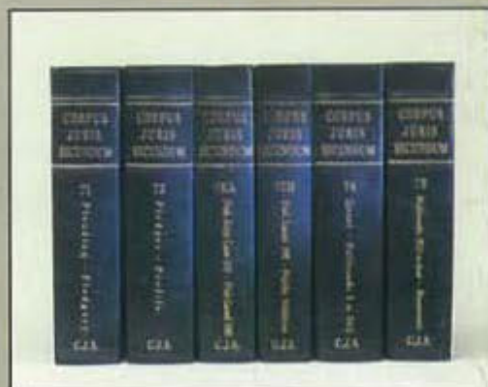
That's where you'll find *Corpus Juris Secundum*. The last word in legal encyclopedias. The first place to look.

Corpus Juris Secundum contains all the law, all the exceptions. All the time.

Corpus Juris Secundum... for the masters.

You can't master your craft until you master the tools.

CJS Corpus Juris Secundum



The Alabama
Lawyer

HON J L CAPELL III
P O BOX 2069
MONTGOMERY AL 36197

West Publishing Company
P.O. Box 64526, Saint Paul, Minnesota 55164-0526