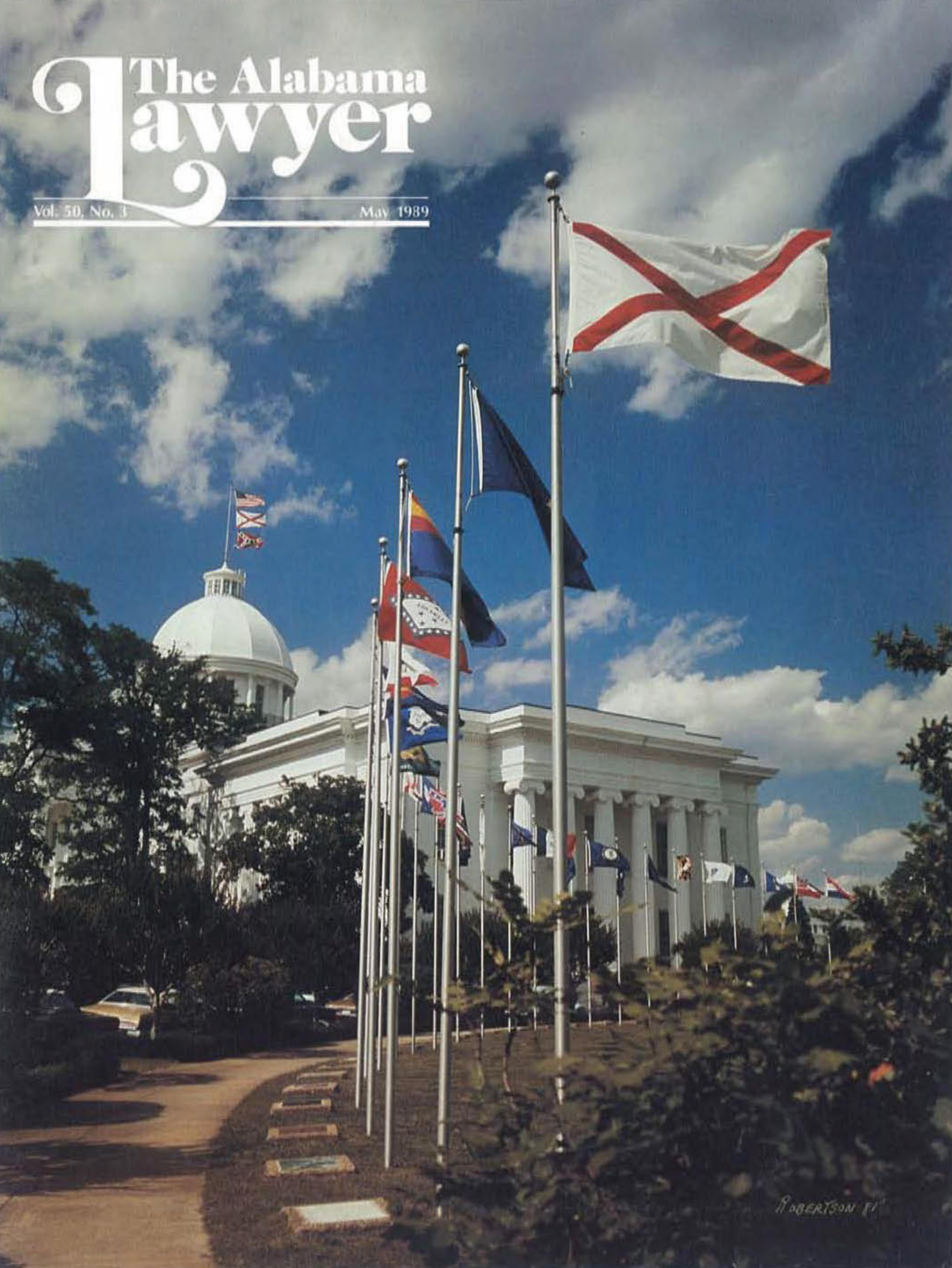
The Alabama Lawyer

Vol. 50, No. 3 May 1989



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MONEY MAGAZINE, FALL 1988

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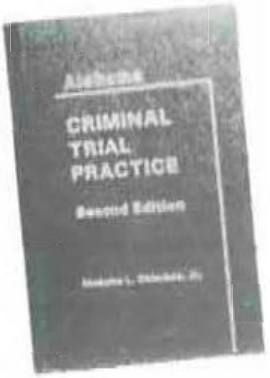
ALABAMA . . .



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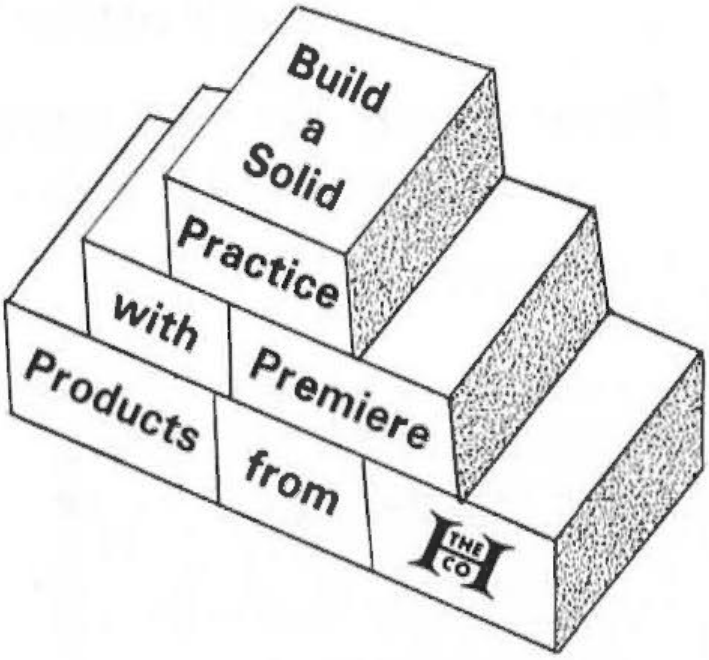

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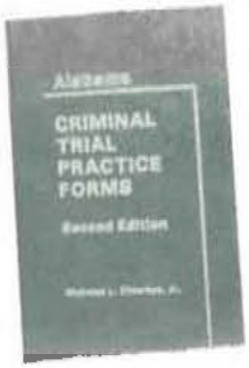

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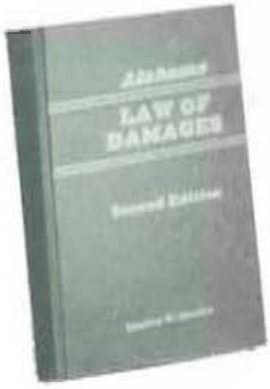

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The new Second Edition retains the character of the first edition in its emphasis, and, due to the advent of tort forms, treats the constitutionality of statutes limiting damages.

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88-H8

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The National Association of Legal Secretaries is offering 47 hours of quality education at its 38th Annual Meeting and Educational Conference in Birmingham. The seminars are open to nonmembers of NALS for $25 each and will be held at the Wynfrey Hotel at Riverchase Galleria.

Place a check mark beside each workshop that you will attend:

Saturday, July 15

- ☐ **Employee Benefits: The Other Part of Your Paycheck**
  8:00 a.m. to 9:30 a.m.
- ☐ **Toxic Torts: The Up-and-Coming Claims of the 90s**
  8:00 a.m. to 9:30 a.m.
- ☐ **Today's Church/State Dilemma**
  8:30 a.m. to 10:00 a.m.
- ☐ **Estate Planning and Preparation of 706s**
  8:30 a.m. to 11:30 a.m.
- ☐ **To Mediate or Not to Mediate**
  9:30 a.m. to 12:30 p.m.
- ☐ **Discovery Techniques**
  9:30 a.m. to 12:30 p.m.
- ☐ **Day in the Life of...Personal Injury**
  2:00 p.m. to 3:30 p.m.
- ☐ **Legal Software: The Agony and the Ecstasy**
  2:00 p.m. to 5:00 p.m.
- ☐ **Collective Bargaining in the Law Office**
  2:00 p.m. to 5:00 p.m.
- ☐ **Unraveling the Mysteries of Pathology**
  2:30 p.m. to 4:30 p.m
- ☐ **Your Role with the Expert Witness**
  3:30 p.m. to 5:00 p.m.

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- ☐ **The Next Step in Marketing Yourself**
  9:30 a.m. to 11:00 a.m.
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The Alabama Lawyer

VOL. 50, NO. 3 MAY 1989

In Brief

Published seven times a year by The Alabama State Bar
P.O. Box 4156 Montgomery, AL 36101
Phone (205) 269-1515
Robert A. Huffaker—Editor
Susan Shirock DeFaola—Associate Editor
Margaret Lacey—Managing Editor

GENERAL INFORMATION **The Alabama Lawyer, (ISSN 0002-4287)**, the official publication of the Alabama State Bar, is published seven times a year in the months of January, March, May, July, August (bar directory edition), 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.

The Alabama Lawyer is published seven times a year 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 for the journal, and $15, for the directory. Second-class postage paid at Montgomery, AL.

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

On the cover—
The Avenue of Flags provides a panoramic view of the south wing of the state capitol which is now undergoing renovation.

Modest Proposals for Preventing the Problems of Law Office Management from Being a Burden to Lawyers or Their Firms—by W. Inge Hill, Jr. 126
A tongue-in-cheek parody of law office management philosophy may be closer to the truth than we care to admit.

Interference with Business Relations: the Unified Tort Since *Gross v. Lowder Realty* by Andrew P. Campbell 129
Since the Alabama Supreme Court merged the torts of interference with contract and intentional interference with business relations into a single tort concept, there has been a marked increase in litigation in this area.

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President's Page

HUCKABY

The decline in bench and bar relations

Much has been said about the demise of professionalism among lawyers in recent years, and there is no dispute that this subject deserves all of the attention it has received. Far less focus has been given, however, to the deteriorating relationship between the bench and the bar, a development which appears to be aggravating the decline of professionalism.

The greater emphasis by lawyers on the adversarial nature of litigation seems to have been met by an ever-increasing adversarial relationship between judges and lawyers, both in state and federal courts in Alabama. In some courts we now commonly see an unhealthy, and, I believe, unnecessary tension between the judge and the lawyers.

In my judgment the fault for this condition rests with both our bench and our bar. Judges rightfully have lost patience with some lawyers who assert unfounded positions for their clients and who are not prepared when appearing in court. They tire of interminable disputes about discovery and other procedural points that should be resolved by agreement. It appears that the new "hard-ball" tactics practiced by some lawyers have caused a similar reaction by judges. Lawyers, just as validly, are upset about some judges who deal with lawyers with a demeanor that ranges from indifference to outright hostility.

These conditions have resulted in part from the isolation that is incidental to judicial office. Judges are lawyers first, and when they assume the bench, they instantly must sever, to some extent, warm, collegial relationships with their fellow lawyers. Lawyers must avoid any appearance of impropriety that might be suggested by a close association with members of the bench.

While it is a necessity to observe the well-known rules of conduct for both the judge and the lawyer, the rules do not demand total isolation. There are abundant opportunities for interaction of judges and lawyers that are not only appropriate but ought to be fostered. The judicial conference in the federal system is one such example. The conference provides an opportunity for appropriate social contact between judges and lawyers, and, more importantly, a vehicle to exchange ideas and viewpoints about the courts.

In our state courts there simply is no realistic avenue for judges and lawyers to communicate on a regular basis about mutual problems. I propose that we establish an annual state judicial conference similar to the federal system. An extension of this idea could be circuit conferences between the judges and lawyers in the circuits.

Another existing opportunity is the annual meeting of the state bar. Twenty-five years ago many judges attended this meeting. Now only a handful of judges are at the bench and bar luncheon at annual meetings. Judges ought to be on committees, and this year I have appointed many of them for such service.

Real improvement must come in the chambers and courtrooms on a day-to-day basis, however, and will require a rededication of the lawyer to the traditional view that he or she is an officer of the court and that it is not his or her duty to assert every position the client demands. Judges must realize that courtesy, and even friendliness, in the courtroom do not connote lack of discipline or control in the case.

Judges and lawyers alike must realize that the goal of all that we do in our court is to serve the public in the adjudication of their disputes. The system and the rules are not ends within themselves. We must try to find cohesion and common ground for the good of the parties. Clearly, common courtesy and civility are the essence of the proper judge-lawyer relationship. ■

Executive Director's Report

This is the year of the Alabama Reunion.

The Alabama Reunion™
1989

HAMNER

An interesting inquiry received in early 1989 afforded us an opportunity to "invite someone home" as I researched a significant bit of Alabama bar history.

Let me share with you some of our bar's history while introducing you to a remarkable Alabama lawyer, special member #2368.

A chance call from an historian wanting the name of the first black female lawyer admitted to practice in Alabama initiated my search. Our records before 1923 are sparse, and we continue to index them from that date to the present. Earlier files are not cross-indexed as to race, gender, year of admission, etc., but by picking a logical starting point, and with the help of some senior members, I eventually can answer an inquiry.

I knew Mobile attorney Frankie Fields Smith was one of the senior female bar members and thought she may have been the first black woman admitted to practice in Alabama, in spite of her 1967 admission date. Smith was very helpful while acknowledging she knew she was not Alabama's first black female lawyer. She gave me a possible name, but I could find nothing concrete with which to answer the question. I did recall a story I had read of a black female lawyer of distinction from Alaska. I also remembered that she had an Alabama connection, though nothing in the article indicated she had ever been admitted to practice here.

Undaunted, I called my counterpart with the Alaska Bar and in less than two minutes had the name of an outstanding black female lawyer in Anchorage. A quick check of our inactive files not only provided the answer to the inquiry but permitted us to establish contact with a very special member, Mahala Ashley Dickerson, a Montgomery native possessing a fascinating legal career.

Dickerson graduated, *cum laude*, from Fisk University where she was inducted into Phi Beta Kappa after it was admitted to that campus. She was a law school

classmate of Alabama Supreme Court Justice Oscar W. Adams at Howard University and licensed to practice in Alabama upon successful completion of the 1948 bar examination. (Today there are 1,303 active female members of the Alabama State Bar. Eighty-six of these are black.)

Dickerson practiced law in Alabama until 1951, when she moved to Indianapolis, Indiana. She was the second black female to be admitted in Indiana and practiced there for eight years. After getting "the Alaska fever" in 1959, she moved there and became Alaska's first black attorney.

She described as a thrilling experience the homesteading of her own 160 acres with a private lake and fabulous mountain view. She became active with the National Association of Women Lawyers and served as that organization's national president during 1983-84.

"Retirement will be left up to nature," she writes. She presently is writing her memoirs, *"Delayed Justice for Sale,"* which she hopes to finish this year. Dickerson is on the board of directors of Pendle Hill, a Quaker Center in Pennsylvania.

In addition, she is the mother of triplet sons. One son is now deceased; her other two reside in New York City, where one is a businessman and the other a famous bodybuilder who has held the titles of Mr. USA, Mr. America, Mr. Universe and Mr. Olympia.

The preparation of an Alaska Supreme Court argument delayed her response, with apology, to my letter, but this lawyer included a check to reactivate her Alabama State Bar membership. In commenting on the cover of the January *Alabama Lawyer* I sent her, she noted not only the female jurors, but a black female juror in the jury box—"Our state has really matured immensely."

I look forward to Mrs. Dickerson's anticipated visit home in April 1989 and her promised visit to state bar headquarters. Such a visit will be in the true Alabama Reunion spirit. ■

Mahala Ashley Dickerson, left, and Reginald Hamner outside Alabama State Bar Building.

Supreme Court of Alabama

ORDER

WHEREAS, the Alabama State Bar has recommended to this Court certain amendments to Rule 8, Alabama Rules of Disciplinary Enforcement; and

WHEREAS, the Court has considered those proposed amendments and deems it appropriate to make those amendments,

It is ORDERED that Rule 8, Alabama Rules of Disciplinary Enforcement, be amended as follows:

1. Rule 8(b)(2) is amended to read as follows: "(2) *Grievance Committee's Records; Failure to Submit Report Within One Year; General Counsel's Records.* Each grievance committee shall maintain a file for at least six years as to all charges filed with it or investigated by it and shall make the same available to the General Counsel upon 14 days' receipt of written request by the General Counsel. The failure of any local grievance committee to take or recommend action against an attorney shall in no event be or constitute a bar to the prosecution of charges by the General Counsel of the Alabama State Bar against the attorney for or arising out of the same facts, as provided in Rule 8(a) hereof.

"In any case where a grievance committee has not submitted its report of an investigation to the Disciplinary Commission within one (1) year from the date that the complaint was received by the Bar or from the date on which the investigation was commenced by the grievance committee, whichever was earlier, the Disciplinary Commission shall notify the grievance committee to submit its report within thirty (30) days, and if the report has not been received within thirty (30) days the Disciplinary Commission may order that the investigation be taken over by the General Counsel.

"The General Counsel shall maintain a file for at least six (6) years as to all charges filed with it and investigated by it and shall make the same available to any grievance committee within fourteen (14) days of the receipt of a written request by the grievance committee, provided, however, that Rule 22 shall be observed by the grievance committee.

"(Amended effective February 28, 1989.)"

2. Rule 8(c) is amended to add the following paragraph:

"In those cases where the respondent is found to have violated the *Code of Professional Responsibility,* the Disciplinary Board shall allow the State Bar and the respondent to be heard further on the question of appropriate discipline in the matter, and the Disciplinary Board shall consider, in setting discipline, any prior violations of the *Code of Professional Responsibility* by the respondent.

"(Amended effective February 28, 1989.)"

3. The following section is added as Rule 8(f):

"*Expungement of Records.* The General Counsel of the Alabama State Bar and a grievance committee of a Circuit, County, or City Bar Association, which committee has been approved by the Alabama State Bar or its Board of Commissioners, may expunge any records or files relating to or involving any complaint or grievance, which has been dismissed without discipline, by an order of the Disciplinary Commission or by a panel of the Disciplinary Board of the Alabama State Bar, and as to which at least seven (7) years has elapsed since the date of the order dismissing the complaint or grievance.

"(Added effective February 28, 1989.)"

It is further ORDERED that these amendments shall be effective this date.

DONE and ORDERED this 28th day of February 1989.

Hornsby, C.J., and Maddox, Almon, Shores, Houston, Steagall, and Kennedy, JJ., concur. ■

About Members, Among Firms

ABOUT MEMBERS

J.E. Sawyer, Jr., formerly of Rowe, Rowe & Sawyer, P.A., announces the relocation of his office to 117 East College Street, Enterprise, Alabama 36330. Phone (205) 347-6447.

■

Richard Breibart announces that he is engaged in the practice of law at 1813 Third Avenue, South, Birmingham, Alabama 35233. His mailing address is P.O. Box 59169, Birmingham, Alabama 35259. Phone (205) 251-2746.

■

W. Cassell Stewart, recently retired from the U.S. Department of Justice, U.S. Trustee in Bankruptcy, announces the opening of his office at 227-238 Frank Nelson Building, Birmingham, Alabama 35203, effective March 1, 1989. Phone (205) 328-6845.

■

Kenneth O. Simon has become an assistant director of the **U.S. Securities and Exchange Commission's Division of Enforcement.** He formerly was a branch chief in the Division of Enforcement. Offices are located at 450 5th Street, N.W., Washington, D.C. 20549. Phone (202) 272-2344.

■

Leonard Wertheimer, III, P.C. announces the relocation of its office to #1 Independence Plaza, Suite 510, Birmingham, Alabama 35209. Phone (205) 870-9587.

■

Robert P. Barclift, formerly a trust officer with AmSouth Bank in Birmingham, announces his appointment as an assistant **United States Attorney for the Northern District of Alabama, civil division,** effective March 1, 1989. Offices are located at Room 200, 1800 Fifth Avenue, North, Birmingham, Alabama 35203 (old federal courthouse). Phone (205) 731-1785.

■

Thomas M. Ray, formerly with the firm of Bishop, Barry, Howe, Haney & Ryder, San Francisco, California, announces that he has become a litigation consultant with **Multi-Systems Agency, Ltd.,** 175 N. Redwood Drive, Suite 280, San Rafael, California 94903. Phone (415) 492-8894.

■

M. Mort Swaim announces the opening of his firm, **M. Mort Swaim, P.C.,** with offices located at 235 West Laurel Avenue, Foley, Alabama 36535. Phone (205) 943-3999.

■

Hank Hawkins has closed his private practice of law and assumed the position of director of the **Alabama Capital Representation Resource Center.** He can be reached at the Resource Center at P.O. Box 6189, Tuscaloosa, Alabama 35486. Phone (205) 348-9571.

■

Eugene R. Verin announces the relocation of his office to 1813 2nd Avenue, North, Bessemer, Alabama 35020. The mailing address is the same as the relocation address. Phone (205) 428-4400.

AMONG FIRMS

Tommy Yearout announces the relocation of the law offices of **G. Thomas Yearout, P.C.** to Suite 550, New South Federal Building, 2100 First Avenue, North, Birmingham, Alabama 35203, phone (205) 328-4156, and that **Aubrey Jefferson Holloway, Jr.,** has become associated with the firm.

■

Veigas & Cox announces that **Tom Wright,** formerly of Reese & Wright, is now associated with the Montgomery office, located at 671 South Perry Street, Montgomery, Alabama 36104. Phone (205) 832-4500.

■

Whitesell & Lewis, P.C. announces that **Calvin M. Whitesell, Jr.,** has become associated with the firm, and the firm has relocated its offices to the Old Scott Street Fire Station, 418 Scott Street, Montgomery, Alabama 36104. Phone (205) 262-1967.

■

Gobelman & Love of Jacksonville, Florida, announces that **David M. Dunlap,** formerly practicing with Pittman, Hooks, Marsh, Dutton & Hollis of Birmingham, has become associated with the firm.

■

Cabaniss, Johnston, Gardner, Dumas & O'Neal announces that **Sidney M. McCrackin, Samuel M. Hill, William H. Pryor, Jr., Anne B. Stone** and **Vincent R. Ledlow** have become associates of the firm. Birmingham offices are located at 1900 First National-Southern Natural Building, Birmingham, Alabama 35203. Phone (205) 252-8800. Mobile offices are located at 700 AmSouth Center, Mobile, Alabama 36602. Phone (205) 433-6961.

■

Cassidy & Associates, Inc. announces that **Robert K. Dawson,** formerly associate director for natural resources, energy and science, office of management and budget, executive office of the president, has joined the firm as vice-president for management, with offices at Metropolitan Square, Suite 1100, 655 15th Street, N.W., Washington, D.C. 20005. Phone (202) 347-0773.

■

Nettles, Barker, Janecky & Copeland announces that **Bert S. Nettles** has withdrawn from the firm, and the firm name has been changed to **Barker, Janecky & Copeland.** The firm also announces that **Judson W. Wells** has become an associate with the firm, and **Lynn Etheridge Hare** is the firm's Birmingham office resident attorney. Birmingham offices are located at Suite 200, 2001 Park Place Tower, Birmingham, Alabama 35203. Phone (205) 252-4441. Mobile offices are located at 3300 First National Bank Building, P.O. Box 2987, Mobile, Alabama 36652. Phone (205) 432-8786.

■

Spain, Gillon, Tate, Grooms & Blan announces that **Bert S. Nettles** (formerly a member of the Mobile Bar) has joined the firm as a partner, and the firm's name has changed to **Spain, Gillon, Grooms, Blan & Nettles.** The firm also announces that **Thomas M. Eden, III,** has been admitted into partnership, and that **Mark T. Waggoner** and **Gary C. Smith** have become associated with the firm. Offices are located in The Zinszer Building, 2117 Second Avenue, North, Birmingham, Alabama 35203. Phone (205) 328-4100.

■

Douglas I. Friedman, P.C. announces that **Russelle L. Hubbard** has become associated with the firm at Suite 535, 2000-A Southbridge Parkway, Birmingham, Alabama 35209. Phone (205) 879-3033.

■

The firm of **Markow, Walker, Reeves & Anderson** announces that **Michael T. Estep** and **Richard C. Coker** have become partners of the firm, and **Tommie S. Cardin** has become associated with the firm. Offices are located at 805 S. Wheatley, Suite 475, Ridgeland, Mississippi, and the mailing address is P.O. Box 13669, Jackson, Mississippi 39236-3669. Phone (601) 956-8500.

■

Andre' M. Toffel announces that **Wade S. Anderson** is an associate with the firm and also the opening of offices at 804 Brown Marx Tower, Birmingham, Alabama 35203. Phone (205) 252-7115.

■

John W. Cooper and **Terry G. Hutcheson** of **Cooper & Hutcheson** announce the removal of their offices from Valley Head, Alabama, to 204 Alabama Avenue, South, Fort Payne, Alabama 35967. Phone (205) 635-6201.

■

Walker, Hill, Adams, Umbach & Meadows of Opelika and Auburn, Alabama, announces that **Will O. Walton, III,** has become a member of the firm, effective January 1, 1989. Offices are located at the Walker Building, 205 South 9th Street, P.O. Box 2069, Opelika, Alabama 36803-2069. Phone (205) 745-6466 in Opelika, 821-2800 in Auburn.

■

Harry P. Long announces that **John W. Norton** has joined him in the practice of law, and also announces the formation of the firm **Long & Norton,** with offices located at 2E Lyric Square, 1300 Noble Street, Anniston, Alabama 36201. Phone (205) 237-3266.

■

J. Randle McKinney and **Tim W. Fleming** announce the formation of their partnership to be known as **McKinney & Fleming.** Offices are located at P.O. Box 2757, 1574 Gulf Shores Parkway, Gulf Shores, Alabama 36542. Phone (205) 968-4444.

■

Lanier, Ford, Shaver & Payne, P.C. announces the relocation of its offices to 200 West Court Square, Suite 5000, Huntsville, Alabama 35801. Phone (205) 535-1100. The firm also announces that **Rennie S. Moody** became a partner in the firm January 1, 1989, and that **Jeffrey M. Blankenship** became associated with the firm November 1, 1988.

■

The firm of **Shackleford, Farrior, Stallings & Evans, P.A.,** announces that **William R. Lane, Jr.,** has become a shareholder of the firm, located at 501 East Kennedy Boulevard, Suite 1400, Tampa, Florida 33601. He is vice chairperson of the Estate and Gift Tax Committee, Tax Section, of The Florida Bar.

■

The Mobile firm of **Johnstone, Adams, Bailey, Gordon & Harris** announces that **Robin Brigham Thetford** has become a member of the firm.

Johnstone Adams also announced that **David R. Peeler** has become associated with the firm. He served as law clerk for the Hon. Robert S. Vance and for the Hon. Alex T. Howard, Jr.

■

Cary F. Smith, J.M. Boozer, H. Wayne Love and **Grant A. Paris** announce the formation of partnership in the name of **Smith, Boozer, Love & Paris.** Offices are located at the Third Floor, AmSouth Bank Building, Anniston, Alabama. Phone (205) 237-8080.

■

Brodowski & Abbott announces that **Andrew Dalins** is associated with the firm, with offices located at 2304 Memorial Parkway, South, Huntsville, Alabama 35801. Phone (205) 534-4571.

■

Gordon, Silberman, Wiggins & Childs will be moving to and occupying two floors of the SouthTrust Tower in Birmingham, Alabama, on April 21, 1989, and **Terrill W. Sanders** was recently appointed as general administrator for **Jefferson County Probate Court.**

■

Bolt, Isom, Jackson & Bailey, P.C. announces that **Stephen K. Wollstein** has joined the firm as an associate. Offices are located at 822 Leighton Avenue, P.O. Box 2066, Anniston, Alabama 36202. Phone (205) 237-4641.

■

Jerry D. Baker and **Dwight M. Jett, Jr.,** announce the formation of a professional corporation under the name of **Baker & Jett, P.C.** The Huntsville office is located at 102 West Clinton Avenue, Suite 200, Huntsville, Alabama 35801. Phone (205) 533-7176. The Decatur office is at 402 Gordon Drive, S.W., Decatur, Alabama 35601. Phone (205) 351-1303.

■

Mark C. Wolfe, formerly associated with Brown, Hudgens, Richardson, P.C., of Mobile, Alabama, and **Elizabeth H. Shaw,** formerly legal clerk for Judge Braxton L. Kittrell, Jr., of Mobile, Alabama, announce the formation of a partnership for the practice of law. Offices are located at 63 South Royal Street, Suite 407, P.O. Box 2726, Mobile, Alabama 36652. Phone (205) 433-0100.

■

Polson & Robbins announces that **G. Douglas Jones** has become a member of the firm, and the name of the firm has changed to **Polson, Jones & Robbins, a Professioaal Corporation.** Offices are located at 2001 Park Place Tower, Suite 1005, Birmingham, Alabama 35203. Phone (205) 252-1388.

■

The firm of **Prince, McGuire & Coogler** announces that **Richard M. Nolen** and **Jon M. Turner, Jr.,** have been made partners of the firm, with offices at 2501 Sixth Street, Tuscaloosa, Alabama 35401. Phone (205) 345-1105.

■

The firm of **Barnes & Radney, P.C.** announces that **Kathy E. Segler** is now associated with the firm with offices at 106 North Central Avenue, P.O. Drawer 877, Alexander City, Alabama 35010. Phone (205) 329-8438.

■

Paul M. Harden announces that **Anthony J. Bishop** has become associated with the firm, with offices located at 104 Court Square, Suite 3, Evergreen, Alabama 36401. Phone (205) 578-4746. ■

HUNTSVILLE! July 20, 21, 22 Alabama State Bar Annual Meeting

Supreme Court of Alabama

ORDER

WHEREAS, the Alabama State Bar Association has recommended the amendment of Rule 3, Alabama Rules of Disciplinary Enforcement, by the addition of a new section to deal with noncompliance with the Alabama State Bar Client Security Fund Rules, and

WHEREAS, the Court has considered that proposal and deems it appropriate to make the recommended amendment,

It is ORDERED that effective this date Rule 3, Alabama Rules of Disciplinary Enforcement, be amended by the addition of the following section:

"(h) *Suspension for Noncompliance With the Alabama State Bar Client Security Fund Rules.*

"(1) An attorney who, being subject to the assessment of a fee pursuant to Rule VIII, Alabama State Bar Client Security Fund Rules, fails to pay the assessed fee by March 31 of a particular year, will be deemed to be not in compliance with the Client Security Fund Rules for that year.

"(2) As soon as practical after March 31 of each year, there shall be furnished to the Secretary of the Alabama State Bar a list of those attorneys who have failed to pay the assessment for the current calendar year, as required by Rule VIII, Client Security Fund Rules.

"The Secretary shall thereupon forward this list of attorneys to the chairman of the Disciplinary Commission.

"The chairman of the Disciplinary Commission shall then serve, by certified mail, each attorney whose name appears upon the list with an order to show cause, within sixty (60) days i.e., within sixty days from the date of the order), why the attorney's license should not be suspended at the expiration of the sixty (60) days. Any such attorney may within the 60 days furnish the Disciplinary Commission with an affidavit (a) indicating that the attorney has in fact paid the assessment for the current calendar year or (b) setting forth a valid excuse (illness or other good cause) for failure to comply with the requirement.

"At the expiration of sixty (60) days from the date of the order to show cause, the Disciplinary Commission shall enter an order suspending the law license of each attorney whose name appears on the list and who has not, pursuant to the third paragraph of this Rule 3(h)(2), filed an affidavit that the Disciplinary Commission considers satisfactory.

"At any time within thirty (30) days after the order of suspension, an attorney may file with the Disciplinary Commission an affidavit indicating that the attorney has paid the assessment for the current year; and, if the Disciplinary Commission finds the affidavit satisfactory, it shall as soon as practicable enter an order reinstating the attorney.

"At any time beyond thirty (30) days from the order of suspension, an attorney seeking reinstatement may file with the Disciplinary Board an affidavit like that described in the preceding paragraph, but an attorney filing such an affidavit must file with that affidavit a petition for reinstatement (see Rule 19, Alabama Rules of Disciplinary Enforcement).

"An attorney may appeal to the Disciplinary Board from an order of suspension or an order denying reinstatement entered by the Disciplinary Commission. Additionally, any affected attorney may appeal any action of the Disciplinary Board to the Supreme Court in accordance with the procedure set out in Rule 8(d) of these rules.

"(Added effective February 28, 1989.)"

DONE and ORDERED this 28th day of February 1989.

Hornsby, C.J., and Maddox, Almon, Shores, Houston, Steagall, and Kennedy, JJ., concur. ■

Young Lawyers' Section

N. Gunter Guy, Jr.
YLS President

Presently, there are four active young lawyer affiliates in Alabama which are recognized by the American Bar Association. The name of each affiliate and its president are listed below:

Birmingham Bar Association—
Young Lawyers' Section
109 North 20th Street, 2nd Floor
Birmingham, Alabama 35203
Phone 251-8006
Pres.—Stephen W. Shaw, phone 322-0457
940 First Alabama Bank Building
Birmingham, Alabama 35203

Mobile Bar Association—Young Lawyers' Section
P.O. Box 2005
Mobile, Alabama 36652
Phone 433-9790
Pres.—Donald C. Partridge, phone 342-4762
P.O. Box 16564
Mobile, Alabama 36616

Montgomery County Bar Association —Young Lawyers' Section
P.O. Box 1402
Montgomery, Alabama 36102
Pres.—Laura A. Calloway, phone 262-1600
P.O. Box 1402
Montgomery, Alabama 36102

West Central Alabama—Young Lawyers' Section
c/o Pres.—G. Warren Laird, Jr.
P.O. Box 1493
Jasper, Alabama 35502
Phone 221-4393

For many of you who are not involved in young lawyers' activities, I encourage you to join one of these associations. In addition to being a vital support for the Alabama State Bar YLS, the affiliates offer a more localized service to the young lawyers and the public in their community.

For example, the Birmingham YLS recently sent me information concerning the activities of their members.

Birmingham YLS supports Fire House Mission

The plight of Birmingham's homeless has prompted the Birmingham Bar Young Lawyers' Section to assist the downtown Firehouse Mission. The mission provides food and shelter for 60 of Birmingham's homeless men. On Tuesday nights volunteers from the YLS of the Birmingham Bar Association prepare and serve meals for the mission's residents. The section also has started a scholarship enabling deserving men to complete high school or get vocational training. The YLS contributed $500 to this fund, and after coverage in January

Mitch Damsky, left, and Bob McKenzie, participants in the January '89 Firehouse Mission Program

from Birmingham's Channel 13 News, a Cumberland group and a group from Anniston called the mission expressing interest in contributing to the scholarship fund. In addition, a Birmingham attorney contributed $500 toward the scholarship fund. On March 23, the section held a party at The Plaza and asked each lawyer attending to donate a toothbrush, razor, shaving cream or a can of deodorant for admittance. The collected articles then were donated to The Firehouse Mission.

Other activities

The section also will be offering free one-hour seminars specifically geared to financial issues concerning women. The first seminar was held March 3 at noon at Rives & Peterson and featured guest speaker Wayne Luck from Financial Planning and Review. Luck spoke on financial and retirement planning and insurance needs of women. In April, the YLS hosted a seminar entitled "Credit Pitfalls to Avoid" and "Your Rights When Ordering by Mail." A final seminar will be held in May and focus on "Tax Planning for Women."

The officers in 1989 for the YLS are Scott Boudreaux—president; LaBella S. Alvis—president-elect; Greg Burge—vice-president; Peter Bolvig—secretary; Tricia Dodson—treasurer; Billy Bates—assistant treasurer. The 1989 Executive Board consists of Robert Baugh, Virginia Carruthers, Turner Williams, Stan Blanton, Fred McCallum, Chris King, Tim Donahue, James Bradford, Spin Spires, David Proctor, Walter Scott, Mitch Damsky, John Herndon and Marda Sydnor.

The Birmingham YLS plans to host their annual dinner party with a buffet and music on May 5 at Mickey and Mike Turner's home, and their annual District Court Seminar in October. For the third time, the organization will host a charity fundraiser in the fall for the Alabama Counsel on Epilepsy. Last year, the group raised $6,000. The fundraiser will feature the popular "Soul Practitioners," an all-attorney band. Also in October, the YLS will work in conjunction with the Birmingham Legal Secretary's Association to host an annual mock trial for high school students.

If there are young lawyers in other areas of Alabama interested in developing projects or becoming a recognized affiliate, please call me or one of the presidents of the four affiliates mentioned. From the activities of the Birmingham group, the opportunities are plentiful to provide services to the public at little or no cost. Also, it quite often can be an enjoyable social experience as well. We have information on many other projects which could be implemented by a group of young lawyers as a public service project in your area. Questions, comments and ideas are always welcomed, and I look forward to hearing from you. ■

Avis raises rates

Effective March 1, 1989, Avis Rent-a-Car System increased its rates, as follows:

Car group:	A	B	C	D	E
Local daily rates:	$36	$39	$41	$43	$45

Local daily rates include 100 free miles per day. Excess miles will be charged at $.30 per mile.

There will be an additional $6 per day charge to these rates at Boston, Dallas, Detroit, Hartford, Houston, Philadelphia, Pittsburgh, Washington, D.C. and area airports, and Alaska. An additional $10 per day charge will apply at Manhattan area airports, and New York area metropolitan locations. There will be an additional $11 per day charge at Chicago. These rates are not available at LaGuardia, JFK and Newark airports and Manhattan locations during weekends and specified holiday periods.

All other rates, discounts and benefits remain in full effect.

Modest Proposals for Preventing the Problems of Law Office Management from Being a Burden to Lawyers or Their Firms

by W. Inge Hill, Jr.
(with apologies to Jonathan Swift*)

The modern practitioner is confronted with innumerable problems of law office management and endless solicitations for products and systems advertised as the ultimate solutions for even the most difficult of these problems. It is no wonder that the average lawyer today feels besieged, beleaguered and bewildered. But a few of the more progressive firms are experimenting with new and ingenious approaches to old problems, and the benefit of their experiences can better enable other firms to meet the challenges of the future. This article reviews some of the latest trends in law office management, and then suggests a few modest proposals for three of the most prevalent problems confronting the modern law firm: cost recovery, distribution of voting rights and compensation.

Cost recovery

The increasingly competitive nature of a legal practice and rising overhead costs make it imperative for the modern firm to charge its clients for as many out-of-pocket expenses as possible. Recent advances in computer technology have enabled firms to recover more of these costs than ever before. For example, most progressive firms now attach computer terminals to facilities such as copying machines, law reference computers and other equipment. Prior to using the equipment, it is necessary to type in a client and matter number, and the computer will automatically charge the cost to the appropriate account. No system is foolproof, though, and many charges are lost due to errors in typing the client and matter number or the use of generic numbers. Although not commonly known, a few of the more innovative firms have found that they can program the computer to administer a small electric shock whenever an erroneous number or generic number is typed into the system. To discourage frequent abusers, the system can be programmed to increase the intensity of the shock with each successive error. After one or two random electrocutions, most firms using this system find that they enjoy 100 percent compliance.

A similar system can be attached to the telephone for long distance calls. When a long distance call is made, the caller simply dials the client and matter number along with the telephone number, and the call is automatically reported to the computer and charged to the appropriate account. This system is now available with a risk/reward feature. Those who properly use the system can be rewarded with a tantalizing or humorous message from one of their favorite celebrities, such as Bo ("You dialed a perfect 10") Derek, Patrick ("Come here, loverboy") Swayze, Clint ("You made my day") Eastwood, and Alfred ("Sorry, wrong number") Hitchcock.

The system also provides negative reinforcement. Recordings of Sean Penn and Don Rickles are available to verbally abuse those who misuse the system by dialing bogus client or matter numbers, and for repeat offenders, the telephone can be programmed to emit a shrill siren.

The deafness is limited to one ear, and usually is only temporary.

Advances in computer technology have greatly improved cost recovery systems, and law students today should aspire to join a modern, efficient and well-managed firm, where they will be expected to produce a client and matter number in order to use the copy machine, FAX machine, long distance carrier, overnight letter carrier and legal research computer (for the new generation of lawyers who take their law—like everything else—from a television screen). Even the firm's runner will not run without a client and matter number. The possibilities for cost recovery are limitless, and many firms are experimenting with even more innovative reforms. For example, the following memorandum was recently circulated by the management committee of a very prestigious local firm:

MEMORANDUM

TO: Everyone
FROM: TMC
DATE: January 12, 1989
RE: New Restroom Procedure

"Today we are changing our restroom procedure, and the previous memorandum on this topic is now inoperative. The new restroom procedure should be simpler than the previous system and is as follows: a computer terminal will be placed at the entrance of each restroom station. To gain admittance, you should type: 1 + Restroom Station Number + (#) Client Number (#) Matter Number + #1 or #2, as the case may be.

"Each secretary should compile a 'quick list' of the client and matter numbers of files for the secretary and the lawyers and paralegals for whom they work to be kept adjacent to their preferred restroom stations for easy access.

"In the event your visit will not be charged to a client and matter number or you do not have the client and matter number available to you, an alternative to the typing procedure noted above is as follows: 1 + Station Number + EMERGENCY. If you are unable to type the appropriate number in time, you should type after-the-fact: 1 + Station Number + ACCIDENT. Our computer will promptly dispatch a janitor with a bucket of sand.

"The length of the visit, the client and matter number and the station from which the visit was made will be recorded on a computer list, which list must be reconciled periodically with each visit being charged to either a client, the firm or an individual, as appropriate. However, please make every effort to use the client and matter numbers when possible.

"This new restroom procedure in conjunction with the cost accounting system is designed to insure that there is an accurate accounting for each restroom visit and to eliminate unnecessary restroom visits which are assumed by the firm by default.

"We thank you for your continued support."

The foregoing illustrates only a few of the more recent developments in law office cost recovery. As expenses continue to rise, progressive firms will respond to the challenge by adopting even more innovative methods for cost containment and recovery. The future is bright for those who can remember their client and matter numbers.

Voting rights

The distribution of voting rights is another thorny problem facing the modern law firm. As the firm continues to grow and take on new partners** with diverse backgrounds and interests, the problem can become even greater. Many firms adhere to the one-man, one-vote principle, while others allocate voting rights based upon seniority or other criteria. But a fair and equitable voting system also should measure how strongly each firm member feels about each matter brought to a vote, and the rigid and inflexible systems now in use fail to do so.

For this reason, more and more modern firms are switching to the peppercorn voting system. Under this system, each partner is allocated a specified number of votes to be cast during the course of each partnership year. The number of votes assigned to each partner may be the same, or may be based upon seniority or any other objective criteria. Regardless of how the allocation of votes is determined, each partner is issued a number of peppercorns equal to his or her number of votes. Then, whenever an issue is put to a vote, the individual partners may vote however many peppercorns they desire, depending upon how strongly they feel about the issue. For example, a partner who feels very strongly about a particular issue is free to vote all or as many peppercorns as he or she desires, while a partner who is neutral may abstain by not voting any peppercorns, and thereby save the peppercorns for a more important matter. A partner who is totally indifferent to office management could sell some or all of his or her peppercorns to a more aggressive partner, who thereby would obtain even greater voting power. Once all of a partner's peppercorns have been voted or otherwise disposed of, however, he or she is precluded from voting on any other issues for the remainder of that partnership year. At the end of the partnership year, all of the partners surrender their remaining peppercorns, and the peppercorns are then redistributed for the following year.

W. Inge Hill, Jr., practices law in Montgomery, Alabama, where presumably he still is a member of the firm of Hill, Hill Carter, Franco, Cole & black, P.C.

Peppercorns have a long and honored tradition in the law; since feudal times they have been recognized as adequate consideration to support a lease or other contract, and unquestionably will become even more valued in the future.

Compensation

It would be an understatement to say that the method of determining compensation of partners is the most difficult issue confronting the modern law firm. Certainly, there is no issue which has resulted in more hurt feelings, more interfirm disputes or more breakups than that of compensation. In an attempt to alleviate these problems, law firms have devised myriads of ingenious formulas which purport to base compensation on a wide variety of 'objective' criteria such as productivity, billings, billable time, client recruitment or seniority, or some combination of any or all of the foregoing.

Frankly, it is time to admit that none of these systems work. For this reason, many of the more innovative firms have switched to the 'money pit' system of compensation. The system works like this: during the course of the year, each partner is given the minimum compensation necessary to provide for the bare necessities of life, and all of the firm's excess profits are invested in an interest-bearing account. At the end of the year, when the firm holds its annual retreat, all of the profits and earned interest are converted to cash or coins and buried in a pit. A circle is drawn around the pit, and the partners line up on the outer perimeter of the circle. Each partner is issued a shovel. At the sound of the starting pistol, all of the partners rush toward the pit and retrieve as much of the firm's profits as possible. Each partner is free to use his or her shovel to dig for profits or as a club to bludgeon the other partners. Whoever crawls out of the pit with the most money wins.

For lawyers who are not comfortable with the money pit system in its pure form, the system can be adjusted to account for old-fashioned criteria such as seniority, productivity or other factors. In the modified system, the length and size of the shovel issued to each partner is adjusted based upon the particular criteria used (i.e., seniority, productivity or whatever). For example, junior partners or partners on senior status may be issued a garden spade, and the top rainmaker may get a steam shovel. As a concession to humanitarian concerns, those who are too old and infirmed or whose shovels are too small to recover any profits may be issued an application for food stamps.

The money pit system substitutes bruises for bruised feelings and broken bones for broken firms. No system is perfect, however, and the money pit is so similar to many systems now in use that implementation may require only a few technical adjustments. (Coming next month: the peppercorn pit voting system)

Conclusion

It is hoped that these modest proposals will be of service to the bar. Law office management is a growing field, with changes occurring daily. To keep abreast of current developments, you may call the Law Office Management Hot Line, 1+ (#) Client Number (#) Matter Number + (900) LAW TIPS. ■

*Swift, Jonathan (1667-1745), dean of St. Patrick's, Dublin, brilliant social scientist and political theorist, renowned for progressive ideas such as *A Modest Proposal for Preventing the Children of Poor People from being a Burden to their Parents or the Country*, by fattening and eating them (1720).

**This article repeatedly makes reference to partners and partnerships, which once were the traditional form of doing business for law firms. The author is aware that most modern, efficient and well-managed firms now have converted to professional corporations or associations, or to professional corporations or associations composed of professional corporations and associations, or to professional associations composed of partnerships composed of professional corporations, and so on ad infinitum. The principles espoused in this article apply regardless of the form of doing business, and the word "stockholder" may be substituted for "partner" and the words "corporation" or "association" may be substituted for "partnership" whenever the context would so require or permit.

Interference with Business Relations: the Unified Tort since *Gross v. Lowder Realty*

Due to a printing error, a portion of this article was omitted from the March edition. It appears in its entirety in this issue.

by
Andrew P. Campbell

I. Introduction

For almost a century one of the most fascinating and yet difficult areas of tort law in Alabama has been that of interference with business and contractual relations. In 1986, the Alabama Supreme Court, in *Gross v. Lowder Realty*, 490 So.2d 590 (Ala. 1986), rendered the most important decision in almost a century of confusing jurisprudence since the court first recognized a cause of action for interference. The court in *Gross* consolidated the previously separate and distinct causes of action of interference with contract and interference with business to create a unified tort of interference with business or contractual relations. In doing so, the court attempted to discard "an outdated and inconsistent body of law," 494 So.2d at 596, and create certainty by setting forth specific elements necessary to establish liability of a third party for intentional interference with the business dealings or relations between two other parties. Yet, these requirements included many of the same elements of the old torts. Accordingly, the case law prior to *Gross* retains viability and may be authoritative.

While the objective in *Gross* may have been to end confusion and provide guidance, a careful analysis of the new tort's elements and their application to specific contexts show that great uncertainty still exists over the parameters of the tort. Simply put, the court in *Gross* created a theory of liability which penalizes some aggressive business conduct in a free economy while legitimizing other competitive behavior without any explanation of the difference. This article will outline the historical antecedents of the unified tort, review the general prerequisites for liability established by the *Gross* court and trace their development in the last two years since *Gross*. From this analysis, the article will attempt to provide some guidance to the practitioner in prosecuting or defending claims for tortious interference.

II. Historical underpinnings

Prior to *Gross*, two separate torts existed, a very limited tort of intentional interference with an existing contract and a much broader and amorphous tort of intentional interference with business. The tort of interference with contract generally did not exist except where a third party (1) intentionally or knowingly interfered with an existing employer-employee relationship or (2) induced a breach of a lease by coercion or fraud. The underlying policy for this strict limitation on the tort was found in *Erswell v. Ford*, 208 Ala. 101, 95 So. 67 (1922) wherein the Alabama Supreme Court held that the plaintiff, whose contract was interfered with, already had an available remedy in breach of contract to recover his damages.

An important case illustrating the tort of interference with contract was *James S. Kemper and Co. Southeast, Inc. v. Cox and Associates, Inc.*, 434 So.2d 1380 (Ala. 1983). In that case, the defendant brokerage company induced the employee of the plaintiff brokerage company to breach his noncompete agreement with his employer and accept employment with the defendant. The defendant also induced the employee to solicit customers of his former employer, another breach of his employment agreement. The court found that the defendant broker was liable for tortious interference with contract.

In direct contrast to this constricted tort, the tort of interference with business enjoyed an almost unlimited development, applying to a myriad of contexts. The common law genesis of the tort was derived from the 19th century principle of substantive due process that a person's trade, profession or business was a property right protected by law from interference. The Alabama Supreme Court set forth this policy in the case of *Sparks v. McCrary*, 47 So. 332, 334 (1908):

> "[T]he individual citizen, as a necessity, must be left free to adopt such calling, profession or trade as may seem to him most conducive to that end. Without this right, he cannot be a free man. This right to choose one's calling is an essential part of that liberty which is the object of government to protect; and a calling, when chosen, is a man's property and right. In necessary consequence, an unlawful invasion of or interference with the pursuit of progress of one's trade, profession or business is a wrong for which an action lies. He that hinders another in his trade or a livelihood is liable to an action for so hindering him . . . ."

This common law right is incorporated into article one, section 13 of the Alabama Constitution, which provides that "every person for any injury done him in his lands, goods, person or reputation should have remedy by due process of law." *See Evans v. Swaim*, 245 Ala. 641, 18 So.2d 400 (1944). A statutory basis is also *Ala. Code* §6-5-260 (1975) which provides a remedy for "unlawful deprivation of or interference with" one's personality. In at least one case, *Mims v. Citizens Bank of Prattville*, 372 So.2d 311 (Ala. 1979), the Alabama Supreme Court

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applied this statute as a basis for interference with business, holding that a bank's unlawful repossession of plaintiff's truck tortiously interfered with his logging business.

Prior to *Gross*, only two elements were required for a plaintiff to establish a *prima facie* case of interference with business and shift the burden to the defendant. First, the plaintiff was required to show an intentional act of affirmative interference and some consequential harm to the plaintiff's business. E.g., *Purcell Company, Inc. v. Sprigg Enterprises, Inc.*, 431 So.2d 515 (Ala. 1983); *Evans v. Swaim*, 245 Ala. 641, 18 So.2d 400 (1944). The unlimited scope of the tort was found in its protection of all facets of the plaintiff's trade, profession and business and not simply its relations with third parties. Thus, any direct interference with the business created a basis for a *prima facie* claim.

Once a *prima facie* case was established, the burden of proof shifted to the defendant to prove justification or propriety for its interference. Early Alabama cases indicated that the burden of proof was on the plaintiff to show the interference was wrongful, improper or unjustified; e.g. *Sparks v. McCrary, supra*. The principle gradually developed, however, that justification is an affirmative defense to be plead and proved by the defendant. *Polytec, Inc. v. Utah Foam Products, Inc.*, 439 So.2d 683, 689 (Ala. 1983). As Judge Wisdom held in *Thompson v. Allstate Insurance Co.*, 476 F.2d 746, 748 (5th Cir. 1973), a seminal 5th Circuit case interpreting the tort:

> "Justification for interference in another's business is an affirmative defense and is no part of the plaintiff's case. It is enough to allege and prove the conduct in effect leaving the defendant to justify, if he can."

What constituted justification prior to *Gross* was never fully defined. The subjective nature of this standard of propriety when applied to competitive acts created immense problems for defendants, particularly since the supreme court had held that justification was a question of fact to be determined by the jury. Generally, in its cases, the court distinguished incidental harm to the plaintiff's business resulting from the natural workings of competition, which were permissible, from affirmative intentional acts taken out of a motive to injure the plaintiff's business, which were tortious.

For example, the courts held that legitimate competition for customers or contracts with the resulting effect of putting a competitor out of business was held to be sufficient justification under Alabama law. *Beasley-Bennett Electric Company, Inc. v. Gulf Coast Chapter*, 273 Ala. 32, 33, 134 So.2d 427 (1961); *Criese-Traylor Corp. v. First National Bank of Birmingham*, 572 F.2d 1039 (5th Cir. 1978). At the same time, the Alabama courts recognized that an otherwise legitimate justifiable act of interference was tortious if it was motivated by malice or ill will toward the plaintiff. In such cases, the privilege was lost and the defendant could be held liable. E.g., *Byars v. Baptist Medical Centers, Inc.*, 361 So.2d 350, 356 (Ala. 1978); *St. Louis-S.F. Railway v. Wade*, 607 F.2d 126, 133 (5th Cir. 1979). In *Byars*, the defendant hospital refused to allow the plaintiff, a nurse formerly employed by the defendant, on the hospital premises to work as a private nurse for patients. The hospital claimed as its justification she was physically unable to perform her duties. The plaintiff claimed that this actual interference was motivated by an earlier $20,000 personal injury judgment which she had obtained against the hospital in a slip and fall case. The supreme court held that while the hospital presumably had a right to determine what nurses could treat patients, this privilege was lost if its motive was malicious. 361 So.2d at 355-356. Likewise, in *St. Louis-S.F. Railway Company*, the defendant's physical blocking of its property which interrupted plaintiff's route of access to its quarry was deemed a jury question on the issue of justification, notwithstanding the fact that defendant was using its own property.

This analysis of reviewing motive and intent to determine justification seemingly made little sense as legitimate competition in a free economy is rarely motivated simply by a laudatory intent. The paradox raised by the supreme court's decisions was how legitimate business behavior, even if motivated by a desire to put a person out of business, could be rendered illegal by impure motives. As of the time of *Gross*, the need for an objective standard casting a bright line between legitimate and illegitimate business conduct was simply absent from the supreme court's decisions. What was clear, however, was that it was very easy for the plaintiff to reach the jury simply by showing a *prima facie* case of interference with business and resulting economic harm.

By the time *Gross* was decided, the distinction between interference with business and interference with contract had become meaningless. Plaintiffs were pleading what actually were claims for interference with contract as claims for interference with business because of its broader reach and the ease of proof. See e.g. *Marion v. Hall*, 429 So.2d 937 (Ala. 1983). As a result, the court, as noted by Chief Justice Torbert in his concurrence and dissent in *Gross*, recognized the need for unification of the two torts:

> "Unification of the two torts is appropriate because a contractual relation is but a species of business relations in general. It makes little sense to have a very liberal cause of action with regard to an interference with a relatively informal business relation yet have a very restrictive cause of action with regard to interference with a more formal relation. Therefore, it seems reasonable to have a single tort that deals with interference with all business relations.
>
> 494 So.2d 598

III. The unified tort and its elements

In *Gross*, the Supreme Court's approach was one of compromise. The majority expanded the tort of interference with contract, incorporating many of the elements of interference with business and, at the same time, restricting the previously broad tort of interference of business. The court held that the elements which must be shown to recover on a theory of interference are as follows:

(1) the existence of a contract or business relation;

(2) defendant's knowledge of the contract or business relation;

(3) intentional interference by the defendant with the contract or business relation;

(4) absence of justification for the defendant's interference; and

(5) damage to the plaintiff as a result of the interference.

The first requirement of an existing relationship is very significant. While not recognized by the bar as a radical change at the time of *Gross*, this requirement actually may represent a substantial narrowing of the tort. As noted above, the

pre-*Gross* decisions based on substantive due process protected from interference a person or entity's right to engage in a profession or business, including prospective or potential relations and not simply existing contracts or relations with third parties. For example, in *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So.2d 383 (1943), a defendant's painting and exhibit of a white elephant on a vehicle sold by plaintiff's automobile dealership directly across from the dealership lot was deemed an actionable interference with the company's right to do business. The court in *Gross* seemingly narrowed this focus from the broad property right to engage in business to the right to uninterrupted relationships with third parties.

The result of this restricted focus was shown in *Odom v. Lowder Realty*, 495 So.2d 23 (Ala. 1986), a decision handed down one month after Gross. In *Odom*, the supreme court strictly construed the requirement of a "existing contract or business relationship which is the subject of the alleged interference." The court in *Odom* affirmed a directed verdict where the plaintiff appeared to show third-party interference with its business interests, but could not show an existing relationship which was the subject of the interference. In *Odom*, Lowder Realty purchased Odom's business and as a part thereof Odom agreed to obtain a one-year lease of premises owned by the owner, Matthews, and to sublease the premises for that one year to Lowder. Lowder intended at the conclusion of the one year to directly lease the premises from the owner. However, Odom, without the knowledge of Lowder, obtained an agreement with the owner that he would not lease the premises to Lowder but would instead lease the premises again directly to Odom. Lowder contended that this constituted an alleged interference with its business. The trial court granted a directed verdict in favor of the defendant Odom on this claim.

On the appeal, instead of holding that Odom's conduct was permissible competition and, hence, justified, the court held that the lack of a formal business relationship between Lowder and the owner, Matthews, was fatal to the claim as a matter of law. The fact that Lowder was the sublessee of property owned by Matthews apparently was not sufficient. The court held as follows:

> "We are of the opinion that Lowder has failed to provide any evidence of an existing contract or business relation with Matthews in this case. Without proof of this essential element of the cause of action for intentional interference with contractual or business relations, the directed verdict against Lowder on this claim is warranted."

Id at 25.

Given the strict interpretation of this requirement by the court in *Lowder*, it is open to question as to whether a more generalized interference with one's business interests or with informal or prospective business relationships (see *Hennessey v. NCAA*, 563 F.2d 1136 [5th Cir. 1977]), is actionable under Alabama law. If the requirement is read literally, it clearly appears that conduct which is construed as interference with one's business, but not with an established relationship with a third party, may be excluded from liability. If so, this would be a substantial departure from prior decisions and their underlying constitutional basis creating a broader property right.

As to the second and third elements of knowing and intentional interference, the *Gross* court apparently retained these prerequisites from the old cause of action of interference with business. This was apparent in the recent decision of *Bear Creek Enterprises, Inc. v. Warrior & Gulf Nav.*, 529 So.2d 959 (Ala. 1988). In that case, the court reaffirmed prior law (e.g., *Ala. Power Co. v. Thompson*, 278 Ala. 367, 178 So.2d 525 [1965]) that a third party's refusal to deal that disrupts the plaintiff's business relation, as opposed to an active interference, is not actionable. In reaching this result, the court

(continued on page 141)

Honor Roll of Attorneys Participating in IOLTA

(as of March 31, 1989)

The Alabama Law Foundation, Inc. announces that the following attorneys and law firms have been added to those participating in the IOLTA program. The foundation thanks those participating for their support.

BALDWIN
Ball, Simon & Kemmer
Brackin & Bear
Cooper, Kenneth
Dempsey-Pearson
Enfinger, Floyd C.
Gibson, W. Kenneth
Owen, James R.
Scroggins, James M.

BARBOUR
Hicks, Deborah Whitmore

CALHOUN
LaBudde, Frank
McGriff, William E., II
Merrill, Merrill, Mathews & Allen
Morris, Daniel E.
Parks, Charles L.
Underwood, Earl P., Jr.
Whittington, Joseph E.
Williams, G. Coke

CHAMBERS
Johnson, Caldwell & McCoy
Phillips, Donald M.
Wallace, R. C., Jr.

CHEROKEE
Davis, Gary E.

CLARKE
Adams, Adams & Wilson
Gilmore & Gilmore
Lee, Franklin D.

CLEBURNE
Casey, John S.

COFFEE
Dowling, John C.
Jordan & Hollingsworth
Stokes, Jackson W.
Waldrop, Richard
Young, Paul A., Jr.

COLBERT
Almon, McAlister, Ashe, Baccus & Tanner
Beasley, Murray W.
Hovater, William R.
Hunt, James L.
Johnson, William T., Jr.
Stansell, James H., Jr.
Tompkins, James H.

CONECUH
Harden, Paul M.

COVINGTON
Fuller, W. Sidney
Mills, A. Wayne

DALLAS
Blair, Robert R.
Cheshire, J. Patrick
Morris, Charles H., III
Pitts, Pitts & Thompson

DEKALB
Killian, Roger
Tate, Patrick H.

HOUSTON
Adams, C. Bruce
Espy, Collier H., Jr.
Flowers, Richmond M.
Meyers, Paul F.
Tatum, Fred M.

JACKSON
Baugh, Hoyt
Haralson, Wallace
Weeks & Weeks

JEFFERSON
Barker & Bynon
Barrett, Charles E.
Battles, Kenneth W.
Bell, Richard W.
Birmingham Area Legal Services Corporation
Bolen, H. Ralph
Bolen, Randall H.
Boohaker, Joseph L.
Booth & Associates
Brackin, Linda
Brobston & Brobston
Cooper, Mitch, Crawford, Kuykendall & Whatley
Crittenden & Cochran
Crookes, Harold R.
Denson, William T.
Emond & Vines
Fitzpatrick, Raymond P., Jr.
Formato, Janice G.
Frawley, W. Spencer
Garner, Gwendolyn B.
Gathings, Jonathan W.
Green, Armstrong & Bivona
Hebson & Miller
Herrin, Elliott C.
Hilliard, Earl F.
Hughes, M. Richard
Johnson, Mickey L.
Johnston, Conwell & Gloor
Joiner, J. Michael
King, Dan C., III
Kizer & Bennitt
Lee, Roger W.
Leitman, Siegal & Payne

Leonard, Thomas B., III
Lewis, Robert F.
Lowe, J. Haran
Maples, Samuel
McCall, Winston B., Jr.
McKnight & Wirtes
Morgan, Joe W.
Nail, Cecil T.
Newton, Barnes, Dunning, May & Miller
North, James L.
Parsons, Douglas Mac
Powell, Tally & Frederick
Roden & Hayes
Roe & Rowell
Sanford & Bullock
Shores, Michael C.
Stephens, Richmond
Thomas, Whit
Whitmire, Bryant A., Jr.
Wynn, William J.
Yearout, G. Thomas

LAUDERDALE
Cochran, Charles W., III
Higginbotham & Whitten
Keller & Pitts
O'Bannon & O'Bannon
Patterson & Jester
Slusher, Rodney B.
Walker & Musgrove
Winborn, Randy

LEE
Davis, Cox & Pollard
Samford, Denson, Horsley, Pettey, Martin & Barrett
Williams, J. Michael

LIMESTONE
Moffatt, James E.
Woodroof & Woodroof

LOWNDES
Conway, Neva C.

MACON
Davis, Milton C.
Russell, William M., Jr.

MADISON
Brinkley, Ford, Chesnut & Aldridge
Burr & Forman
Burton, H. Coleman
Butler, James L.
Catron, Clement J., III
Hamilton & Ryan
Lampley, Joe N.
Lanier, Ford, Shaver & Payne
Roberts, Audrey L.
Robinson, Carter Alan
Sturdivant, James R.

MARENGO
Burdett, Russell
Drinkard & Drinkard
Lowrey, L. M.

MARSHALL
Starnes, John W.

MOBILE
Barker, Janecky & Copeland
Baxley, Kent
Coale, Helmsing, Lyons, Sims & Leach
Coley, F. Luke
Diamond & Hasser
Foster, Clifford, III
Frierson, Sara
Gonas, John S., Jr.
Hamilton, Butler, Riddick, Tarlton & Sullivan
Langan, Michael D.
Leon, Francis E., Jr.
McCleave & Patterson
Padgett, Herman
Pennington, Al
Ramsey, Robert S.
Sheldon, Richard S.
Thiry, Maples & Brunson
Tonsmiere, George A.
Whiddon, A. Holmes
Williams, Ronnie L.
Wilson, Augusta E.

MONROE
Coxwell & Coxwell

MONTGOMERY
Allen, Bob E.
Argo, Enslen, Holloway & Sabel
Ball, Ball, Matthews & Novak
Bell, Maurice S.
Bryan, Howard F.
Capouano, Wampold, Prestwood & Sansone
Cooper & Cooper
Davis, Terry G.
Devereaux, Wanda
Duke, William S.
Fitzpatrick, H. T., Jr.
Foxworth, Billy F.
Gillian & Gillian
Hawthorne, Raymond J.
Hill, Hill, Carter, Franco, Cole & Black
Lawrence, Richard A.
Long, Frank M.
Minor, Manasco & Wise
Morrow, Romine & Pearson
Perry & Perry
Pool, Benjamin E.
Reynolds, J. Donald
Riggs, NeSmith & Halstrom
Smith, Frances H.
Walden, Gatewood A.
Watkins, Donald V.
Williams, Rick A.
Wood & Parnell
Yarbrough & Patterson

MORGAN
Powell, Joe B.
Powell, Miles T.

PERRY
Brown, Kirtley W.

RANDOLPH
Butler, Morgan

RUSSELL
Hamilton, Estes & Carter

SHELBY
Carson & Steed
Mathews, William F.
Mitchell, W. Eason

SUMTER
Brewer, William C.
Reid, David A.

TALLADEGA
McSheridan, Bobbie

TALLAPOOSA
Dillon, Kelley & Brown
McKnight & Wirtes

TUSCALOOSA
Dixon, Brenda A.
Gibson, Dan M.
Pearson, Charles E.
Searcy, Margie T.
Sogol & Chandler
Stephens, Shields & Gunter

WALKER
Donaldson, Jeff
Laird & Wiley

WILCOX
Cromer, Andrew
McLeod, Donald

■

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First Federal Savings & Loan, Gadsden
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First National Bank, Ashland
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First National Bank of Brundidge
First National Bank of Columbiana
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First National Bank of Hamilton
First National Bank of Jasper
First National Bank of Scottsboro
First National Bank of Talladega
First National Bank of Union Springs
First State Bank of Bibb County
First State Bank of Tuscaloosa
Jacobs Bank, Scottsboro
Marion Bank & Trust Company
Merchants & Planters Bank, Montevallo
Merchants Bank, Jackson
Monroe County Bank
National Bank of Commerce, Birmingham
Peoples Bank, Elba
Peoples Bank & Trust, Selma
Peoples Bank of Cullman County
Peoples Independent Bank, Boaz
Phenix Girard Bank
Pike County Bank
Robertson Banking Company, Demopolis
Southland Bank, Clayton
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SouthTrust Bank, Auburn
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SouthTrust Bank of Andalusia
SouthTrust Bank of Arab
SouthTrust Bank of Baldwin County
SouthTrust Bank of Calhoun County
SouthTrust Bank of Cullman
SouthTrust Bank of Dothan
SouthTrust Bank of Elba
SouthTrust Bank of Etowah County
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SouthTrust Bank of Mobile
SouthTrust Bank of Montgomery
SouthTrust Bank of Ozark
SouthTrust Bank of the Quad Cities
SouthTrust Bank of Randolph County
SouthTrust Bank of Selma
SouthTrust Bank of Talladega County
SouthTrust Bank of Tuscaloosa County
Sweet Water State Bank
The American Bank, Geneva
The Bank of Tallassee
The Choctaw Bank of Butler
The Citizens Bank, Enterprise
The Citizens Bank, Moulton
The Citizens Bank of Valley Head
The Home Bank, Guntersville
The Peoples Bank, East Tallassee
The Peoples Bank & Trust, Greenville
The Peoples Savings Bank, Clanton
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Winfield State Bank, Winfield

*Financial institutions participating statewide

Profile

William Harold Albritton, III, 1989-90 President-elect, Alabama State Bar

William Harold Albritton, III, was born in Andalusia, Alabama, December 19, 1936. He graduated from high school at Marion Military Institute in 1955 as valedictorian of his class and received both undergraduate and law degrees from the University of Alabama.

As an undergraduate at Alabama, Albritton was active in campus affairs as well as academics. He was a member of the varsity debate team and student legislature, served as vice president of the Student Government Association and was named to ODK and Jasons. He was elected to Phi Beta Kappa, was a member of Alpha Tau Omega social fraternity and received an Infantry commission through ROTC.

Albritton received his LL.B. in 1960. While in law school he was elected to Farrah Order of Jurisprudence, was on the Law Review and was a member of Bench & Bar and Phi Delta Phi.

Following law school Albritton received a branch transfer in the U.S. Army to the Judge Advocate General's Corps and served two years on active duty, being discharged as a captain.

In 1962 Albritton returned to Andalusia where he entered his family's law firm, at that time named Albrittons & Rankin. The firm has been in continuous existence in Andalusia since it was founded in 1887 by Albritton's great-grandfather, Judge Edward T. Albritton, and Harold Albritton became the fourth generation of his family in the firm. In 1971-72 his father, Robert B. Albritton, served as president of the Alabama State Bar. His uncle, William H. Albritton, served the bar for several years as a member of the board of bar examiners (taxation), and his uncle, J. Marvin Albritton, was a three-term member of the board of commissioners, a representative to the American Bar Association House of Delegates and a member of the Alabama Court of the Judiciary. Albritton is now senior partner of the firm of Albrittons, Givhan & Clifton.

Since beginning practice in 1962 Albritton has been active in the state bar. He served for five years on the executive committee of the Young Lawyers' Section and has been a member of numerous committees and task forces, including Facilities of the State Bar, Proposed New Judicial Building, Professionalism, Future of the Profession, Judicial Office, Long-range Planning, and *Code of Professional Responsibility*. He was a member of the Insurance Programs Committee for several years and served as chairperson for three years. He now is in his third term as a member of the board of commissioners. He served on the board's Executive Committee for three years, and was vice-president in 1985-86. He was a member of the Disciplinary Commission for a three-year term and now is serving as chairperson of the State Bar-Supreme Court Liaison Committee for the third year. He has been a member of the Council of the Alabama Law Institute for several years and is on the board of directors of the newly-organized Alabama Capital Representation Resource Center.

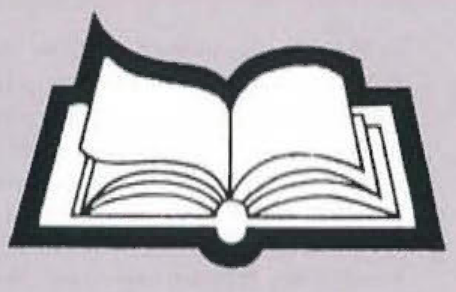
Albritton was president of his local bar association in Covington County in 1973. In 1987 he was elected a Fellow in the American College of Trial Lawyers. In 1988 he began a term as president of the Alabama Law School Foundation. He was president of the Alabama Defense Lawyers Association in 1976-77, and holds membership in the American Bar Association, International Association of Defense Counsel and National Association of Railroad Trial Counsel.

Through the years Albritton has contributed to continuing legal education as a lecturer and faculty member at various programs and seminars, including law schools, section meetings, a defense lawyers seminar, the Southeastern Trial Institute, the Hastings College of Advocacy in San Francisco, and the Defense Counsel Trial Academy in Boulder, Colorado.

Albritton has been active in his community through service as president of the Andalusia Jaycees, chairperson of the Board of Zoning Adjustments, member of the Community Arts Council, president of the Andalusia Chamber of Commerce, and member and president of the Andalusia Rotary Club. He is an elder and trustee of the First Presbyterian Church, and a director of First Alabama Bank of Covington County and served for six years as chairperson of the Board of Trustees of Community Hospital of Andalusia.

Harold Albritton has been married since 1958 to the former Jane Rollins Howard of Tuscumbia, and they have three sons. The oldest son, Hal, graduated from law school at the University of Alabama in 1985 and now is a partner and fifth-generation member of the family law firm in Andalusia. Ben, a graduate of Auburn University, is employed by a contracting firm in Mobile, and Tom is a senior at the University of Alabama. Both Ben and Tom will be entering law school at the University of Alabama in the fall. The Albrittons have one granddaughter, Rollins. ■

cle opportunities



may

11 thursday

STRUCTURED SETTLEMENTS & DAMAGES
Cumberland Law School, Birmingham
Cumberland Institute for CLE
(205) 870-2865

12 friday

CRIMINAL LAW
Harbert Center, Birmingham
Cumberland Institute for CLE
Credits: 6.0 Cost: $95
(205) 870-2865

13 saturday

BANKRUPTCY & COMMERCIAL LAW
Perdido Beach Hilton, Orange Beach
Alabama State Bar Bankruptcy & Commercial Law Section
Credits: 3.5
(205) 237-8515

18-19

NEGOTIATION WORKSHOP FOR LAWYERS
Century Plaza Hotel, Los Angeles
Practising Law Institute
Credits: 12.0 Cost: $350
(212) 765-5700

CURRENT EMPLOYMENT LAW ISSUES
Mariners Inn, Hilton Head
Wake Forest University School of Law
Credits: 12.0 Cost: $395
(919) 761-5560

19-20

ANNUAL SEMINAR ON THE GULF
Sandestin Beach Resort, Destin
Alabama Bar Institute for CLE
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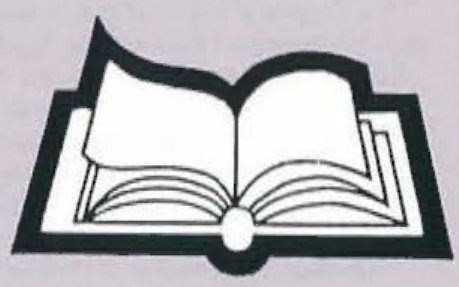
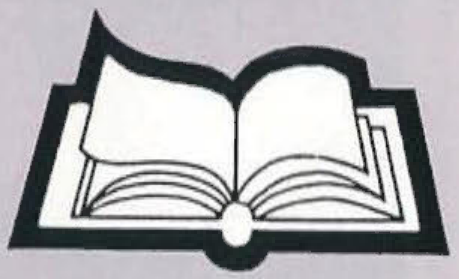
(205) 348-6230

PRODUCTS LIABILITY
Omni Hotel, St. Louis
Association of Trial Lawyers of America
Cost: $275
(800) 424-2725





25-26

CURRENT DEVELOPMENTS IN BANKRUPTCY
Hotel del Coronado, San Diego
Practising Law Institute
Credits: 11.5 Cost: $425
(212) 765-5700

TITLE INSURANCE
Colony Square, Atlanta
Practising Law Institute
Credits: 11.5 Cost: $350
(212) 765-5700

26 friday

ADVANCED REAL ESTATE
Birmingham
Alabama Bar Institute for CLE
Credits: 6.0 Cost: $135
(205) 348-6230

june

1-2

COMMERCIAL REAL ESTATE LEASES
Omni International Hotel, St. Louis
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Credits: 11.0 Cost: $425
(212) 765-5700

			The petition must contain: 1) The style of the case, petitioner's name and the names of both the trial court and the court of appeals; 2) The dates of the opinion and of the denial of rehearing; 3) A concise statement of the grounds on which the petition is based; and 4) A copy of the opinion below.	ARAP 39(d)
			Nine copies of the petition must be filed with the clerk of the Supreme Court and one with the clerk of the Court of Criminal Appeals, and one must be served on each party to the court of appeals proceeding.	ARAP 39(e)
B. Brief in Support of Petition for Writ of Certiorari	Petitioner	Accompanying the petition	The required elements and form of briefs are specified by rule. One brief should accompany each copy of the petition.	ARAP 28; 32 ARAP 39(e)
C. Initial Reply Brief	Respondent	Within 14 days, or, if involving pre-trial appeal by the state, within 7 days of service of the petition and brief of the petitioner	The initial reply brief is optional and is limited to whether proper grounds have been set forth in the petition.	ARAP 39(f)
			Nine copies must be filed with the clerk of the Supreme Court and one copy served on the petitioner or his attorney.	ARAP 39(f)
			The required elements and form of briefs are specified by rule.	ARAP 28; 32
D. Reply Brief	Respondent	Within 14 days, or, if involving pre-trial appeal by the state, within 7 days of issuance of the writ of certiorari	The respondent now addresses the substantive issues raised in the petitioner's brief.	ARAP 39(f)
			Nine copies must be filed with the clerk of the Supreme Court and one copy served on the petitioner or his attorney.	ARAP 39(f)
			The required elements and form of briefs are specified by rule.	ARAP 28; 32
E. Answering Brief	Petitioner	Within 14 days, or, if involving a pre-trial appeal by the state, within 7 days of receipt of respondent's reply brief	Petitioner may answer respondent's argument made in the reply brief.	ARAP 39(f)
			Nine copies must be filed with the clerk of the Supreme Court and one copy served on the respondent or his attorney.	ARAP 39(f)
			The required elements and form of briefs are specified by rule.	ARAP 28; 32
STEP 8 Request for Oral Argument	Petitioner or Respondent	Within 14 days, or, if involving a pre-trial appeal by the state, within 7 days, after receiving notice of the granting of the writ	There is no oral argument on the preliminary examination, i.e., whether the writ should be issued. Only if the court decides to grant the writ will motions for oral arguments be entertained.	ARAP 39(h)
			The opposing party must be served with notice of the request.	ARAP 39(h)
			The mechanics and the procedures regarding oral argument are the same as in the court of appeals.	ARAP 34
STEP 9 Opinion and Judgment	Clerk of Supreme Court	When opinion is released	Same as in Court of Criminal Appeals	ARAP 36(a)
STEP 10 Application for Rehearing	Petitioner or Respondent	Within 14 days, or, if involving a pre-trial appeal by the state, within 7 days of the rendition of judgment	Same as in Court of Criminal Appeals	ARAP 40
			No application for rehearing will be allowed if the petition for writ of certiorari is denied.	ARAP 39(j)
STEP 11 Petition for Writ of Certiorari to United States Supreme Court	Petitioner	Within 60 days of the later of: 1) The denial of the petition by the Alabama Supreme Court; 2) The Alabama Supreme Court's opinion; or 3) The Alabama Supreme Court's denial of rehearing		United States Supreme Court Rule 20.1; 20.4

*The author credits staff attorneys J. Elizabeth Kellum, John L. Moore, IV, and Richard L. Owens and executive assistant Sandy Huovinen for substantial work in the preparation of this outline.

**ARAP—Alabama Rules of Appellate Procedure, officially abbreviated as Ala.R.App.P.
Crim. Rule—Alabama Temporary Rules of Criminal Procedure, officially abbreviated as A.R.Crim.P.Temp.
Forms are found in Appendix I to the Alabama Rules of Appellate Procedure.

A Criminal Case

ge, Court of Criminal Appeals*

ITEM	PARTY RESPONSIBLE	TIME	PROCEDURE & COMMENTS	AUTHORITY Rules, Statutes & Forms**
STEP 6 Application for Rehearing	Appellant or Appellee	Within 14 days of rendition of judgment, or, if involving a pre-trial appeal by the state, within 7 days	Applicant must file a brief in support of the application; the application may be included at the beginning of the brief. If a written opinion was issued, then the brief must be a new brief, pointing out clearly any error in the opinion. If no written opinion was issued, then the original brief may be re-filed. Cox v. State, 380 So.2d 384 (Ala. Cr. App. 1980).	ARAP 40
			A party who fails to file a brief on original submission is barred from applying for rehearing. Hobbie v. State, 365 So.2d 685 (Ala. Cr. App. 1978).	ARAP 40
			A second application is not allowed unless the opinion is reversed or substantially changed.	ARAP 40
			A reply brief by the opposing party is optional.	ARAP 40
			An application for rehearing is a prerequisite to filing a petition for writ of certiorari in the Supreme Court, except in the case of a pre-trial appeal by the state and except in the case of a petition for extraordinary writ that is filed originally in the court of appeals.	ARAP 39(a), (l); 21(e)
			If a party is not satisfied with the facts stated in the opinion, the application for rehearing must state any additional or corrected facts and request that the opinion be appropriately corrected to reflect the additional facts; otherwise, the scope of review in the Supreme Court will be limited to those facts stated in the opinion. Ex parte O'Leary, 417 So.2d 232 (Ala. 1982), cert. denied, 463 U.S. 1206 (1983).	ARAP 39(k)
			Such a statement and request are required in no-opinion cases. Phelps v. State, 339 So.2d 124 (Ala. 1976).	
STEP 7 A. Petition for Writ of Certiorari to Alabama Supreme Court	Petitioner (either Appellant or Appellee)	Within 14 days of ruling on application for rehearing, or, if involving a pre-trial appeal by the state, within 7 days of judgment of Court of Criminal Appeals or within 7 days of order overruling application for rehearing	A petition for writ of certiorari involving a death case will be granted. All other cases are discretionary and must present one of the following grounds: 1) The opinion construed the validity of a city ordinance, state statute or federal statute or treaty, or a state or federal constitutional provision; 2) The opinion affects a class of state or county officers; 3) The opinion involved a question of first impression in Alabama; 4) The opinion is in conflict with a prior opinion of the Supreme Court or of a court of appeals; or 5) The petitioner seeks to have overruled controlling Supreme Court opinions that were followed by the Court of Criminal Appeals.	ARAP 39(b), (c) Form 22
			Unless one of the requisite grounds is stated in the petition the writ must be denied. Ex parte Andrews, 406 So.2d 1045 (Ala. 1981).	
			If the Court of Criminal Appeals denied request for additional or corrected statement of facts, the requested statement should be included in the petition for writ of certiorari.	ARAP 39(k)
			NOTE: In no-opinion cases, an additional or corrected statement of facts must be included with the petition; otherwise the Supreme Court will have no facts to review, as the scope of review is limited to facts as stated in the Court of Criminal Appeals	

Please note:

This poster is a special insert to this issue of the *Lawyer*, entitled "How to Appeal a Criminal Case" by Judge Sam Taylor.

B. Certificate of Completion of Record on Appeal	Trial Clerk	Within 7 days of filing of court reporter's transcript, unless time is shortened or extended by order	The clerk of the trial court combines with the court reporter's transcript the various papers, documents, written charges and exhibits that are capable of being legibly photocopied, to constitute the record on appeal. Each volume is not to exceed 300 pages.	ARAP 10(c); 11(b), (c)
			The clerk of the trial court then sends the original record on appeal to the clerk of the Court of Criminal Appeals and certified copies thereof to the appellant, or his attorney, and to the attorney general, and retains a certified copy.	ARAP 11(b); Form 14
			The record on appeal is effectively filed in the Court of Criminal Appeals when it is received, unless the clerk of the trial court uses registered or certified mail, in which case the record on appeal is effectively filed on the date of mailing.	ARAP 11(b)
	Clerk of Court of Criminal Appeals	When the record on appeal is filed	The clerk of the Court of Criminal Appeals notifies the appellant, or his attorney, and the attorney general, of the date that the record on appeal was effectively filed.	ARAP 11(b); 31(a)
C. Correction or Modification of The Record	Appellant or Appellee	Either before or after the record is certified	If there is any material misstatement or omission in the record, the parties, the trial court or the appellate court may request/order that the error be corrected.	ARAP 10(f)
STEP 3 Appellate Briefs	Appellant	Within 28 days of date of certificate of completion of record on appeal, unless time is extended	The brief (one copy for each judge) is filed with the clerk of the Court of Criminal Appeals, and a copy is served on the appellee(s).	AIAP 31(a), (b)
			Failure to timely file the brief may result in dismissal of the appeal. Failure to file a brief constitutes prima facie ineffective assistance of counsel. *Mylar v. Alabama*, 671 F.2d 1299 (11th Cir. 1982), cert. denied, 463 U.S. 1229 (1983).	AIAP 31(c)
			NOTE: Clerk of Court of Criminal Appeals must notify state bar of failure to file a brief.	
			A seven-day extension of time for filing the brief is usually granted upon request, and for good cause an additional extension is possible.	ARAP 26b; 26(b); 31(d)
			The required elements and form of the briefs, as well as the color of the brief covers, are specified by rule.	ARAP 28; 32
	Appellee	Within 21 days after service of the appellant's brief	The brief (one copy for each judge) is filed with the clerk of Court of Criminal Appeals and a copy is served on appellant.	ARAP 31(a), (b)
			Failure to file brief waives opportunity to be heard at oral argument except by permission of court.	ARAP 31(c)
			Same extensions as provided for appellant are allowed.	ARAP 26b; 26(b); 31(d)
			The required elements and form of the briefs, as well as the color of the brief covers, are specified by rule.	ARAP 28; 32
	Appellant	Within 14 days after service of appellee's brief	The appellant has the option to file a brief in reply to the appellee's brief.	ARAP 31(a)
			Deficiencies in the original brief may not be corrected in a reply brief. *Metzger Bros. v. Friedman*, 288 Ala. 386, 261 So.2d 398 (1971), and new issues may not be raised for the first time in a reply brief. *Hareing v. Thomas*, 291 Ala. 659, 286 So.2d 830 (1973).	
STEP 4 Oral Argument	Appellant or Appellee	Include request in appellate brief	The words "oral argument requested" must appear conspicuously on the front of the appellate brief, and the brief must contain an explanation of why oral argument should be granted. Oral argument will be granted unless: 1) The appeal is frivolous; 2) The dispositive issue or set of issues has been recently authoritatively decided; or 3) The facts and legal arguments are adequately presented in the briefs and record.	ARAP 34(a)
			Each side is allowed 30 minutes for argument, with the appellant opening and concluding the argument of the case.	ARAP 34(b), (c)
			If one party fails to appear, the court may hear argument from the appearing party, and if the party who requested oral argument fails to appear, that party may be assessed reasonable costs incurred by the appearing party, including attorney fees.	ARAP 34(d)
STEP 5 Opinion and Judgment	Clerk of Court of Criminal Appeals	When opinion is released	As soon as practicable after an opinion is rendered, the clerk of the Court of Criminal Appeals shall send a copy of the opinion to: 1) The judge who tried the case; 2) The clerk of the trial court; 3) The appellant's attorney; and 4) The appellee's attorney.	ARAP 36(a)

How To Appeal

by Sam Taylor, Presiding Jud

PRONOUNCEMENT OF JUDGMENT AND SENTENCE [OR RULING ON POST-TRIAL MOTION(S)]				
ITEM	**PARTY RESPONSIBLE**	**TIME**	**PROCEDURE & COMMENTS**	**AUTHORITY Rules, Statutes & Forms****
STEP 1 A. Notice of Appeal				
1) Oral	Appellant (Defendant)	1) At sentencing	1) Advise trial judge of notice of appeal at time of sentencing.	ARAP 3(a)(2); 4(b)
2) Written		2) Within 42 days of sentencing or ruling on post-trial motion	2) File notice with clerk of trial court.	ARAP 4(b); Crim. Rule 17 Form 11
Written	If State is Appellant	Within 7 days of pre-trial order: 1) Suppressing confession, etc., 2) Dismissing indictment, etc., or 3) Quashing search/arrest warrant	File notice with both clerk of trial court and clerk of Court of Criminal Appeals. Proceeding in trial court is stayed during pendency of appeal, which will be expedited.	ARAP 3(a)(2); 4(a); Crim. Rule 17
			NOTE: Timely filing of the notice of appeal is jurisdictional and cannot be enlarged. Death cases "shall be subject to automatic review," so filing notice of appeal is not necessary and case will be appealed even if the defendant does not want an appeal.	ARAP 26(b); §13A-5-55; §12-22-150
	Trial Court Clerk		Serves notice of appeal on: 1) Clerk of Court of Criminal Appeals; 2) Court reporter who reported the evidence; 3) Defendant; 4) Defendant's appellate counsel; 5) District attorney of circuit where trial occurred; and 6) Attorney General.	ARAP 3(d)(2); Form 12
			Stays can be granted only if requested prior to or contemporaneously with the filing of notice of appeal.	§12-22-170; §12-22-171; Form 11
B. Stay Pending Appeal	Appellant	Prior to or with filing of notice of appeal	Where the sentence is: 1) Death: The defendant cannot be released from custody, but a date for execution is set later by the Supreme Court.	ARAP 8(d)(1)
			2) Imprisonment: A stay shall be granted if an appeal is taken. A defendant is eligible for bail (release) only if his sentence is for a term not exceeding 20 years.	ARAP 8(d)(2); 9(b); §12-22-170; §12-22-171
			3) To pay a fine: Either the trial court or the appellate court may stay the payment of a fine or a fine and costs. The defendant may be required to deposit the whole or a part of the monies with the clerk of the court.	ARAP 8(d)(3)
			4) Probation: The order of probation shall be stayed if notice of appeal is filed. Probation cannot be granted if the term of imprisonment is more than 15 years.	ARAP 8(d)(4); §15-22-50
STEP 2 A. The Record on Appeal	Court Reporter	At or during defendant's trial	The court reporter, where directed by the judge or requested by a party, is required to "take full stenographic notes of the oral testimony and proceedings, except argument of counsel [in non-death cases], and note the order in which all documentary evidence is introduced, all objections of counsel, the rulings of the court thereon and exceptions taken or reserved thereto."	§12-17-275; Crim. Rule 21
		Within 56 days from date of notice of appeal, unless shortened or extended by order	The court reporter files with the clerk of the trial court an original transcript of the proceedings and three copies. The reporter then serves upon the appellant's attorney, the attorney general, the district attorney and the clerk of the court of criminal appeals a notice that the transcript has been filed.	ARAP 11(b), (c); Form 13

2 friday

WORKERS' COMPENSATION IN ALABAMA
Birmingham
National Business Institute, Inc.
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(715) 835-8525

6 tuesday

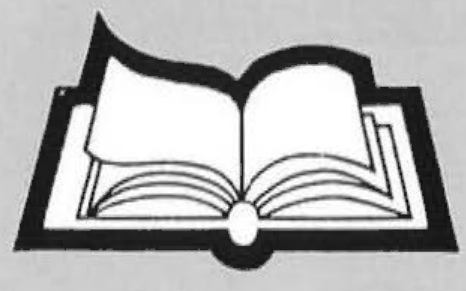
SOUTHEASTERN TAX LAW INSTITUTE
Point Clear
Alabama Bar Institute for CLE
Credits: 12.0
(205) 348-6230

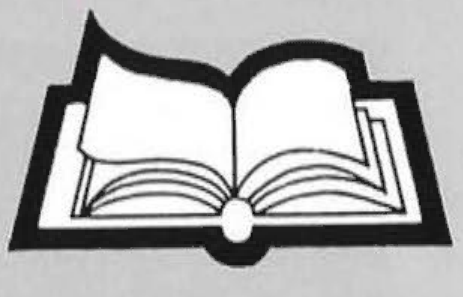
15-17

ANNUAL SEMINAR
Sandestin Beach Resort, Destin
Alabama Trial Lawyers Association
Credits: 7.5
(205) 262-4974

21-23

AMERICAN INSTITUTE ON FEDERAL TAXATION
Wynfrey Hotel, Birmingham
American Institute on Federal Taxation, Inc.
Credits: 16.4 Cost: $350
(205) 251-1000





28-30

CHILD SUPPORT CONFERENCE
Gulf Shores
Alabama District Attorneys Association
(205) 261-4191

july

12 wednesday

EMPLOYEE BENEFITS IN ALABAMA
Montgomery
National Business Institute, Inc.
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13 thursday

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National Business Institute, Inc.
Credits: 6.0 Cost: $98
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14 friday

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National Business Institute, Inc.
Credits: 6.0 Cost: $98
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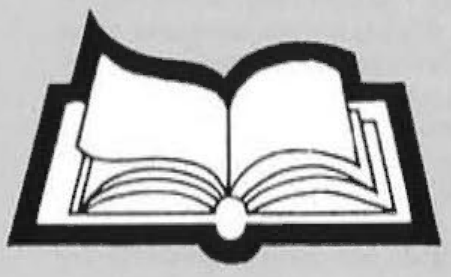
20-22

ANNUAL MEETING
Hilton, Huntsville
Alabama State Bar
(205) 269-1515

25-28

SUMMER CONFERENCE
Alabama District Attorneys Association
Perdido Hilton, Orange Beach
(205) 261-4191

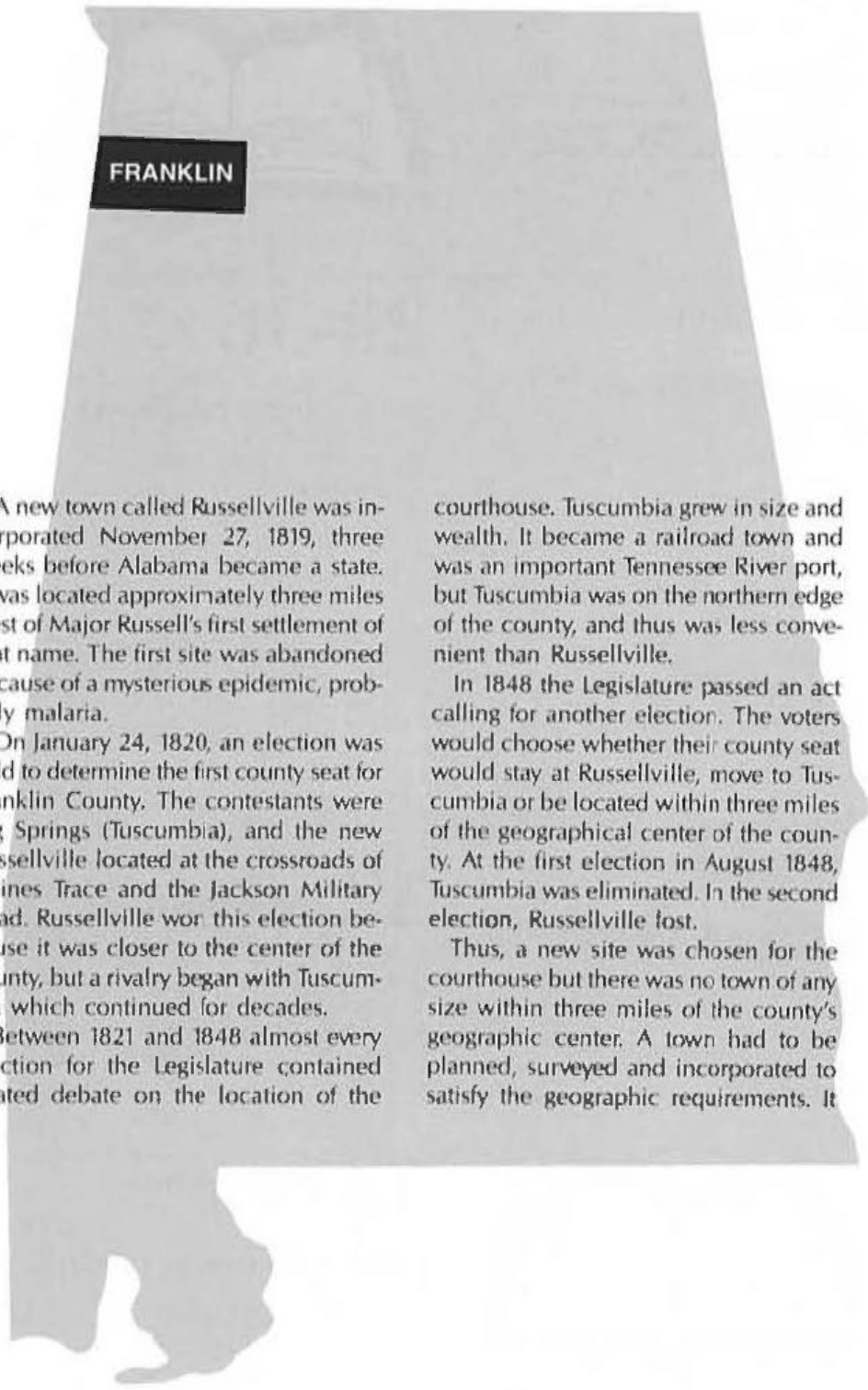


Building Alabama's Courthouses

by Samuel A. Rumore, Jr.

The following continues a history of Alabama's county courthouses—their origins and some of the people who contributed to their growth. *The Alabama Lawyer* plans to run one county's story in each issue of the magazine. If you have any photographs of early or present courthouses, please forward them to:

Samuel A. Rumore, Jr.
Miglionico & Rumore
1230 Brown Marx Tower
Birmingham, Alabama 35203



Franklin County

During the War of 1812 Andrew Jackson and his men passed through the territory that now is Franklin County, Alabama. Several of his soldiers were impressed by the beauty of this area, and after the war, they came back to settle on the land. One such soldier was Major William Russell.

Russell was a native of North Carolina who had lived a short time in Franklin County, Tennessee. He was the chief of scouts, also known as the "Mounted Spies," in Jackson's army. When he was released from service in 1815, he came back to the hill country south of the Tennessee River shoals. He built a cabin and trading post. The area was named in his honor and known as Russell Valley. With the arrival of more settlers the community became Russellville.

The Alabama Territorial Legislature created Franklin County on February 4, 1818. This county was composed of the territory in present-day Franklin and Colbert counties. It was named for Benjamin Franklin.

The first superior court was organized September 7, 1818, at the cabin of William Neely on lower Spring Creek. Due to lack of space, court convened the next day at the home of Michael Dickson in the town of Cold Water, located at present-day Tuscumbia.

A new town called Russellville was incorporated November 27, 1819, three weeks before Alabama became a state. It was located approximately three miles west of Major Russell's first settlement of that name. The first site was abandoned because of a mysterious epidemic, probably malaria.

On January 24, 1820, an election was held to determine the first county seat for Franklin County. The contestants were Big Springs (Tuscumbia), and the new Russellville located at the crossroads of Gaines Trace and the Jackson Military Road. Russellville won this election because it was closer to the center of the county, but a rivalry began with Tuscumbia which continued for decades.

Between 1821 and 1848 almost every election for the Legislature contained heated debate on the location of the courthouse. Tuscumbia grew in size and wealth. It became a railroad town and was an important Tennessee River port, but Tuscumbia was on the northern edge of the county, and thus was less convenient than Russellville.

In 1848 the Legislature passed an act calling for another election. The voters would choose whether their county seat would stay at Russellville, move to Tuscumbia or be located within three miles of the geographical center of the county. At the first election in August 1848, Tuscumbia was eliminated. In the second election, Russellville lost.

Thus, a new site was chosen for the courthouse but there was no town of any size within three miles of the county's geographic center. A town had to be planned, surveyed and incorporated to satisfy the geographic requirements. It

Franklin County Courthouse

was called Frankfort. The name was coined by combining "Franklin County" with the term "fort," for a pioneer structure once existing in the area. Frankfort officially served as county seat from 1849 to 1879. A brick courthouse and jail were built there serving the county through the Civil War.

The Reconstruction Era brought many changes to Alabama. One was the division of Franklin County. The northern part of the county outstripped the southern in wealth, population and business activity. The majority of practicing attorneys lived in Tuscumbia, and attitudes were different between the Tennessee Valley people and the hill people. In response to these conditions, on February 6, 1867, the Legislature carved Colbert County from Franklin. Tuscumbia became the county seat for the new county.

This legislative action caused great resentment, and the act was repealed later that year. In 1869 Colbert County was reestablished and Tuscumbia was named temporary county seat, provided that the voters approved creation of the new county. An election was held January 6, 1870, and the result confirmed the establishment of Colbert County.

This action severely affected the future of Franklin County. In 1860 Franklin County had a population of 18,627. In 1870, Colbert County had a population of 12,537, while Franklin County residents numbered only 8,006. The better farmland was located in the new county. And the creation of Colbert County effectively cut off Franklin County from railroad and river transportation.

After the division, the town of Frankfort was left near the Colbert County line and no longer centrally located. A new movement began for removal of the courthouse. Another factor considered was that the courthouse building had been severely damaged by a storm and was in a dilapidated condition.

A courthouse site election was held in 1879. The contestants this time were Frankfort, Russellville and the new "center" of the county. Once again the mythical center won. The exact location chosen was three miles north of the geographical center. It was named Belgreen because of the beautiful foliage in the area. This small farming community grew into a prosperous small town as it served as county seat from 1879 to 1891. A large wooden building was constructed for the courthouse; no known picture exists of the structure.

Belgreen did not prove to be a satisfactory choice. The railroads that came to Franklin County in the 1880s bypassed Belgreen, and most of the industrial growth occurred around Russellville.

On December 4, 1890, the courthouse burned to the ground. There is an interesting story suggesting that this courthouse fire was deliberately set. Residents

of Belgreen supposedly heard of a conspiracy by some people in Russellville to remove their courthouse. They stood guard for three weeks. When nothing happened they ceased their vigil thinking that the rumors were false. The very next night that the courthouse was left unguarded, it burned.

Once again an election was called to decide the site of the Franklin County seat. This time the contestants were Belgreen, Russellville and Isbell. Russellville and Isbell were prosperous towns, Isbell having a slightly larger population, and both wanted the courthouse. This was probably the most controversial election ever held in Franklin County. It was reported that non-resident railroad workers were brought in from Sheffield to cast votes in the election for Russellville. Though the vote was close, and despite the allegations of fraud, Russellville once again became the county seat. It has served the county since 1891.

Shortly after this election, a $15,000 bond issue was approved for the construction of a courthouse. In November 1892, a brick courthouse was completed. An illustration of this building reveals that it was four stories tall and topped by a clock tower and dome. Sixty years later, in January 1953, this courthouse burned in an early morning fire.

Construction on the present courthouse began in 1954, and was completed in March 1955. This new building cost approximately $460,000. The architects were Johnston and Jones of Starkville, Mississippi, and the contractor was Craig Construction Company of Florence, Alabama. The building is constructed of native limestone from nearby Rockwood. Renovations and an annex were completed in 1983. The architects for this work were Lambert and Ezell, and the general contractor was Weems & Associates. ■

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

Alabama Judicial Award of Merit Nominations

Nominations are now being received for the Alabama State Bar Judicial Award of Merit. This award, established by the board of bar commissioners, will be presented for the first time at the 1989 annual meeting in July. In the future it will be awarded periodically by the board of commissioners.

The award is to be given to that judge, whether state or federal, whether trial or appellate, who has contributed most to the administration of justice in Alabama.

Please submit nominations before **June 15, 1989,** to:

Nominating Committee
Alabama State Bar
Judicial Award of Merit
P.O. Box 671
Montgomery, Alabama 36101

MCLE News

The Mandatory CLE Commission held its January 27, 1989, meeting at the state bar headquarters. At this meeting the Commission:

1. Declined to grant an attorney's request for extension of the March 1, 1989, deadline to make up a CLE deficiency for 1988;

2. Granted three attorneys' requests for full waivers of the 1988 CLE requirement due to health reasons;

3. Declined to grant an attorney's request for a waiver of the late compliance fee;

4. Approved an attorney's request for substituted compliance of a single program activity based on medical reasons;

5. Granted an attorney's request for a waiver of the late compliance fee;

6. On appeals by two sponsors, affirmed the director's original decision denying accreditation for the sponsors' activities which focused on investment advisors, broker dealers, financial reporting and insurance accounting. ■

Attorneys Insurance Mutual of Alabama, Inc.

The Board of Directors of Attorneys Insurance Mutual of Alabama, Inc. met April 3, 1989, to consider the results of the offering of units through March 31, 1989. The board was encouraged by the fact that the company had over $2,000,000 from subscriptions and commitments to subscribe for units from approximately 1,600 attorneys. The board was further encouraged by the advice of its insurance business consultant and its reinsurance broker that, based on current conditions in the reinsurance market, it would be feasible for the company to commence operations at the current level of participation by Alabama attorneys with an initial capitalization of $2,000,000 rather than $2,500,000.

In view of these encouraging factors, the board decided to extend the offering of the units until July 31, 1989, to continue the effort to raise $2,500,000 from the numerous Alabama attorneys who have expressed an interest but not yet subscribed for units. However, the board also requested its legal counsel to investigate the possibility of amending the terms of the offering for units so that the company can be in a position to commence business at an earlier date by "breaking escrow" at the lower level of $2,000,000. If the offering is so amended, all current subscribers for units will be afforded an opportunity to evaluate the terms of the amended offering and reconsider their obligation to subscribe for units. ■

Interference with Business Relations
(continued from page 131)

relied on *Restatement (Second) of Torts* §766 and comments which validate refusals to deal to reach its result. Given the court's adoption of the Restatement in *Gross* and *Bear Creek*, practitioners should become familiar with Restatement, §§766-767, on interference, and particularly §§768-774, which identify specific examples of justification. To the extent a party can fit its acts within one of these examples, it may gain acceptance by the supreme court.

With respect to the element of justification, the supreme court created more uncertainty than clarity in *Gross*. While the court listed absence of justification as one of the elements of proof, the court stated in a footnote that it was retaining the principle that justification was an affirmative defense to be plead and proved by the defendant. 494 So.2d at 597, n. 3. In the same footnote, the court reaffirmed prior law that justification normally would be a question for the jury. The court then adopted the Restatement (Second) of Torts § 767 (1979) balancing test for a jury to determine justification based on a consideration of factors, including (1) the nature of the actor's conduct; (2) the actor's motive; (3) the interests of the other with which the actor's conduct interferes; (4) the interests sought to be advanced by the actor; (5) the social interests in protecting the freedom of action of the actor and the contractual interests of the other; (6) the proximity or remoteness of the actor's conduct to the interference; and (7) the relations between the parties.

A critical review of these factors reflects that this balancing test of considerations (1) muddles the law rather than giving any certainty to the bar and businesses as to what constitutes legitimate business conduct and; (2) may turn the issue of justification into a subjective value-oriented decision based on a jury's rough notions of fairness as opposed to a determination based at least in part on some objective criteria. Arguably under this test, the most important feature, as with the old law, will be the intent or motive of the actor in carrying out the alleged interference and not whether the act itself constitutes valid business competition as opposed to wrongful behavior.

In subsequent decisions after *Gross*, the Alabama courts have tended to place the burden on the plaintiff to prove absence of justification. In *Finley v. Beverly Enterprises, Inc.*, 499 So.2d 1366 (Ala. 1986), the defendant nursing home adopted the policy of not allowing nurses whom it had previously discharged to work as private nurses to patients at its facility. While the supreme court recognized that this constituted a potential interference with the relationship, the court held that the plaintiff had not "produced a scintilla of evidence to show that there was no justification for Beverly's policy that discharged Beverly's employees may not re-enter the premises to work as private duty nurses." 499 So.2d at 1368. In *Birmingham Television Corp. v. Deramus*, 502 So.2d 761 (Ala.Civ.App. 1986), the court of civil appeals emphasized that plaintiff had failed to prove an absence of justification for interfering with a former employee assuming a position with a competitor. *Id.* at 765-66.

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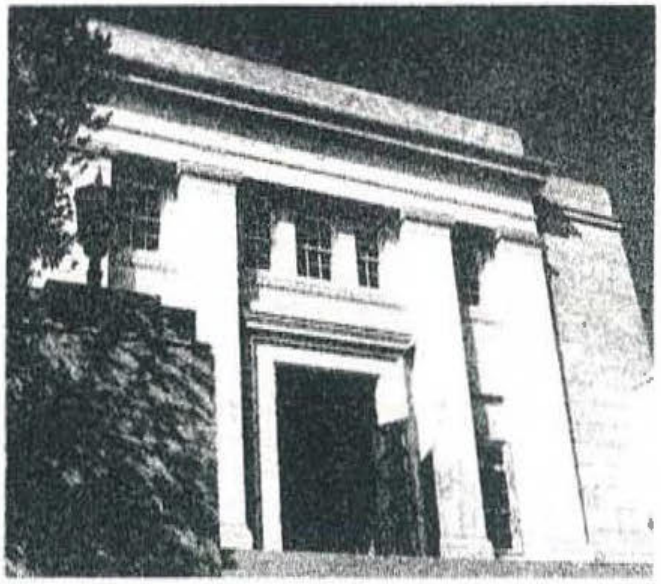


Recent Decisions

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

Recent Decisions of the Alabama Court of Criminal Appeals

Batson issue—continuing problem

Madison v. State, 1 Div. 200 (December 30, 1988)—Madison was convicted of the capital offense of the murder of a police officer in violation of §13A-5-41(a)(5), *Code of Alabama* (1975). The trial jury recommended that Madison be sentenced to death by a vote of eleven-to-one. The jury's recommendation was accepted and imposed by the trial judge following a separate sentencing proceeding.

The victim in the case was a white police officer and the defendant a black male. The record reflects that during the examination of the venire, certain white jurors either had relatives or friends who were associated with or employed by the police department and/or sheriff's office. These persons were left on the venire while the district attorney's office used its peremptory strikes to remove all seven prospective black jurors from the venire.

At trial and on appeal, Madison contended that his rights under the Equal Protection Clause were violated by the state's use of its peremptory strikes to remove all black jurors from the venire. At trial, defense counsel made a timely objection and requested the trial court to require the district attorney to articulate some non-discriminatory reason for the complete exclusion of blacks from the jury.

Pursuant to the Supreme Court's decision in *Batson v. Kentucky*, 476 U.S. 79 (1986) and the decision of the Alabama Supreme Court in *Jackson v. State*, 516 So.2d 768 (Ala. 1986), the intermediate appellate court remanded the case to the trial court for a hearing on the basis of the allegations made by the defendant. Thereafter, the circuit court conducted the hearing and returned the case to the appellate court. The court of criminal appeals, in a unanimous decision, reversed Madison's conviction and remanded the case for new trial.

Judge Tyson outlined the rationale of the Supreme Court of Alabama's decision in *Ex parte Jackson*, 516 So.2d 768 (Ala. 1986), by further defining the criteria which the state must employ in the selection of prospective jurors. In *Ex parte Branch*, 526 So.2d 609 (Ala. 1987), the court pointed out the type and manner of the state's attorney's questions and statements during *voir dire*.

The court of criminal appeals held as follows:

"We are of the opinion that a prima facie case of racially discriminatory strikes was established under the

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

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

testimony before the trial court. The State then had the burden, through the District Attorney's office, of overcoming the presumption by showing that its strikes were race-neutral. The District Attorney's general assertion that he did not strike jurors on the basis of race, but on other reasons which appeared to us to be superficial and show a lack of proper examination of such jurors leaves this Court no alternative but to reverse and remand this cause for a new trial because of the explanations given by the District Attorney . . . For these reasons, the defendant is entitled to a new trial."

Speedy trial—application of *Barker v. Wingo*

Steele v. State, 8 Div. 119 (December 30, 1988)—Steele was convicted of kidnapping in the second degree and theft in the first degree. He was given concurrent sentences of 15 years. On appeal, Steele raised a single appellate issue—the denial of his right to a speedy trial.

Employing the four-part test of *Barker v. Wingo*, 407 U.S. 514 (1972), the Alabama Court of Criminal Appeals reversed and rendered Steele's decision finding that Steele was denied a speedy trial.

In applying the *Barker v. Wingo* test, Judge Bowen made the following critical findings:

"A. Length of Delay: In this case, the right to a speedy trial was activated when Steele was arrested. *Hayes v. State*, 487 So.2d 987, 991 (Ala.Crim.App. 1986) . . . The delay in Steele's case from the time of arrest to trial was approximately three years and nine months. The delay was presumptively prejudicial and sufficiently lengthy to trigger inquiry into the remaining *Barker factors*.

"B. Reasons for the Delay: [T]he State is under an affirmative duty to try an accused within its jurisdiction with a reasonable time . . . *Taylor v. State*, 429 So.2d 1172, 1174 (Ala.Crim.App.). *cert. denied, Alabama v. Taylor*, 464 U.S. 950, 104 S.Ct. 366, 78 L.Ed 2d 326 (1983) . . . At the hearing on the speedy trial motion the prosecutor represented to the court that the State 'has stood ready and willing to prosecute the case' since the indictment was returned in August of 1986; that the case had first 'come up on the docket in March of 1988 when it was continued until April of 1988,' and that 'for some reasons that case might have fallen through the cracks in the scheduling process.' The reason for the one-month continuance is not explained in the record. Moreover, the State did not even attempt to explain the approximate two-year delay between the arrest and the indictment.

"C. Assertion of Right: On five separate occasions, Steele asserted his right to a speedy trial, the first being approximately nine months after his arrest, which was a little over two years before he was even indicted. Steele's repeated requests put the State on notice that there were charges pending against him thereby triggering his constitutional right to a speedy trial.

"D. Prejudice: 'An accused's right to speedy trial remains undiminished even when he is already serving a prison sentence.' *Aaron v. State*, 497 So.2d 603, 604 (Ala.Crim.App. 1986) . . . A very significant prejudice was suffered by the defendant in the loss of the opportunity to have his present sentence served concurrently with the time he [was already serving]. There was no attempt on the part of the State of Alabama to rebut Steele's claim of prejudice."

Finally, Judge Bowen reasoned that every factor of the balancing test employed under *Barker* weighs against the state and in favor of Steele. "The record before this Court shows an unreasonable delay without justification or acceptable excuse resulting in actual prejudice."

Other acts of misconduct constitute plain error

Tabb v. State, 6 Div. 257 (December 30, 1988)—Tabb was found guilty of the capital offense of murder during a rape in the first degree. Following a separate sentencing hearing, Tabb was sentenced to death.

Pursuant to Rule 45A, Alabama Rules of Appellate Procedure, the Alabama Court of Criminal Appeals reviewed the record to determine whether any error adversely affected the substantial rights of the defendant.

In a unanimous decision, the court found that under the circumstances, the admission of Ken Mays' testimony indicating that the defendant had been a drug addict and was attempting to 'dry out' constituted plain error. Tabb's conviction was reversed and the case remanded for new trial.

During the presentation of the State's case, Mays, an investigator for the Alabama Bureau of Investigation, testified about his role in the investigation of the offense. Mays testified that he took a written statement from Tabb following the administration of his *Miranda* rights. Later in the trial, and just prior to the state's resting its case, the state recalled Mays. Mays' second appearance was brief and concerned only another oral statement made to him by the defendant.

Q: "All right, sir. Aside from the written narrative that we have introduced here of what he signed about his activity that particular day, at the very first of the conversation, following your advising Tabb of his constitutional rights, did he make any other oral statement to you?"

A: "Yes, sir."

Q: "And what was that and would you relate the question and answer that the two of you had at the very first of the discussion?"

[DEFENSE COUNSEL]: "Your Honor, I'm going to object to the question as being repetitive . . ."

THE COURT: "Overruled."

Q: "You may answer."

A: "In the conversation with Mr. Tabb, he informed me that he had lived in Memphis, Tennessee. I asked him why he was in Millport, Alabama. He said he had moved to Alabama, Millport, Alabama, recently because he was a drug addict and to get off of cocaine. He was wanting to dry off drugs in his words."

The evidence at trial revealed no other evidence that the appellant took drugs nor were drugs involved in any way in the commission of the offense. The defense counsel failed to object to this testimony, and the propriety of the testimony was not raised in briefs on appeal.

Nevertheless, the court of criminal appeals found that this testimony constituted plain error which 'probably adversely affected the substantial rights of the appellant.' "We can find no purpose in the elicitation of this testimony, other than to show the bad character of the appellant. This evidence was totally irrelevant and immaterial to the instant case and could have substantially prejudiced the appellant, in that it made the jury aware of the fact that the appellant was a drug addict."

Judge McMillan further reasoned that the defendant's case was based on his truthfulness, and the state's introduction of improper testimony that was intended to show the appellant's bad character and lack of credibility directly undermined the accused's theory of defense. The predictable result was reversible error and a new trial.

Recent Decisions of the Supreme Court of Alabama—Civil

Civil procedure . . . dismissal under Rule 25 (a)(1) acts as rule of repose and is with prejudice

Illinois Central Gulf R.R. Co. v. Price, 22 ABR 437 (December 9, 1988). Price filed an F.E.L.A. action against Illinois Central in state court. Thereafter, he died of unrelated causes. Illinois Central's attorney filed a suggestion of death on the record. Price's attorney did not file a motion to substitute a personal representative for Price within the six-month period, and Illinois Central filed a motion to dismiss *with prejudice*. The trial court dismissed the action *without prejudice*, and the supreme court granted a Rule 25(a), A.R.A.P. appeal.

In a case of initial impression in Alabama, the Alabama Supreme Court stated that a dismissal under Rule 25(a)(1), A.R.Civ.P., acts as a rule of repose and is *with prejudice* as to common law causes of action and Alabama statutory causes of action, unless the statute creating the cause of action provides otherwise. The supreme court noted, however, that this is an F.E.L.A. case and, therefore, the state courts defer to federal law. The United States Supreme Court also has construed the predecessor of Rule 25(A), F.R.Civ.P., as a rule of repose. This construction is consistent with the Alabama Supreme Court's interpretation of Rule 25(a)(1). Therefore, the result is the same regardless of whether the federal or state law applies. The dismissal should have been with prejudice.

Contracts . . . public policy dictates against extending third-party beneficiary status to certain information-gathering sources

Smith v. Equifax Services, Inc., 22 ABR 370 (December 2, 1988). Smith filed this action against Mutual Benefit Life Insurance and Equifax claiming that she was a third-party beneficiary to a contract between Mutual and Equifax. Equifax hired Mutual to collect and transmit requested medical information to Mutual to be used by it to determine whether they would issue a policy of life insurance to her husband. Smith claimed that Equifax breached its contract by a delay in transmitting medical records to Mutual. The trial court granted Equifax's motion to

summary judgment, and the supreme court affirmed.

The supreme court found that the evidence failed to establish that the contract between Mutual and Equifax was for the direct benefit of Mr. or Mrs. Smith. The information was not to go to or to be used by them. The supreme court also noted that as a matter of public policy, it is desirable to promote the furnishing of information in a business context. The supreme court reasoned that if it held that the person about whom the information is requested has standing as a third-party beneficiary to sue for breach of the contract, then it would be undermining that public policy.

Insurance . . .

loss of consortium in uninsured motorist context discussed

Weekley v. State Farm Mutual Automobile Ins. Co., 23 ABR 647 (January 6, 1989). Mr. and Mrs. Weekley were severely injured in an automobile accident with an automobile driven by Elder, an uninsured motorist. The Weekleys filed suit against Elder, and their insurance carrier, State Farm, seeking damages for bodily injury. Mr. Weekley also claimed loss of consortium of his wife as a result of her injuries, and Mrs. Weekley claimed loss of consortium of her husband caused by his injuries. The Weekleys had two policies with State Farm, each providing UM coverage in the amount of $20,000. State Farm acknowledged that the injuries were severe and would justify payment of the full amount under both policies. Consequently, State Farm tendered its UM limits to the circuit clerk in payment of Mrs. Weekley's injuries, and she accepted the money in settlement of her claim against State Farm. State Farm filed summary judgment against Mr. Weekley on his claim for loss of consortium of his wife, and the court granted the motion.

The issue presented by this appeal is whether a husband may recover any amount for loss of consortium under his UM policy after his wife has been paid the full amount recoverable under the same 'per person' limits of the policy for 'all damages' resulting from her 'bodily injury.' In a case of first impression in Alabama, the supreme court said no. The supreme court noted that the policy limits of both policies had been paid to Mrs. Weekley. Therefore, no further recovery may be had, based upon a consortium claim, because that claim arises out of the bodily injury to the injured spouse, and not out of a separate bodily injury to Mr. Weekley. A consortium claim does not constitute a claim for bodily injury. Consequently, the limits of liability for each person, arising out of the 'bodily injury' to one person, include claims for loss of consortium.

Truth-in-lending . . .

15 U.S.C. 1061, *et seq.*, construed

Lawson v. Reeves, 22 ABR 348 (December 2, 1988). Plaintiffs purchased used automobiles from defendants who did business as Rocket City Auto Sales. The plaintiffs signed a sales contract and a security agreement. The contract provided for 47 weekly payments and stated that the finance charge is 'zero,' and the APR is 'zero.' The plaintiffs contended that the contract price included a hidden or undisclosed finance charge in violation of 15 U.S.C. §1638. The defendants denied that such a claim for relief exists, and the trial court agreed with the defendants. The supreme court reversed.

The court held that a claim for relief exists under the federal Truth-in-Lending Act for non-disclosure of hidden finance charges when the installment sales contract does not disclose an annual percentage rate, but the stated price exceeds the actual value of the items sold. The supreme court noted that the buyer is required to prove by competent evidence the difference between the actual value of the items sold and the stated sales price.

Worker's compensation . . .

§25-5-11(a) establishes what worker's compensation carrier is required to pay to employee's attorney

Maryland Casualty Co. v. Tiffin, 22 ABR 383 (December 2, 1988). Maryland Casualty provided worker's compensation insurance for the deceased employee. His widow and the minor children sought damages for his death from third parties under §25-5-11(a), *Code of Alabama* (1975). The plaintiff's attorney settled a third-party claim substantially in excess of the amount of Maryland Casualty's liability under §25-5-60, but still it was only 20 percent of its value. The

plaintiff's attorney had a one-third contingency contract, and Maryland Casualty agreed to pay one-third of the amount reimbursed to it and one-third of the future liability from which it was released as its proportionate amount of the attorney fee under §25-5-11(a), *Code of Alabama* (1975). The trial court held that since there was evidence that they received only 20 percent of the value of the case (less their expenses), Maryland Casualty should receive the same percent of the amount it had paid and would have paid, less attorney fees, under the Common Fund Doctrine. The supreme court disagreed.

The supreme court stated that there is a statutorily prescribed common fund doctrine involved in a third-party recovery in the worker's compensation context. The plaintiff's contingency fee contract with their attorney provides that the attorney shall receive one-third of all sums recovered. Maryland Casualty is to pay one-third of all sums that it recovers from the common fund and one-third of all sums it is relieved of paying due to the common fund. No more than that is required of it under §25-5-11(a), *Code of Alabama* (1975), or any equitable common fund doctrine.

Recent Decisions of the Supreme Court of the United States

Right to consult with defense during break—*Geders* distinguished

Perry v. Leeke, 57 US LW 4075 (January 10, 1989)—Is a criminal defendant's Sixth Amendment right to counsel violated when, during an interruption in his testimony, he is barred from conferring with his lawyer? The Supreme Court, in a six-to-three decision, said no.

In *Geders v. United States*, 425 U.S. 80 (1976), the Supreme Court held that a trial court's order directing a defendant not to consult his attorney during an overnight recess, called while the defendant was on the witness stand, violated his Sixth Amendment right to the assistance of counsel. The Supreme Court, in *Perry v. Leeke*, considered whether the *Geders* rule applies to a similar order entered at the beginning of a 15-minute afternoon recess.

At the conclusion of Perry's direct testimony, the trial judge declared a 15-minute recess and ordered that Perry not be allowed to talk to anyone, including his lawyer, during the break. In affirming the defendant's conviction, the South Carolina Supreme Court ruled that *Geders v. United States, supra*, did not apply because "normally counsel is not permitted to confer with his client between direct and cross-examination."

Justice Stevens delivered the opinion of the court which held that the federal Constitution does not compel a trial judge to allow a criminal defendant to confer with his attorney during a brief break in his testimony. The Justice reasoned that, "It is an empirical predicate of our system of justice that, quite apart from any question of unethical 'coaching' cross-examination of an uncounseled witness, whether the defendant or a non-defendant, following direct examination is more likely to lead to the discovery of truth than is cross-examination of a witness given time to pause and consult with his lawyer. Thus, although it may be appropriate to prevent such consultation in individual cases, the trial judge must nevertheless be allowed the discretion to maintain the status quo during a brief recess in which there is a virtual certainty that any conversation between the witness and his lawyer would relate exclusively to his ongoing testimony."

The court drew a distinction between *Perry* and its ruling in *Geders* on the facts. The court reasoned that, "The long interruption in *Geders* was of a different character because the normal consultation between attorney and client that occurs during an overnight recess would encompass matters that the defendant does have a constitutional right to discuss with his lawyer—such as the availability of other witnesses, trial tactics, or even the possibility of negotiating a plea bargain—and the fact that such discussions will inevitably include some consideration of the defendant's ongoing testimony does not compromise the basic right in that instance."

The *Perry* case also answered a second important question. The court held that a showing of prejudice is not an essential component of a violation of the

Ceders rule, in light of the fundamental importance of the criminal defendant's constitutional right to be represented by counsel.

Habeas corpus—exhaustion of state remedies

Dugger v. Adams, case no. 87-121 (February 27, 1989)—Was a convicted Florida murderer precluded from raising an issue in his federal habeas corpus petition because he failed to raise it in the Florida appellate courts? The Justices, in a five-to-four decision, said yes.

Dugger had argued successfully before the Eleventh Circuit that his jurors were misled about their role in sentencing, a violation of his Eighth Amendment rights.

Justice White, writing for the majority, held that the Eleventh Circuit should not have ruled on the merits of Dugger's petition because the jury instruction issue had not been argued, raised or preserved in the state appellate courts.

Justice White noted:

"The ground for challenging the trial judge's instructions—that they were objectionable under state law—was a necessary element of the subsequently available [federal] claim arising from a Supreme Court decision issued after the defendant had exhausted direct appeals." ■

Interference with Business Relations

(continued from page 141)

While the court in *Gross* left unclear the scope of the justification defense and the evidentiary standards for establishing it, subsequent cases have shown that with the demise of the scintilla rule and the question on the burden of proof, justification may be more of an appropriate issue for summary judgment. *See Finley, supra; Dunnivant v. Bi-State Auto Parts*, 851 F.2d 1575, (11th Cir. 1988). Indeed, what could develop is an evidentiary standard akin to federal discrimination claims where (1) the plaintiff has the burden to offer proof of the four other elements of actionable interference; (2) the defendant then must articulate or show some evidence of justification; and (3) the plaintiff, in turn, must prove that the articulated rationale is pretextual for an intent or motive to harm the plaintiff's business. This evidentiary standard would be more consistent with the emphasis placed by *Gross* and its pedigree on the actor's motive in effecting the alleged interference, while affording real protection to a defendant's aggressive but lawful acts.

IV. Conspiracy to interfere

The limitations imposed by *Gross* apparently did not affect the availability of the separate tort claim of conspiracy to interfere with business or relations. Prior to *Gross*, the supreme court held that if two or more persons planned or participated in an actual interference, they were liable for the separate tort of conspiracy to interfere. *E.g., Purcell, supra* at 527. Unlike traditional conspiracy law the essence of tort was not the conspiratorial agreement but the interference carried out as a result of it. Without the elements of the underlying tort, i.e., actual interference and damage, the claim failed. *Id.* The supreme court in *Fossett v. Davis*, 531 So.2d 849 (Ala. 1988), held this claim for conspiracy is still available if a party establishes the *Gross* elements and shows by circumstantial evidence that other parties participated in an agreement to effect the interference. *Id.* at 851.

V. Conclusion

Critics with some justification have argued that a tort of interference with business relations not only is too vague, but fundamentally inconsistent with an economy founded on free and vigorous competition. This difficulty of reconciling a tort of interference with the competitive order in the United States becomes more acute when the defendant competitor is required to prove that his conduct was justified under some undefined subjective standard to be submitted to a jury. What is fundamentally clear from *Gross* and its prodigy is that the broad elements of the new tort sketched out in *Gross* need substantial "fleshing out" and clarification, particularly on the justification defense if businesses are to be afforded the certainty promised, but undelivered, by *Gross v. Lowder.* ■

Committees

Committees and Task Forces work hard in many areas

The bar's committees and task forces have worked steadily throughout the year and have much to show for their diligence. During the months of March and April, committee and task force chairpersons reported their accomplishments thus far and their goals for the remainder of the bar year. Following are highlights of some of those reports:

Committee on Access to Legal Services requested and received a grant from the Alabama Law Foundation (ALF) in the amount of $25,000 to fund a legal needs survey for Alabama. The survey will take place during 1989. Other committee projects include coordinating a statewide 'Lawline' program with the SouthTrust Banks, NBC-TV affiliates and local bar associations in Birmingham, Huntsville, Mobile and Montgomery. The committee also has prepared a series of articles on subjects of interest to senior citizens to be mailed to the state's daily newspapers in recognition of May as Senior Americans' Month.

Task Force on Alabama Rules of Evidence activities have been placed on hold while the Advisory Committee of the Alabama Supreme Court is drafting proposed rules of evidence.

Task Force on Alternatives to Dispute Resolution spent many hours redrafting the proposed Alabama Arbitration Act for introduction during this session of the Legislature. The task force is also studying the various mediation programs across the state to determine whether a bar-sponsored mediation program should be recommended for implementation.

Character and Fitness Committee, Panel II, met in July 1988, interviewing six bar applicants. Five of the applicants were approved and one was declined. The committee also met in February 1989 and interviewed two student applicants and one bar applicant. One student applicant was approved and one was continued for further investigation. The bar applicant also was approved.

Task Force on the Implications of Compulsory Bar Membership reviewed the implications of the federal district court decision in the *Levine v. Supreme Court of Wisconsin,* 679 F. Supp. 1478 (W.D. Wisc. 1988), holding that a Wisconsin lawyer was not required to be a member of that state's bar as a condition for practicing law in that state. The task force reviewed the structure of the Alabama State Bar in light of the *Levine* decision and concluded that the Alabama State Bar was significantly different from Wisconsin's bar and probably any other and recommended that the bar not participate as *amicus curae* or otherwise in the litigation. (The district court's decision in *Levine* has since been reversed by the Seventh Circuit Court of Appeals.)

Committee on Continuity, Programs and Priorities has met one time and conducted its business primarily by correspondence because of the geographic dispersion of its members. The committee members focused their attention on three basic matters: (1) maintaining continuity of programs from year to year in the face of annual changes in the leadership of the the bar; (2) standardization of bar committee reports; and (3) analysis of North Carolina's Graylyn Conference report to determine if it contains recommendations and conclusions useful to the Alabama State Bar. A preliminary recomendation will be prepared and circulated for comment among committee members, the bar president and the executive director of the bar. A final draft then will be prepared for submission in early June.

Task Force on Facilities for the Alabama State Bar met to determine the present and future needs of the bar and make suggestions to the bar staff and architect retained for the project. The task force will review the architect's drawings of the proposed new addition to the bar headquarters and make appropriate suggestions.

Task Force on Illiteracy studied the high incidence of adult illiteracy in the state and existing programs to decrease adult illiteracy. The task force will contact local bar associations and encourage each to establish a standing committee on illiteracy to recruit local lawyers to become involved in local literacy programs. The task force also intends to recommend to the board of bar commissioners the adoption of a resolution calling upon the Alabama Supreme Court, the Administrative Office of Courts and all courts in Alabama to address this problem through the judicial system.

Indigent Defense Committee is concentrating its efforts on revamping the indigent defense system in Alabama. The Administrative Office of Courts has commissioned ABA consultant Bob Spangenberg to prepare a report proposing alternative solutions to the problem. The report will be reviewed by a small committee appointed by the bar, AOC and chief justice, suggesting the best legislative proposal to improve the quality of indigent defense in Alabama and solve the underfunding problem. A proposed list for membership on the review committee has been prepared by AOC. The proposed list will be reviewed by the indigent defense committee to provide input to AOC regarding other possible members for the review committee.

Task Force on the Proposed Judicial Building reports that the architectural firm of Barganier, McKee & Sims of Montgomery in association with Gresham, Smith of Birmingham is the architect for the judicial building. The land for the building site has been partly acquired, several tracts are being negotiated for and other tracts will be the subject of condemnation.

Task Force on the Judicial Selection Process has met on three occasions and discussed the current status of litigation

having impact on the judicial selection process and studied proposed legislation before the legislature providing for non-partisan election of judges. In the interim between meetings, a considerable number of published items from newspapers and others sources bearing on the mission of the task force were circulated to task force members. Although the task force has been assisted in its study of the merit selection area by a representative of the American Judicature Society, the task force believes that the implementation of non-partisan elections may offer a more realistic opportunity for improvement in the Alabama system at this time. The litigation involving the judicial system has caused the task force to proceed at a more deliberate pace than first anticipated.

Task Force on Legal Education will visit each of the state's five law schools and meet with the deans, curriculum chairpersons and other appropriate personnel. In addition, the task force will obtain catalogs, curriculum and faculty information and class schedules, as well as information on the library and physical resources of each law school.

Committee on Professional Economics completed its performance evaluation of the bar's endorsed law office management consultant and concluded that he has provided satisfactory services to all clients in Alabama who responded to the survey. The committee concluded, based on a lack of response to an advertisement appearing in *The Alabama Lawyer*, that the formation of a Professional Economics Section be deferred to permit the committee to concentrate on other areas and develop more interest in a section. Also, the committee will sponser a joint seminar with the Alabama Legal Administrators during its conference in September. The committee decided against sponsoring an office equipment and service exposition at the 1989 annual state bar meeting, but will consider sponsoring an exposition at the 1990 meeting.

Task Force on Substance Abuse in Society has a subcommittee investigating the possibility of the bar's producing and sponsoring television spots directed toward the substance abuse problem in a statewide public service campaign. The task force also is studying establishing a lawyer's speakers bureau to speak on the legal consequences of substance abuse. A questionnaire will be mailed to individuals involved in substance abuse programs across the state to obtain information on how the bar association can most effectively help them. The task force's chairperson was to speak at the Governor's Conference on Drug Abuse Awareness held in Montgomery in April. ■

Chambers County Bar Association

Pictured above are, left to right, Greg Ward, new president of the Chambers County Bar Association, and Donald R. Cleveland, vice-president of the bar. Not pictured is Donald M. Phillips, secretary/treasurer of the bar.

Riding the Circuits

Shelby County Bar Association

The Shelby County Bar Association held its annual meeting in December 1988 and elected officers for 1989. Officers are:

President: Patricia Yeager Fuhrmeister, Columbiana
Vice-president: John A. McBrayer, Birmingham
Secretary: Steven R. Sears, Montevallo
Treasurer: Henry E. Lagman, Birmingham

■

Opinions of the General Counsel

by Alex W. Jackson, assistant general counsel

QUESTION:

***

"The undersigned is a licensed attorney practicing law in . . . Alabama. For the past several years, the attorney has represented an individual doing business as a tire shop (hereinafter the 'shopowner').

"Approximately four years ago, the shopowner referred one of his workers to the attorney for the purpose of representing the worker in a divorce proceeding (hereinafter the 'worker'). During the course of that representation, the worker told the attorney that, while moving out of the marital home, the worker had injured his back. The divorce was concluded, and the attorney did not represent the worker on any subsequent occasion. At approximately the same time the shopowner and the worker had a dispute and the worker went to the shopowner's place of business, removed his tools, quit and told the shopowner he was going to sue him.

"The attorney has represented the shopowner on a continuing basis, and subsequent to the conclusion of the divorce, the shopowner notified the attorney that he had been sued by the worker. The attorney informed the shopowner that he was unable to represent him in that matter because of a conflict of interest, and advised the shopowner to seek other counsel.

"During the course of representation in other matters, the shopowner informed the attorney that the lawsuit against him by the former worker is a worker's compensation suit, claiming that the ex-worker was injured while employed by the shopowner, during and in the course of his employment. The shopowner has also informed his attorney that the suit is entirely baseless, and the deposition testimony of the ex-worker is entirely untrue. The shopowner alleges that he was present at the time of the alleged injury, and states that the testimony is perjured.

"The ethical dilemma faced by the attorney is the worker told the attorney that his back injury occurred while moving out of the marital home. The lawsuit is based upon the self-same injury, and the attorney believes the worker is perpetrating a fraud on the court. The information which was given to the attorney by the worker was not relevant to the domestic relations case, except insofar as it was confided to the attorney in the course of the worker's statement that he had removed his belongings from the marital home.

"May the attorney reveal this information given to him in the course of his representation of the worker, and if so, to whom should such information be divulged?"

ANSWER:

Disciplinary Rule 4-101(A) defines a client's secret as " . . . 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." Disciplinary Rule 4-101(C) provides that a lawyer *may* reveal " . . . (4) confidences or secrets when required by law . . . or (5) the intention of his client to commit a crime and the information necessary to prevent the crime." (emphasis added) Ethical Consideration 4-6 states that the obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment.

In Opinion 4-86 the Professional Ethics Committee of the Queen County (N.Y.) Bar Association opined that while " . . . the *Code* refers only to 'crimes', frauds are considered to be crimes for purposes of disclosure." We are of the same opinion. We also are of the opinion, based upon the facts cited by you, that this fraudulent conduct of the client is continuing in nature. We feel, therefore, that you should approach the client and request that he immediately rectify this fraud and discontinue his continuing fraudulent course of conduct. We would recommend that you advise the client that should he fail to do so, you will reveal to the proper authorities the intention of the client to commit a fraud and such information as necessary to prevent the fraud.

DISCUSSION:

A lawyer must exercise great caution before voluntarily revealing secrets gained during a professional relationship. However, the *Code* cannot be construed in such a way as to make an attorney an unwitting accomplice to a fraud or a crime. In the instant case the lawyer did not learn of the intention of his former client to commit a fraudulent act or crime during the course of his representation of the client, however, he did learn the fact upon which the fraud was based. It was the subsequent use of that secret by the client that constituted fraudulent conduct and it was only upon the use of that information that the duty arose for disclosure. The continuing nature of the fraud, the likelihood of harm to innocent parties and the probability that the fraud will not be discovered without disclosure by the lawyer weigh heavily in our opinion that disclosure under these facts would be permissible. However, we reiterate that the lawyer should first call upon the client himself to discontinue his fraudulent conduct and to rectify any harm already done. Should the client voluntarily take this action, then we feel it would be inappro-

priate for the attorney to make any disclosure unless ordered to do so by a court or otherwise required by the provisions of DR 4-101.

[RO-89-12]

NOTE: Proposed Rule 1.6(b)(1) of the Rules of Professional Conduct, now pending before the Alabama Supreme Court and as recently published for comment through April 28, 1989, if adopted, would change this opinion. The proposed rule allows disclosure to the extent necessary "to prevent the client from committing a criminal act that the lawyer believes is *likely to result in imminent death or substantial bodily harm.*" (emphasis added) ■

IOLTA Grants Awarded

The Alabama Law Foundation has made the first grants of IOLTA funds, awarding $227,492.50 to 20 applicants. Pursuant to the supreme court order, grants were made in the categories of legal aid to the poor, improving the administration of justice, providing law-related education to the public and supporting local law libraries.

Funds for grants were provided through the Interest on Lawyers' Trust Accounts (IOLTA) program, which allows attorneys to convert their pooled client trust accounts to NOW accounts. Financial institutions then forward the interest earned to the Alabama Law Foundation. Currently 56 percent of those attorneys eligible to participate in IOLTA are doing so.

A total of $50,977.50 was distributed to local law libraries. The following libraries received grants:

1. Colbert County Law Library
2. Barbour County Law Library
3. Montgomery County Law Library
4. Geneva County Law Library
5. Baldwin County Law Library
6. Wilcox County Law Library
7. Jefferson County Law Library
8. Huntsville-Madison County Library
9. Dallas County Law Library
10. Lawrence County Law Library
11. Tallapoosa County Law Library
12. Dale County Law Library

In the category of improving the administration of justice, $70,000 was distributed. The Court Appointed Juvenile Advocate (CAJA) program of the Madison County juvenile court received funding to help administer its program, which trains and appoints volunteers to help see the cases of abused and neglected children through the juvenile court system. The Mitigation Program of the Alabama Prison Project, which performs an investigative function at the trial level for attorneys appointed to capital cases, and the Alabama Capital Representation Resource Center also received grants.

In helping provide legal aid to the poor, $90,000 was awarded to three recipients. The Mobile Bar Association received funds for its pro bono program. The Alabama State Bar Committee on Access to Legal Services received a grant funding a survey to determine the extent of unmet legal needs of the poor, and Legal Services offices in Alabama received funds.

The sum of $16,515 was awarded for law-related education to the public. The YMCA/Young Lawyers' Section Youth Judicial Program received a grant to make the program available to more students, and the Southern Environmental Law Center received funding to publish brochures on wetlands law.

These grants present an example of how IOLTA funds are being put to use. If you are not already participating in IOLTA and would like to, contact Tracy Daniel at (800)392-5660. ■

Legislative Wrap-up

by Robert L. McCurley, Jr.

The Alabama Securities Commission, by resolution adopted October 30, 1986, requested the Alabama Law Institute to conduct an in-depth study of the Alabama Securities Act, focusing specifically on the Uniform Securities Act (1985) as adopted by the National Conference of Commissioners on Uniform State Laws.

The present Alabama Securities Act was enacted approximately 30 years ago by the Alabama Legislature. Various periodic amendments have been made, but there has not been a comprehensive study of the securities law until this revision. The Institute subsequently appointed the following to the Securities Law Committee:

L. Burton Barnes, III, chairperson	Birmingham
Manning G. Warren, III, reporter	Tuscaloosa
Louis H. Anders, Jr.	Birmingham
Carolyn L. Duncan	Birmingham
Meade Frierson, III	Birmingham
Carl L. Gorday	Birmingham
Marshall H. Harris	Mobile
Thomas J. Mancuso	Montgomery
James L. North	Birmingham
Charles G. Pinckney	Birmingham
Yetta G. Samford, Jr.	Opelika
William J. Ward	Birmingham
Howard P. Walthall	Birmingham
C. Larimore Whitaker	Birmingham

James D. Pruett, chairperson, Alabama Securities Commission

R. Frank Ussery and successor Robert Rash, directors, Alabama Securities Commission

Subsequent to the establishment of the Securities Law Committee, the National Conference of Commissioners on Uniform State Laws withdrew the Uniform Securities Act (1985) for further study. However, its efforts did generate constructive discussions among members of the North American Securities Administrators Association (NASAA) and the American Bar Association, among others, regarding numerous issues of concern in the regulation of securities matters by the states. Because of various proposals developed as a result of those discussions and because the Securities Law Committee perceived that it would be in the public interest to consider these proposals and specific issues that had arisen in the administration of the Alabama Securities Act, it resolved to proceed with the study.

The first completed draft of the revision dated June 1988 was mailed to over 300 individuals, organizations and associations having an interest in securities law. A second draft is the result of consideration by the committee of recommendations received to the first draft.

The most significant substantive changes proposed by the committee include the following:

(1) **Transactional exemption from registration:** This proposal, at *Alabama Code* §8-6-11(a)(9), would substitute the "purchaser" concept for the present "offeree" concept in determining the availability of a statutory exemption from registration for offerings of securities to a limited number of investors. Under the existing law, an offer of securities made to more than ten persons, regardless of how many of these actually purchase the securities, would render the exemption unavailable. Under the proposed revision, an offer could be extended to more than ten persons and would be exempt from registration as long as there were no more than ten purchasers of the securities.

(2) **Marketplace exemption from registration:** This proposal, at *Alabama Code* §8-6-10(7), would extend the current exemption of exchange-listed securities to all securities, whether exchange-listed or traded in the over-the-counter market, which are designated as "national

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

market system" securities and meet existing listing criteria of the New York Stock Exchange, the American Stock Exchange or NASDAQ/NMS markets.

(3) **Regulation of investment advisers:** This proposal would provide regulatory protection to investors who deal with investment advisers. Similar regulation has been enacted by approximately 40 other states to combat frauds estimated to be annually in excess of $500,000,000. It would prohibit a number of fraudulent and abusive practices and would require registration similar to that already required of broker/dealers in this state.

(4) **Registration by notification:** This proposal would expand the availability of registration by notification, the simplest method of registration under the statute. It would become available to all exchange-listed and over-the-counter securities which are designated as "national market system" securities, in addition to the seasoned issuers for whom the procedure is now available.

(5) **Registration by qualification:** This proposal would eliminate several requirements which practitioners have viewed as unnecessary impediments to the procedure for full registration. The suggested revisions include the elimination of the bond requirement for issuers and the requirement that any applicant for registration be a dealer.

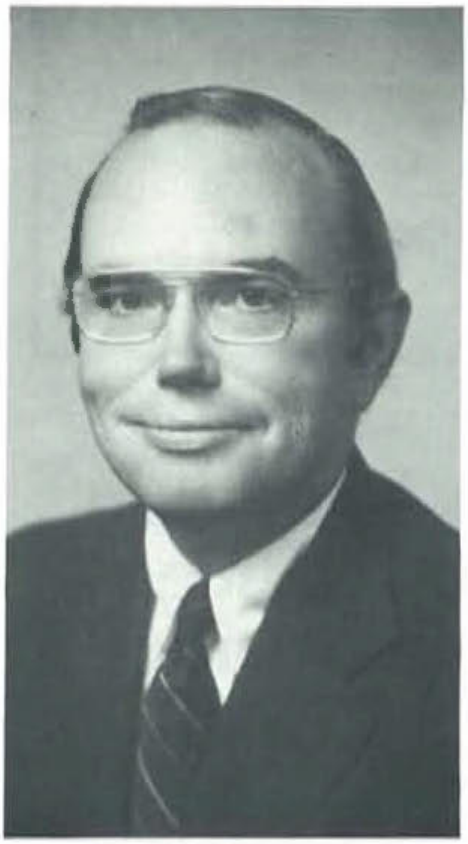
The foregoing represents some of the more significant substantive revisions proposed by the committee. In addition, the notice and hearing provisions of the statute would be amended to conform with the Alabama Administrative Procedures Act. ■

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

Bar Briefs

TO: Alabama Lawyers

FROM: Richard L. Holmes,
presiding judge,
Court of Civil Appeals



Holmes

I retired from judicial service April 15, 1989. I take this opportunity to thank the lawyers of this state for your assistance during my judicial tenure.

The court of civil appeals has been, in my judgment, a great institution and with your help will continue to render justice in a speedy and efficient manner.

Again, I thank you for your many kindnesses and courtesies during my tenure.

Devitt announces first joint winners of the seventh annual award

Judges with parallel careers were chosen to receive the Seventh Annual Edward J. Devitt Distinguished Service to Justice Award. Senior Judge Elbert Parr Tuttle of the United States Court of Appeals for the Eleventh Circuit and Judge John Minor Wisdom of the United States Court of Appeals for the Fifth Circuit were selected by a committee comprised of Justice Sandra Day O'Connor of the United States Supreme Court, Chief Judge Wilfred Feinberg of the United States Court of Appeals for the Second Circuit, and Senior United States District Judge Edward J. Devitt of St. Paul, Minnesota, for whom the award is named.

Together, Judge Elbert Parr Tuttle, who served six and one-half years as chief judge, United States Court of Appeals for the Fifth Circuit, and Judge John Minor Wisdom, who served as circuit judge, United States Court of Appeals for the Fifth Circuit, guided the court through the upheaval begun with *Brown v. Board of Education*.

Judge Tuttle is 91 years old and still active as a judge, authoring an average 30 opinions per year. Judge Tuttle received his A.B. (1918) and LL.B. degrees (1923) from Cornell University before beginning a long career in Atlanta as both a practicing attorney (1923-1954) and federal court district judge for the Fifth and Eleventh circuits. His guidance of the Fifth Circuit during the tumultuous years of the civil rights movement is among his most noted accomplishments.

Judge Wisdom, who turns 84 this month, was born in New Orleans, received his A.B. from Washington & Lee University and his LL.B. from Tulane Law School, and practiced law in New Orleans from 1929 to 1957. Nominated to the Fifth Circuit in 1957, Judge Wisdom has served as a member of the Judicial Panel on Multi-District Litigation (1968-79), and as the panel's chairperson (1975-79). Judge Wisdom is well-known

Pictured above are, left to right, Reginald Hamner, executive director, Alabama State Bar; American Bar Association President-elect L. Stanley Chauvin, Jr.; ASB President-elect Alva Caine; and ABA President Robert Raven at the 1989 Bar Leadership Institute in Chicago.

for scholarly, incisive opinions, many of which helped define civil rights law throughout the United States.

The honor, established to recognize extraordinary public service by members of the federal judiciary, is named after Edward J. Devitt, longtime Chief United States District Judge for the District of Minnesota. Presentation of the award will be made to the recipients at a time and place to be named later.

Previous Devitt Award winners include United States Circuit Judge Albert B. Maris of Philadelphia, Pennsylvania; United States District Judge Walter E. Hoffman of Norfolk, Virginia; United States Circuit Judge Frank M. Johnson, Jr. of Montgomery, Alabama; United States District Judge William J. Campbell of Chicago, Illinois; United States District Judge Edward T. Gignoux of Portland, Maine; and most recently, Senior United States District Judge Elmo B. Hunter of Kansas City, Missouri. Chief Justice Warren E. Burger was honored by a special award in 1983, and United States Circuit Judge Edward A. Tamm, Washington, D.C., was honored posthumously in 1985.

Byrne elected Fellow

The American Board of Criminal Lawyers announces that David B. Byrne, Jr., of Montgomery, has been elected as a Fellow in the American Board of Criminal Lawyers, a group of criminal attorneys from throughout the United States, Canada and Phillipines. The standards for acceptance are very high, which include major felony trial requirements, the highest ethical standards and exceptional recommendations from distinguished jurists and lawyers. Byrne practices with the firm of Robison & Belser, and is a member of the Character & Fitness Committee of the state bar.

Man of the Year

Recently, Alabama Supreme Court Senior Associate Justice Hugh Maddox was named Montgomery's 1988 YMCA "Man of the Year." This recognition is organized wholly by youth of the Tri-Hi-Y and Hi-Y programs. This year's selection of Justice Maddox was the result of nominations by each of 42 Montgomery County-based units.

Justice Maddox receiving his award

After a six-week period of presentations on each nominee, the process of elimination concludes with the scrutiny of each finalist through extensive research and personal interviews with the nominee's associates, colleagues and friends.

Justice Maddox, who had been instrumental in creating the Judicial Program for the YMCA-sponsored Alabama Youth Legislature, was officially recognized before 500 high school students at a banquet December 5.

—The Court Brief
January 4, 1989

Local Rules of Civil Procedure—15th Judicial Circuit

On February 6, 1989, certain recommended rules were approved unanimously by the judges of the 15th Judicial Circuit.

A copy of these rules can be obtained from Dot Wilson, Executive Director, Montgomery County Bar Association, 305 S. Lawrence Street, Montgomery, Alabama 36104, (205) 265-4793.

Chief Justice Hornsby meets with Florida officials

Hornsby, Governor Martinez, Chief Justice Ehrlich

Alabama's Chief Justice Sonny Hornsby met recently with Florida Governor Bob Martinez and the Chief Justice of Florida, Raymond Ehrlich. Hornsby discussed court matters, including juvenile justice, with the two Florida officials at a meeting of the National Conference of Chief Justices in Orlando. ■

Memorials

Ralph Rountree Banks, Jr.—Eutaw
Admitted: 1948
Died: February 6, 1989

Lucien K. Dzilenski—New Britain, CT
Admitted: 1949
Died: September 4, 1989

Frances Elizabeth Johnson—Pike Road
Admitted: 1956
Died: March 1, 1989

Henry Sanders Mims—Huntsville
Admitted: 1975
Died: February 14, 1989

Larry Gilbert Pilgrim—Heflin
Admitted: 1979
Died: February 5, 1989

Clyde A. Smith, Jr.—Washington, DC
Admitted: 1979
Died: April 11, 1989

Finis Murland Smith—Andalusia
Admitted: 1949
Died: April 14, 1989

William Glassell Somerville, Jr.—Birmingham
Admitted: 1961
Died: December 10, 1988

Ernest Charles Willson—Birmingham
Admitted: 1951
Died: March 14, 1989

JAY B. BLACKBURN

The legal profession of Alabama suffered a great loss Sunday, February 5, 1989, with the passing of Jay B. Blackburn after a brief illness.

After graduation from the University of Alabama School of Law in 1928, Blackburn returned to Bay Minette, his lifelong residence, to practice law. J.B. distinguished himself in his profession, not only in his hometown and its environs, but on a statewide basis. He acquired a reputation of thoroughness, intelligence, tenacity and knowledge of the law. He retired from the practice in 1982, but never lost interest in his profession or concern for its betterment.

He was active in the legal profession on both a local and state level and active in community and church affairs. Blackburn was a devoted and conscientious member of the Alabama State Bar Board of Commissioners from 1948 to 1971 and served many of those years as first vice-president. He was, for many years, a pillar of the First Baptist Church of Bay Minette and in 1982 was accorded the high honor and accolade of being named as a deacon emeritus of his church. He represented the City of Bay Minette and the Baldwin County Board of Education for many years and distinguished himself in his service to those bodies, and he enjoyed and commanded the respect of his fellow lawyers as an accomplished trial lawyer and advocate. In 1978 he was named "Citizen of the Year" in Bay Minette for his work in the community.

Blackburn possessed and practiced the highest standards of ethical conduct without in any way compromising his high sense of duty as an advocate.

Blackburn is survived by his wife, Mary Lou; a daughter, Ann (Mrs. Wade) Faulkner of Mobile; a son, Daniel G. Blackburn of Bay Minette, a member of the Alabama State Bar; and four grandchildren.

—Norborne C. Stone
Bay Minette, Alabama

HENRY SANDERS MIMS

WHEREAS, Henry Sanders Mims was a member of the Huntsville-Madison County Bar Association and engaged in the practice of law in Huntsville for the past 14 years; and

WHEREAS, he left our company prematurely, having been born 41 years ago in Drew, Mississippi; and

WHEREAS, he graduated from the University of California at Irvine in June 1971, with a bachelor of arts and from the Hastings College of the Law, University of California at San Francisco in May 1974; and

WHEREAS, upon his graduation he was named a Reginald Heber Smith Fellowship Attorney by Howard University, Washington, D.C., in 1974 through 1976, serving as staff attorney for Legal Services of North-Central Alabama; and

WHEREAS, upon the termination of his fellowship he entered the private practice of law in Huntsville, Alabama; and

WHEREAS, he was active in the community, serving on the board of Legal Services of North-Central Alabama for three years and as its president in 1981; was named an election law commissioner for the State of Alabama in May 1980; was an active supporter of the Huntsville Girls Club; was an active member of the Cumberland Presbyterian Church; and served as president of the Huntsville-Madison County Young Democrats; and

WHEREAS, he received numerous professional distinctions including appointment as special attorney general for the State of Alabama April 20, 1984; was north Alabama representative to the Alabama Lawyers Association; was named Attorney of the Year in 1980 by the Miles College School of Law; was named as one of the Outstanding Young Men of America in 1977; was named to the Alabama Senate District Six Advisory Committee on February 1, 1983; was commended for outstanding contributions to the legal profession by the Senate of Alabama on May 20, 1985; served as municipal court judge for the City of Huntsville from 1980 until the time of his death, municipal court judge for the City of Triana from 1979 until the time of his death, municipal court judge for the City of Madison, city attorney for the City of Hillsboro from 1984 until the time of his death, city attorney for the City of North Courtland from the time the city was formed in 1982 until his death and city attorney for the City of Moulton; and

WHEREAS, he was a loving and devoted husband to his wife, Gloria, and father to his daughter, Venessa Kay, and was protector and provider for a number of homeless children over the years whom he invited into his home and for whom he provided care and affection;

NOW, THEREFORE, BE IT RESOLVED that in consideration of the premises and in deference to his family and friends, the Huntsville-Madison County Bar Association does by these presents express its sympathy and condolences; and

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this meeting of the Huntsville-Madison County Bar Association and that a copy thereof be forwarded to the family of Henry Sanders Mims, deceased.

ADOPTED unanimously by the Huntsville-Madison County Bar Association this 17th day of February 1989.

—Robert Sellers Smith,
President
Huntsville-Madison
County Bar Association

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

Disciplinary Report

Suspension

● On January 5, 1989, **Lawrence A. Anderson** of the Madison County Bar was suspended indefinitely for failure to comply with Mandatory Continuing Legal Education requirements for 1987. [CLE 88-01]

Public Censures

● On January 27, 1989, Mobile lawyer **C. Christopher Clanton** was publicly censured for violating Disciplinary Rules 1-102(A)(5), 1-102(A)(6), 6-101(A) and 7-101(A)(1) of the *Code of Professional Responsibility of the Alabama State Bar.* Clanton was paid $2,500 by a client to represent the client in a civil matter; however, he failed to pursue the matter on behalf of his client. Clanton thereby engaged in conduct prejudicial to the administration of justice and conduct which adversely reflected on his fitness to practice law by willfully neglecting a legal matter entrusted to him and by failing to seek the lawful objectives of his client through reasonably available means. [ASB No. 87-80]

● On January 27, 1989, Livingston lawyer **Robert E. Upchurch** was publicly censured for conduct adversely reflecting on his fitness to practice law and for having willfully neglected a legal matter entrusted to him, in violation of the *Code of Professional Responsibility of the Alabama State Bar.* Upchurch was the attorney of record in the appeal of a criminal case from the Circuit Court of Sumter County, but failed to file a brief or any other pleading on behalf of his client with the Alabama Court of Criminal Appeals. Upchurch also ignored three requests from the Disciplinary Commission of the Alabama State Bar to provide an explanation for his conduct in the matter. [ASB No. 88-204]

● On January 27, 1989, Foley lawyer **Julian B. Brackin, Jr.,** was publicly censured by the Alabama State Bar for unprofessional conduct. Brackin was found to have been guilty of willful misconduct and conduct adversely reflecting on his fitness to practice law, in violation of the *Code of Professional Responsibility.* Brackin was a partner and a minority stockholder in the professional association known as Foster, Brackin & Bolton, P.A., which operated a law practice in Foley, Alabama. Without the knowledge or consent of the other stockholders, who were his law partners, Brackin entered the law firm's offices on the night of January 20-21, 1986, and, with the assistance of other persons, surreptitiously removed a quantity of office equipment, office furnishings and law books that belonged to the professional association. At approximately the same time, he received a $14,000 check, representing attorney's fees in a case which had been settled, and which was due to be paid to the professional association of Foster, Brackin & Bolton, P.A., but Brackin deposited this check to a new bank account that he opened in his own name. He also withdrew almost $32,000 from the law firm's bank account. These actions grew out of Brackin's decision to leave the law firm, and his inability to reach an agreement with his law partners as to the financial terms under which he would withdraw from the law firm. [ASB No. 86-54]

Private Reprimands

● On January 27, 1989, a lawyer was privately reprimanded for having willfully neglected a legal matter entrusted to him, for having intentionally failed to seek the lawful objectives of a client through reasonably available means and for having intentionally prejudiced or damaged a client during the course of the professional relationship. The lawyer was retained to represent a woman and her husband in a Chapter 13 bankruptcy proceeding, after which an automobile was repossessed from the clients by the lien holder and sold at auction. Despite having been informed of this by the clients, and despite having assured the clients that he could recover the automobile through the bankruptcy court, the lawyer failed to pursue the matter. [ASB No. 88-16]

● On January 27, 1989, a lawyer was privately reprimanded for conduct adversely reflecting on his fitness to practice law, for willfully neglecting a legal matter entrusted to him, for intentional failure to seek the lawful objectives of a client and for intentional failure to carry out a contract of employment entered into with a client. The lawyer accepted a fee from a married couple to initiate voluntary bankruptcy proceedings for them, but failed to initiate the proceedings, to communicate with the clients or to refund the pre-paid fee, until formal charges were filed against him. Ultimately, the lawyer did refund the pre-paid fee to the clients, through the General Counsel's office. [ASB No. 88-17]

● On January 27, 1989, a lawyer was privately reprimanded for engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or willful misconduct; failing to maintain client funds in an insured depository trust account in the state; and failing to maintain complete records of all client funds coming into his possession. At the client's request, the lawyer sent the client bogus billings in the amount of $15,000, for unperformed legal services. The lawyer transferred these funds to a personal out-of-state money market account that the lawyer maintained jointly with his wife. The lawyer also caused bogus entries to be made in his law firm billing records, falsely indicating that the $15,000 had been billed and received for legal services actually performed. Shortly after receiving the $15,000, the lawyer filed a bankruptcy petition for the client, but failed to list or in any way refer to the $15,000 transfer in the bankruptcy petition or the attached schedules. Shortly thereafter, the lawyer returned the $15,000 to the client, upon the client's request. [ASB No. 87-203]

● On January 27, 1989, a lawyer was privately reprimanded for several ethics violations. The violations included failing to communicate to his client a settlement offer in a civil suit, endorsing his client's name on a settlement draft without authority and withdrawing disputed funds from his trust account before the dispute was finally resolved with the client. [ASB No. 86-15(A)]

Disability Inactive Status

● Lawyer **Charles Rayford Nesbitt** was transferred to disability inactive status by the Alabama State Bar on January 27, 1989. [Rule 20(a) No. 89-01] ■

Consultant's Corner

The following is a review of and commentary on an office automation issue that has current importance to the legal community, prepared by the office automation consultant to the state bar, Paul Bornstein, whose views are his own, and not necessarily those of the state bar.

This is the tenth article in our "Consultant's Corner" series. We would like to hear from you, both in critique of the article written and suggestions of topics for future articles.

Alabama's model law firm . . . hold it! Do not reach for your bar directory. Serene & Comfortable does not exist. It is a composite, an amalgam of a number

Bornstein

of law firms. What emerges is a profile of an urban law firm, situated in a city of approximately 10,000 people.

Organization

The days when two "good ole boys" formed a practice to share costs is fast disappearing. Today's successful firm not only must have a business development plan, it must have an energetic form of governance that motivates each member from day one to retirement.

Serene & Comfortable is a partnership, but an unusual one. There are no associates. Each firm member begins as a partner, whether right out of law school or as a lateral entry. Entry partners are advanced three months average earnings as a draw against expected production. That is it—no salary, no guarantees, nothing except opportunity.

The profit distribution formula is also rather unique. First of all, it is understandable. Secondly, it is understandable. Lastly, (you guessed it). You earn based on how much you bill and collect. No one can draw more than one bills in a quarter. Yes, there is credit for being an originating attorney, but the credit disappears over a period of five years. You have to bill to earn.

The firm currently has five members, and is unlikely to grow to more than seven. There are three paralegals, two of whom work 25 hours per week, and one of whom is fulltime, but she doubles as a parttime office manager. There are five secretaries, a receptionist, a bookkeeper and a parttime runner/file clerk. They are all salaried, with a decent benefit package of life, health and disability insurance, including one-year vestiture in an employer-matched 401K plan. Not surprisingly, there is high productivity, virtually no turnover and a long waiting list of applicants.

Direction

Their firm has a primary practice area and an emerging secondary one. They do not try to be all things to all people. True, they will handle an oocasional "out-of-area" matter, such as a divorce for the president of a major client, but they stick to basics the majority of the time.

They hold a retreat once a year, examining their assumptions with fresh perspective. There are no "sacred cows." They recently have changed their secondary practice area and are in the process of working out of their previous one. They pay particular attention to their younger partners, who often have valuable contemporary knowledge about such issues as automation or litigation support.

There are no secrets. The firm meets once a week, after hours, to minimize extraneous discussion. The office manager is a regular attendee. There is an agenda, beginning with a brief presentation of all new matters, with a view toward conflict avoidance. (They have never been sued).

Profitability

You guessed it again . . . they are profitable. Partners average 200 billable hours a month. Last year they grossed slightly more than a million dollars. After expenses there was $550,000 left to distribute. They did not draw it all. They are investing some of it to acquire the office building they presently occupy.

Future

Urban law firms face a particularly difficult challenge in the coming decade. A number of them will not make it. Serene & Comfortable has as good a chance as any and a better chance than most. Here are the key factors again:

Organization—designed to motivate
Direction—focused
Support staff—carefully chosen, well-compensated, loyal to the core. ■

Classified Notices

RATES: Members: no charge, except for "position wanted" or "position offered" listings, which are at the nonmember rate (two free listings per bar member per calendar year). Nonmembers: $35 per insertion of 50 words or less. $.50 per additional word. Classified copy and payment must be received according to the following publishing schedule:

July '89 Issue—Deadline May 31

September '89 Issue—Deadline July 31

No deadline extensions will be made. Send classified copy and payment, made out to The Alabama Lawyer, to: Alabama Lawyer Classifieds, c/o Margaret Lacey, P.O. Box 4156, Montgomery, AL 36101.

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SOLE PRACTITIONER retiring—law books, office equipment, furniture and furnishings for sale. Quaint office building with spacious office parking in Highland Gardens area available for rent or for sale. Will discuss arrangements for taking over existing files. **Call (205) 262-0508.**

FOR SALE: United States Code Service, current through summer of 1988, excellent condition. **Contact James Marks, P.O. Box 839, Tuscumbia, Alabama 35674. Phone (205) 383-2435.**

ANTIQUE ALABAMA MAPS, guaranteed authentic. Most pre-1865, some showing location and extent of Indian lands. Write for list and photos. **Sol Miller, P.O. Box 1207, Huntsville, Alabama 35807.**

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FOR SALE: One IBM Mag Card Selectric in good working condition. Best offer. **Phone (205) 424-1150, or write 118 N. 18th St., Bessemer, Alabama 35020.**

BIRMINGHAM LAWYER retiring and/or limiting practice, wishes to sell up-to-date Southern Reporter 2nd, Alabama Digest together with six sections of beautiful oak library shelving. Priced reasonably. **Phone (205) 322-6400.**

FOR SALE/RENT: Two-story office building at 458 South Lawrence Street, Montgomery. One block from the new courthouse. Ten large offices, conference room, three large secretarial areas, four bathrooms, kitchen area and storage space. Plenty of parking and a built-in phone system. 190K or 8.00 per square foot ($2,400) full service. **272-3385.**

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OFFICE SPACE FOR LEASE: Downtown Birmingham, excellent location, well decorated, receptionist, telephone service, law library, conference room, kitchen, copier, ample parking, secretary negotiable or suite w/o secretary. **Call (205) 251-6666 for more information.**

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MONTGOMERY FIRM seeking associate with strong research and writing skills. Top 25 percent of class. **Send résumé to P.O. Box 1402, Montgomery, Alabama 36102.**

SMALL LAW OFFICE seeks attorney with trial experience to handle insurance defense litigation for major carrier. Salary commensurate with experience; great benefits. **Send résumé in confidence to: Law Firm, 1200 Corporate Drive, Suite 105, Meadowbrook Corporate Park, Birmingham, Alabama 35242.**

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LEGAL RESEARCH HELP: Experienced attorney, member of Alabama State Bar since 1977. Access to law school and state law libraries. Westlaw available. Prompt deadline service. We do UCC-1 searches. $35/hour. **Sarah Kathryn Farnell, 112 Moore Building, Montgomery, Alabama 36104. Phone (205) 277-7937. In Jefferson and Shelby counties, call free: 322-4419.** *No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.*

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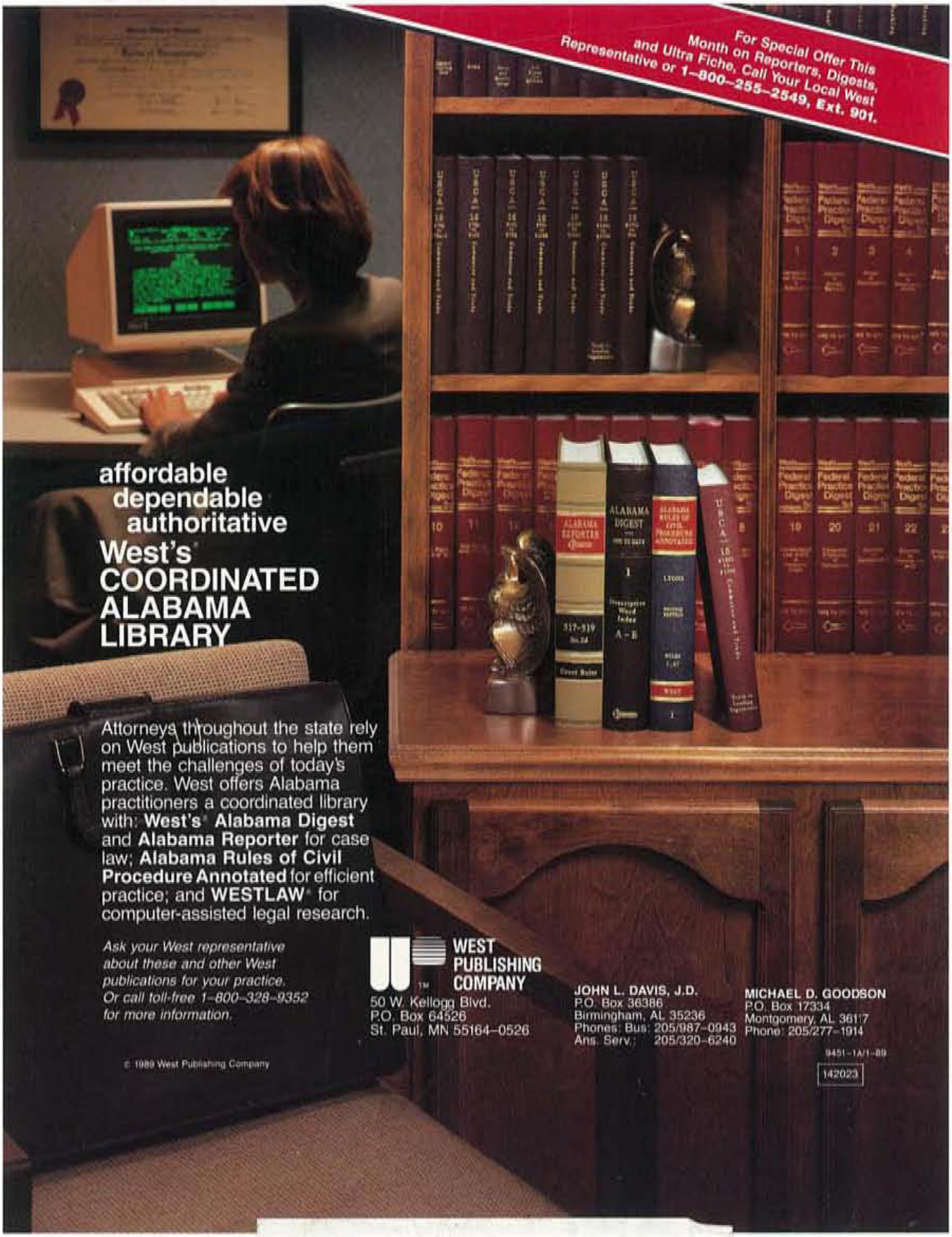

Hon. Frank M. Johnson, Jr.
U. S. Court of Appeals, 11th Circuit
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