

The Alabama Lawyer

Vol.47 No.4

July 1986



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

—Henry A. Leslie
President and Chief Executive Officer

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

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

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

Union
BANK & TRUST MEMBER FDIC

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

THE **H** THE
CO HARRISON COMPANY, PUBLISHERS
3110 Crossing Park • P O Box 7500 • Norcross, GA 30091-7500

Tilley's ALABAMA EQUITY Second Edition

by Nathaniel Hansford

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

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

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

Regularly \$45.95
Special Introductory Offer
\$39.95

Announcing . . .

CANCER

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

Etiology; Diagnosis; Nutrition; Therapeutic Modalities

© 1985

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

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

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

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

Regularly \$99.95
Special Introductory Offer
\$89.95



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



1-800-241-3561



Financial Ideas That Stand Out In The Best Of Times.

When conditions are ideal, most any financial plan can produce good results.

But truly outstanding performance demands more than garden-variety financial management.

It demands a solid foundation of financial knowledge strengthened by years of experience and success. As the largest bank in Alabama with the longest history of trust services, that's exactly what AmSouth offers.

For outstanding results in managing your personal finances, AmSouth provides a wide variety of services from expert investment management to

assisting you with your estate plans.

For corporations, AmSouth dedicates itself to maximizing the long-term objectives of employee benefit plans through high potential investments.

And for both, we put the most experienced, well-informed trust professionals to work for you.

For more information or to arrange an appointment with a financial advisor, call the AmSouth office nearest you and ask about our trust services.

Because even in the best of times, you can demand better.

AMSOUTH
For Your Growing Needs.

Trust Division

The Alabama Lawyer

VOL. 47 NO. 4

JULY 1986

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
Carol Ann Smith—Associate Editor
Margaret Lacey—Managing Editor

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

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

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

GENERAL INFORMATION The Alabama Lawyer, (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, September and November. Views and conclusions expressed in articles herein are those of the authors, not necessarily those of the board of editors, officers or board of commissioners of the Alabama State Bar. Subscriptions: Alabama State Bar members receive The Alabama Lawyer as part of their annual dues payment; \$15 of this goes toward subscriptions for The Alabama Lawyer. Advertising rates will be furnished upon request. Advertising copy is carefully reviewed, but publication herein does not necessarily imply endorsement of any product or service offered.

© Copyright 1984. The Alabama State Bar. All rights reserved.

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. 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—

This night shot of Birmingham shows it is better than ever and the site of the bar's 1986 Annual Meeting! For more on the Magic City's "nightspots" see Greg Hawley's article beginning on page 198. Cover photograph courtesy of Kathie T. Sharpe, Greater Birmingham Convention and Visitors Bureau



Eviction or Ejectment: How does the Mortgagee take Possession of Mortgaged Property after Default? 188

A mortgagee has certain rights regarding eviction of a former mortgagor, before or after foreclosure. For a nuts and bolts approach to this problem, see page 188.

INSIDE THIS ISSUE

President's Page	180
Executive Director's Report	183
Legislative Wrap-up	185
Annual Meeting Schedule	186
Bar Briefs	194
Riding the Circuits	196
cle opportunities	204
Attorneys Admitted to Bar	206
About Members, Among Firms	212

In Brief



Comfort Orders, Legal Titles and the Constitution—Should Sales by the Trustee be Judicial Sales? 208

Unresolved problems and unanswered questions surround the Bankruptcy Code and its modifications and refinements. For one judge's opinions, see page 208.

Recent Decisions	214
Young Lawyers' Section	219
Committees	220
Lawyers in the Family	222
Opinions of the General Counsel	224
Disciplinary Report	225
Et Cetera	226
Memorials	229
Classified Notices	231

President's Page



NORTH

Tort reform

In one of A.A. Milne's books about Winnie the Pooh Christopher Robin was descending the stairs dragging Pooh by the heel. As Pooh's head bounced from step to step, he said to himself, in effect, "I'm sure there is a better way of coming downstairs if only my head would stop bumping long enough for me to think about it."

That is sort of how I felt this year as my head has been bumped repeatedly by "tort reform" legislation and legal malpractice insurance premium increases. I am sure there is a better way to run a bar association as far as the long view goes, but at times the immediate pressures of those two issues simply did not give us "long enough for me to think about it."

Fortunately, you have a splendid board of commissioners and capable committees to think about it for us. One of the great pleasures of this job is working with the many superb lawyers who give so freely of their time and talent.

One lawyer is Henry Henzel of Birmingham, the head of the Insurance Programs Committee. He and his committee have spent untold hours fighting a very frustrating battle to keep for you the best possible insurance coverage at affordable cost. It has been an uphill struggle.

Our present insurers have once again broken faith with us. We have determined, on advice of counsel, to discontinue dealing with them. Your bar therefore has no endorsed program in place at this time.

Your bar commissioners, however, recently voted to enter into an agreement with Miles, Smith Reinsurance Limited, a firm located in London. Pursuant to that agreement, Miles, Smith will attempt to secure a reinsurance slip for our endorsed program. We are very optimistic about this prospect.

The commissioners also voted to fund an initial professional feasibility study regarding the formation of a captive insurance company. Cathy Wright of Birmingham and

Reggie Hamner met recently with a group from London regarding the creation of such a company. Both came away with guarded optimism.

The tort reform package, of course, failed in the Alabama Legislature in the 1986 regular session. It will be back, but I am encouraged by the recent change in the tone of the debate. There have been a number of well-reasoned articles which are more moderate in their approach to this issue. Perhaps the future holds a rational solution to the demands for change. However, as Mencken said, "The prophesying business is like writing fugues; it is fatal to every one save the man of absolute genius."

Projects finished

We finished a number of projects started in prior years. As I wrote you earlier, our bill regarding the governance of your bar passed—around midnight on the final day of the 1986 regular session. This legislation provides for some additional representation on the board of bar commissioners for the more urban areas of the state. It also provides for the selection of your president-elect by mail ballot, just as you now select commissioners.

The bar owes a great deal to all members of the Alabama Legislature, but particularly to Lt. Gov. Bill Baxley and Senator Roger Bedford, Jr., in the Alabama Senate, and Representatives Jimmy Clark, Jim Campbell and Bill Fuller in the Alabama House of Representatives.

Members of the bar who were active in getting this legislation adopted are many, but some who were special leaders in the effort were Walter Byars, Alex Newton and Richard Ogle. Gary Huckaby and John Proctor were the commissioners who led the way to the formulation of this legislation.

I am particularly pleased that this law passed during this session, as I had committed to make its adoption the

highest priority of this year.

The commissioners passed an IOLTA plan this year, and a plan for a client security fund is pending before the Alabama Supreme Court. The commissioners approved a plan for evaluation of and minimum standards for judges.

Bar headquarters now has computer capability, and you recently were requested to furnish certain information for storage in our computer records. An indigent defense survey has been prepared and mailed to members of the bar.

On the recommendation of David Arendall of Birmingham, chairman of the Professional Economics Committee, the bar commissioners designated Paul Bornstein of Office Technology Associates, Inc. in Atlanta as its office automation consultant.

Following the recommendation of Tennent Lee of Huntsville, chairman of a task force appointed to study the creation of a litigation section, the commissioners determined to authorize such a section.

The legislature passed an authorizing act for a new judicial building to house the appellate courts of our state. Maury Smith of Montgomery spearheaded the bar's effort on this legislation.

David Boyd of Montgomery was elected chairman of the board of bar examiners and Kirby Sevier and George M. Taylor, III, both of Birmingham, were elected to the board.

J. Don Foster of Foley was elected to fill a vacancy on the Judicial Inquiry Commission.

Examinees

At a recent meeting of the bar commission, Dr. Nancy R. Campbell-Goymer presented her evaluation of a survey of the July 1985 bar examinees. The survey showed that 362 of the 380 individuals sitting for the 1985 Alabama State Bar examination completed the second survey, instituted at the recommendation of the Alabama State Bar's Task Force to Evaluate the Lawyer Explosion. The first questionnaire, administered in the summer of 1984, asked examinees' age, sex, race, residency during law school, type law school attended, class rank, employment status, type of employer, salary and job and salary satisfaction. [See 46 *Alabama Lawyer* 185 (1985)] The second question-

naire was similar, but explored unemployment more fully.

Demographic data indicate the typical 1985 examinee was male, in his 20s, Caucasian, an Alabama resident during law school, a graduate of an accredited law school in Alabama and taking the bar exam for the first time. As in 1984, almost one-third of the examinees were women.

More than three-fourths of the 1985 examinees were working full time: about 55 percent in positions requiring law degrees, about 8 percent in other law-related positions and about 14 percent in nonlegal positions. This is 12 percent more than reported having obtained full-time employment at the time of the 1984 survey.

Approximately 20 percent of the 1985 examinees were unemployed, compared with 29 percent in 1984. About half of these examinees, for various reasons, had not been seeking employment.

Seven percent of the examinees were actively but unsuccessfully seeking employment. A large majority of the unemployed examinees desiring legal positions wanted to locate in one of Alabama's five largest cities.

Private practice, especially in small or very small firms, was chosen by about half of the 284 employed examinees. Only 3 percent had undertaken solo practices. About 14 percent held clerkships, with almost 9 percent holding other government positions, and 13 percent worked in business. The remaining respondents worked primarily in public service programs, the military or academic settings.

Examinees were asked to rate their satisfaction in five areas: location, type of employer, type of work, salary and overall satisfaction.

The average ratings were in the moderately to very satisfied range for all employed examinees and generally somewhat higher for those in full-time legal positions.

The average salary reported for full-time legal positions was \$26,838. Approximately three-fourths of the examinees made between \$16,000 and \$35,000.

Top Medical Experts Free Case Evaluation

The odds against you winning your medical malpractice action unaided, are almost 3 to 1.

The odds are better than 5 to 1 that you will win any case deemed meritorious by **JD.MD.**

Whatever your needs, **JD.MD** has the experts, back-up services, and payment options to suit you and your client. Our compensation is directly related to our success in helping you.

JD.MD PICKS UP THE ENTIRE MEDICAL SIDE OF YOUR CASE AND LEAVES YOU TO WHAT YOU DO BEST—THE LAW. THAT'S THE WINNING COMBINATION.

JD.MD[™]
INC.

For our complete brochure call
our toll-free number today

1-800-225-JDMD

The survey results contain other interesting data included elsewhere in this publication.

Law Day

The Calhoun County Bar Association had a significant Law Day celebration featuring the presence of Associate Justice Sandra Day O'Connor. She is a most impressive speaker, and she and her husband were delightful and witty guests of the Calhoun County Bar. A.W. Bolt is the president of that bar, and Bruce N. Adams was Law Day chairman.

A number of lawyers and judges from Alabama attended the recent 11th Circuit Judicial Conference in Atlanta. I believe all Alabama judges were in attendance. Associate Justices Lewis Powell and Harry Blackmun addressed the conference chaired by Chief Judge John Godbold. As always, I was struck by the outstanding caliber of our judges when compared with those of any other state.

One judge told a group of us this story. It seems he had gotten to know Justice Powell fairly well, who is a warm, albeit

somewhat patrician, man. In the course of their acquaintance, Justice Powell suggested to our judge that he feel free to call him "Lewis." As our friend related the story he said, "I don't know if I would ever feel comfortable calling Justice Powell by his first name, but I could come a lot closer to that than I could to calling Judge Lynne 'Seybourne.'"

He meant this as a tribute to the beloved senior district judge.

New year

Our annual meeting this year is in Birmingham, and the site for the convention is the new Wynfrey Hotel at the Riverchase Galleria. The Wynfrey is something special, as is the Galleria. You should have received notice by now of the substantive program. The annual meeting is a great time to get your continuing legal education credits and renew old friendships. I have not missed an annual meeting since beginning the practice of law and have made many, many deep and lasting friendships at these meetings.

In closing, I would truly be remiss if I did not first offer to the members of the board of bar commissioners, the executive committee of that board, the other officers of your bar and Reggie and the entire bar staff my sincere appreciation for their guidance and assistance this past year.

Second, I offer to Bill Scruggs, your new president, my heartfelt congratulations. Any support I can give Bill will be enthusiastically forthcoming. He will be a great president. I know of no other lawyer with the combination of intelligence,

experience, wit and warmth possessed by Bill Scruggs.

Bill is in the midst of his most important work, that is, the appointment of committee and task force chairmen and members. The committees and task forces of your bar do its work. Literally hundreds of lawyers, young and old, give thousands of hours to the work of your association. And they do so not seeking plaudits for their work, rather being satisfied with the sure knowledge they served their profession. I want each committee and task force member to know how much and how sincerely I appreciate your service to the bar.

Most tasks as lawyers are prosaic, but our commitment to society goes much deeper. We have the high responsibility to protect the role of law in a free society. As Edmund Burke said:

"In no country perhaps in the world is law so general a study . . . This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources . . . They augur misgovernment at a distance, and snuff the approach of tyranny in every tainted breeze."

The loss of liberty does not come in one fell swoop; freedom is picked away at the edges, little by little. It is our highest duty as lawyers to be ever vigilant to protect against the little noticed infringements on our most cherished freedoms.

The exercise of our duty has historically come during times of popular fear of unfamiliar causes. That is the time we must be most prepared to step forward. "When public excitement runs high as to alien ideologies, is the time when we must be particularly alert not to impair the ancient landmarks set up in the Bill of Rights." *United States v. Lattimore*, 112 F. Supp. 507, 518

This duty is a practical one. It has to do with everyday, mundane things. Burke said, "Abstract liberty, like other mere abstractions, is not to be found." We have a government of laws—not men—and it is our high calling to defend it.

Please know that you have blessed me with the opportunity to serve, and I shall be forever deeply and humbly grateful for this honor. Alabama has a great bar, and I am proud to be a member. I close with

George Eliot's thought, "Blessed is the man, who having nothing [more] to say, abstains from giving in words evidence of that fact." ■

—James L. North

MCLE News

by Mary Lyn Pike
Assistant Executive Director

The technology of the 20th century has come to the Alabama State Bar. Records of CLE courses accredited, pending approval and denied approval now can be obtained by pushing a few keys. Searches by subject matter, location, date, sponsor and title can be conducted. Assistance to Alabama bar members can be rendered almost instantaneously, and printed information on courses can be sent out the same day requested.

At its May 30th meeting, the commission:

1. Heard a report that 1,200 CLE programs had been entered into the bar's computer since January 1, 1986;

2. Learned that all but four of the 91 members granted 1985 compliance deadline extensions had complied, as had 44 of the 68 individuals certified to the Disciplinary Commission;

3. Heard a report on the chairman's meeting with the supreme court on proposed MCLE rule changes;

4. Granted an attorney's request for credit for a University of Hong Kong course on arbitration law and his request for credit for studying Chinese law at the University of East Asia;

5. Designated the Morgan County Bar Young Lawyers an approved sponsor for 1986;

6. Authorized the chairman to write a letter expressing the commission's displeasure at the false advertising of accreditation of a seminar entitled "Making Money Practicing law;" and

7. Approved a DeKalb County Bar Association appellate practice seminar, giving credit for attendance of a supreme court session as well as follow-up lectures. ■

SAVE 30-60%

* * *

USED LAW BOOKS

* * *

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

WE BUY — SELL — TRADE

Law Book Exchange

P. O. Box 17073

Jacksonville, FL 32216

1-800-325-6012

Executive Director's Report

Diary of a Jury Reject

Have you ever been "niced to death"? Try it, you'll like it! I had such an experience in April. I found it interesting, yet frustrating, but, most of all, pleasant.

I was summoned for jury duty, but I never served. Therefore, I had ample time to reflect upon this experience and view firsthand our jury system, albeit only in the 15th Judicial Circuit.

Efficiency was rampant. From the sheriff's "command" to picking up my \$52.50 check, every administrative step was flawless, and smiles greeted me throughout.

Upon reporting to the courtroom designated for prospective jurors, I was struck initially by the true variety of prospective jurors gathered. I saw old friends, new friends and soon-to-be-friends. The really experienced prospects, I noted, were armed with a paperback or two. Believe me, I did not forget my book on day number two. I even finished it on day five without setting foot in a jury box.

I read about the parliamentary ambitions of members of the English Parliament as I participated in our much revered jury system. I must say, with one exception, the extracurricular affairs of the MPs were far more scintillating than those we did not get to hear in courtroom number two—more on this case later.

Any elected courthouse official would be proud to be featured in the juror ori-

entation slide show. Given the cost of television commercials, one must be euphoric to know that every week a captive audience sees one's smiling presence and is told of one's indispensable role in our justice system. I am still concerned, however, that district judges did not rate individual photos. Imagine the confusion of a voter trying to recall for which of the smiling faces in a group photo he or she should vote.

The slide show was, in reality, a visual and verbal presentation of the excellent orientation brochure but with photos of the incumbent cast, some of whom, incidentally, were up for reelection.

After the slide presentation, the "numbers game" began. It was particularly gratifying to realize that our panel got the perfect "ten." Our rating, however, must have been a mistake since many never had an opportunity to serve and show we truly merited our rating.

I assume that being struck from the jury is tantamount to being quashed. Since I knew both the prosecuting and defense attorneys in one case, I thought surely I would get to serve but I noticed that all four of us with wives who were registered nurses were eliminated—with a smile. This was my only strike, so maybe we were "nines."

The jurors' lounge was spacious. It was sunny, the coffee quite good and the magazines a bit more current than those on the periodicals rack at the local health club. At times, this lounge reminded me



HAMNER

of a bus station waiting room with the staccato recitation of panel numbers and courtroom destinations.

While waiting to see if our panel would be dubbed "tried and true," we speculated about the likelihood of the return of those other veniremen who earlier had been called away to perform their civic responsibility in another courtroom. After a while, a person could develop a poor self-image having been struck numerous times, but the court administrator's reassurance that "we may yet have a case to try" seemed to assuage such feelings.

Finally I was told that while I was much appreciated, I was no longer needed for that day. To insure my convenience and help reduce taxpayers' waste, I was instructed to call the Code-A-Phone after 5 p.m. to see if I should report for duty the next day. (Experience taught me you seldom find anyone at the

county courthouse after 5 p.m., except perhaps the jailer or deputy sheriff.) Bingo! I was going to get to try again the next day and the next.

The performance of my civic duty during my week of jury service went thusly: Monday, I never left the jurors' lounge (I had forgotten a book, too). Tuesday, I was struck. The disappointment of this rejection was somewhat softened by another lawyer's rejection. Obviously, someone did not want lawyers to try a particular defendant who resembled a young Kojak, minus the lollipop.

The Tuesday afternoon case resulted in a settlement. We all felt sorry for an elderly and somewhat feeble man seated at the counsel's table.

The judge apologized for delaying us and ultimately excused us, announcing the scheduled case had been settled. We subsequently learned we had missed a chance to hear a sexual abuse case. You can imagine our shock upon learning the seemingly confused and feeble man was not the victim after all but the alleged abuser—appearances in the courtroom can be very deceptive.

Wednesday's trial never got started. The judge assured us several times he was not the cause of the trial's delay. I just knew he did not want us to forget his role in the slide show.

Finally, the defendants' lawyer got struck. It seemed his two defendant or co-defendant clients suddenly remembered the other had done something causing their testimony to be in conflict and, therefore, their lawyer would be unable to serve his two masters.

At least I did not get struck this time; however, the trial was postponed. A different judge had to apologize for not needing our services Thursday.

That case must have resulted in a settlement, too. We never really found out what it was about, but one lawyer walked confidently out of the courtroom with a smile on his face as he placed a white Stetson on his head.

I realized I had only one more chance, and I still lacked the final three chapters in *First Among Equals* when Friday came. I so hoped that my number would be on the Thursday Code-A-Phone and Friday I would get to sit. I still did not believe my lawyer-friends who smiled and said, "You'll never get to sit; why are you here anyway?"

Near week's end, I was almost willing to be a defendant so I could participate in our justice system.

I got to the juror lounge area at 8:59 a.m., almost late. Already, the overflow crowd of prospective jurors was seated in the hall. We were possibly going to hear a case today in Judge Gordon's new, modern courtroom. They indeed had saved the very best 'til last.

It was not to be. A defense lawyer told the court administrator he was going to have to move for a mistrial, inasmuch as the alleged victim was already among us, giving the prospective jurors a preview of the coming attractions. The defense attorney had heard him stating his case through the closed courtroom doors.

Surprise! Surprise! The attorney never got to make his motion. The administration of our system was such that they merely brought an untainted venire from the other side of the courthouse to Judge Gordon's new courtroom and dispatched us to the courtroom from whence they came. Our return to this particular courtroom was where this saga all began—the orientation courtroom.

Judge Kennedy had to apologize again. They were not going to need us after all, and he thanked and directed us to the clerk's office to be paid. (I bet they would have shown the slide show again so we would not forget all the folks who had been so nice to us if they realized they had the time.)

I am still waiting to receive my certificate of appreciation which another elected official sends those serving on juries. My wife got one with a big gold seal and handlettering on it. It came in a first-class envelope, and I am sure must have cost

at least \$2.50—\$3 to send—the Code-A-Phone saved this much, I know.

In spite of developing a poor self-image for never having gotten to be a juror, all was not lost. I will be a better informed voter and remember those nice people in the slide show; I finished my paperback and was reassured by a fellow venire person that she had been rejected twice and the third time had indeed been a charm. (She also was interested in reading my book.)

The efficiency with which we were paid was impressive. Usually, paying money to the county courthouse is a hassle with the lines and such, but never in my wildest imagination could I foresee our circuit clerk's (she's a lawyer) paying it out, and so fast.

I am hoping I get called to serve again soon. The slide show will not change, I know, but I have two new books. I became accustomed to the courtesy and pampering extended to us, and I bought two crystal wine glasses with the jury fee. The next time I will buy the wine.

I am told the only thing more fun than being on a jury venire is to actually be selected to sit and try a case.

NOTE: This reflection of a rejected juror, while written in jest, in no way diminishes the writer's appreciation for the truly outstanding jury administration and utilization witnessed in the 15th Judicial Circuit. There may be other circuits with operations equal to ours, but none better.

I cannot help but believe a nonlawyer must be favorably impressed and leave this experience with a more meaningful appreciation for our justice system, after having served on a jury.

—Reginald T. Hamner

NOTE

1986 Alabama State Bar Directories will be published in August of this year, but save \$ and get in your orders for extra copies now!



Legislative Wrap-up

by Robert L. McCurley, Jr.

1986 Regular Session ends

The session is now over. It can best be summarized as one of frustration for many legislators since there were so many "hot" issues to be considered in an election year. The package of tort reform legislation, including medical malpractice, passed the House of Representatives but died in the Senate. Other items loudly debated, but failing to pass, included:

- (1) A mandatory seat belt law;
- (2) A statute of limitations revision for architects and engineers;
- (3) "Buy American" goods; and
- (4) Parental notification before a minor could have an abortion.

Although 284 bills passed, only about 75 were of a general nature applying statewide. This represented 5 percent of the 1,577 bills introduced. Resolutions were more successful; 98 percent of the 1,968 resolutions introduced were adopted.

New laws of special interest to the legal profession include:

Judicial Building (Act 86-420)—This act establishes an Alabama Judicial Building Authority to plan and build a new judicial building to house the supreme court, both appellate courts, the law library and the Administrative Office of Courts.

Bar Governance (Act 86-544)—The composition of the bar commission is revised to give additional commissioners to judicial circuits for each 300 attorneys. It further authorizes the election of president-elect of the bar by mail ballot instead of the present system of voting at the annual meeting.

Uniform Transfers to Minors (Act 86-453)—This bill expands the Uniform Gifts to Minors Act to allow gifts of real and personal property to minors, in addition to gifts of cash, stock and insurance proceeds previously permitted. A gift under this act may now restrict the child from receiving the gift until age 21. Gifts made under the prior

law are valid under the new law without any additional action. This bill was drafted by the Alabama Law Institute.

Interstate Banking (Act 86-69)—This authorizes bank holding companies in any one of certain states to acquire banks in Alabama, provided these states give Alabama banks reciprocal authority to own banks in the other states.

Drugs—The law regarding drug paraphernalia was revised by Act 86-425. Also, a "Drug Baron's Enforcement Act" (Act 86-534) was passed.

Good Samaritan Act (Act 86-539)—Persons who provide assistance in the cleanup of hazardous waste are exempted from liability; however, those who cause the accident or are paid other than expenses for cleanup are not exempted.

Administrative Procedure Amendments (Act 86-472)—Various sections of the Administrative Procedure Act were amended to clarify the interpretation of the sections. These amendments were in response to requests made to the Alabama Law Institute by the bar and 11 agencies.

The annual meeting of the institute will be held Thursday, July 17, 1986, at 4 p.m. at the Wynfrey Hotel, Birmingham. This meeting will coincide with the Alabama State Bar Annual Meeting. ■



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.

ALABAMA STATE BAR

Annual Meeting

July 17-19, 1986

The Wynfrey Hotel
Birmingham, Alabama

Schedule of Events

WEDNESDAY, JULY 16, 1986

1 p.m.

Board of Commissioners Meeting
Riverchase Ballroom B

THURSDAY, JULY 17, 1986

8 a.m.—6 p.m.

Registration
The Wynfrey Hotel, meeting room level, second floor

Pre-registration packets may be picked up at the bar's registration desk.

10 a.m.—noon

Section Meetings

FAMILY LAW Vanzetta Penn McPherson,
Riverchase Ballroom A chairman
CLE credit: 1.2

LITIGATION L. Tennent Lee,
Riverchase Ballroom B chairman
CLE credit: 1.2

REAL PROPERTY, PROBATE AND TRUST LAW
Wynfrey Ballroom D Ralph A. Franco,
CLE credit: 2.0 chairman

Noon—12:30 p.m.

Bloody Mary Party
The Wynfrey Hotel, pre-function area, second floor
Tickets: \$2 each

12:30—1:45 p.m.

Bench & Bar Luncheon
Wynfrey Ballrooms A/B/C
Tickets: \$10 each

Presiding:

James L. North, esq.
President, Alabama State Bar

Invocation:

Francis H. Hare, Jr.
Commissioner, Tenth Judicial Circuit

Welcome to Birmingham:

Roderick Beddow, Jr.
President, Birmingham Bar Association

Response:

Harold Albritton
Vice President, Alabama State Bar

Guest Speaker:

Hon. Joseph R. Davis
Assistant Director/Legal Counsel
Federal Bureau of Investigation
Topic: "Year of the Spy—Perspectives on Recent Espionage Cases"

2—3:30 p.m.

Section Meetings

ADMINISTRATIVE LAW Al L. Vreeland,
Avon Room chairman
CLE credit: 1.2

CRIMINAL LAW Mark McDaniel,
Hampshire Room chairman
CLE credit: 1.2

ENVIRONMENTAL LAW Robert R. Reid, Jr.,
Cornwall Room chairman
CLE credit: 1.5

LABOR LAW D. Frank Davis,
Berkshire Room chairman
CLE credit: 1.2

OIL, GAS AND MINERAL LAW Edward G. Hawkins,
Devon Room chairman
CLE credit: 1.6

PRACTICE AND PROCEDURE W. Stancil Starnes,
Wynfrey Ballrooms D/E chairman
CLE credit: 1.5

TAXATION Norman W. Harris, Jr.,
Essex Room chairman

3:30—5 p.m.

Section Meetings

BANKRUPTCY AND COMMERCIAL LAW
Riverchase Ballroom B George W. Finkbohner, Jr.,
CLE credit: 1.5 chairman

BUSINESS TORTS AND ANTITRUST LAW
Essex Room Michael L. Edwards,
CLE credit: 1.5 chairman

CORPORATE, BANKING AND BUSINESS LAW
Dorset Room Jacob A. Walker, Jr.,
CLE credit: 1.0 chairman

YOUNG LAWYERS J. Bernard Brannan, Jr.,
Riverchase Ballroom A president
Business Meeting

5 p.m.

Alabama Law Institute Council Meeting
Hampshire Room

Mr. Davis is a native of Mobile, Alabama, and a graduate of the University of Alabama, where he also received his law degree in 1967. He entered duty with the FBI as a special agent in 1968 and was transferred to the Legal Counsel Division in FBI Headquarters in 1974. In April 1984, Davis was appointed chief counsel of the Drug Enforcement Administration and later assistant director/legal counsel to the FBI. He is responsible for advice on law and policy, defense of civil litigation, legal instruction and research.

He is married to Dr. Nancy Davis, a psychologist. They live with their three sons in northern Virginia.

6-7:30 p.m.

Cocktail Reception
The Wynfrey Hotel Ballroom

This event replaces the cocktail supper previously held on Thursday evening so members may have a free evening for personal entertaining. This reception is hosted by Spann W. Milner of Insurance Specialists, Inc. This is a complimentary event for the membership; however, tickets must be requested.

7:30 p.m.

Dinner on your own

8 p.m.—midnight

Young Lawyers' Party
Hoover Community Care Center—located one mile north of Wynfrey on Highway 31 behind Jack's Hamburgers
Tickets: \$3—will be sold at door
Free kegs and cash bar, band—Soul Practitioners

FRIDAY, JULY 18, 1986

7:30 a.m.

Breakfasts

Cumberland Law Review Breakfast
Riverchase Ballroom A
Tickets: \$9.75 each

Farrah Order of Jurisprudence/Order of the Coif
Breakfast
Riverchase Ballroom B
Tickets: \$10 each

Past Presidents' Breakfast
The Wynfrey Hotel, Avon Room

8 a.m.—5 p.m.

Registration

9 a.m.—noon

"Update '86" Seminar*
Morning session - CLE credit: 3.0
Wynfrey Ballrooms A/B/C
Sponsor: Young Lawyers' Section
Moderator: James H. Miller, III, esq.
CLE chairman, YLS
Birmingham, Alabama

9-9:10 a.m.

Welcome and Introductory Remarks
William D. Scruggs, Jr., esq.
President-elect, Alabama State Bar

9:10-10 a.m.

"Update on Evidence"
Dean Charles W. Gamble
University of Alabama School of Law

10 a.m.

Spouses' Mimosa Brunch
Wynfrey Ballrooms D&E

10-10:50 a.m.

"Real Property Law: A Review of Significant Events"
Richard F. Ogle, esq.
Birmingham, Alabama

10:50-11:10 a.m. Break

11:10 a.m.—noon

"Update: Corporate and Commercial Law"
Professor Howard P. Walthall
Cumberland School of Law

Noon

Cumberland School of Law Alumni Luncheon
Riverchase Ballrooms A/B
Tickets: \$16.50 each

12:30 p.m.

University of Alabama School of Law Alumni Luncheon
Wynfrey Ballrooms D/E
Tickets: \$15.50 each

2-5 p.m.

"Update '86" Seminar*
Afternoon session - CLE credit: 3.0
Wynfrey Ballrooms A/B/C
Moderator: Claire A. Black, esq.
President-elect, YLS
Tuscaloosa, Alabama

2-2:50 p.m.

"Legislative Update: A Review of Recent Legislation of Interest to Lawyers"
Representative James M. Campbell, esq.
Anniston, Alabama

2:50-3:10 p.m. Break

3:10-4 p.m.

"Claims and Defenses Under the Securities Act of Alabama"
Michael L. Edwards, esq.
Birmingham, Alabama

4-4:50 p.m.

"Update on Ethics: Avoiding Malpractice and Client Complaints"
Alex W. Jackson, assistant general counsel
Alabama State Bar

4:50-5 p.m.

Closing remarks and announcements

*Smokers please sit in the smoking section (the left-hand side of the room).

7:30 p.m.

Dinner
Wynfrey Ballroom
Tickets: \$22.50 each

"Return of Halley's Comity"

This production will be made by the touring company of the Chicago Bar Association's widely acclaimed Christmas Spirits show.

SATURDAY, JULY 19, 1986

8 a.m.

Committee Breakfast
Wynfrey Ballrooms A/B/C

10 a.m.

Annual Meeting Convocation
Riverchase Ballrooms A/B
Presiding: James L. North
President, Alabama State Bar
Awards and Recognitions
Business Meeting/Election of Officers
Adjournment

Noon

Board of Commissioners Meeting
Wynfrey Ballroom D

—end of 1986 Alabama State Bar Annual Meeting—

Eviction or Ejectment:

by Romaine S. Scott, III

The bundle of rights acquired by a lender when a borrower executes a mortgage deed is subject to intermittent attack by those attempting to separate certain rights from that bundle to lighten the burden on the mortgagor. The most blatant battles echo loudly through the courts and offices of lawyers, leaving such questions involving due process notice to be debated *ad nauseam*.

Most battles over the mortgagee's rights do not involve what legal remedies are available to a mortgagee to obtain possession of mortgaged real property after a default occurs, under the terms of the note and mortgage. There is, however, a very real problem when a mortgagee receives a right to take possession of mortgaged real property and seeks to execute on that right.

This article explores and explains the remedies available to those who have a right to take possession of real property, and focuses on those remedies available to mortgagees. The author's position is all remedies available to landlords should be available to mortgagees. Some courts clearly disagree.

Rights to possession as between mortgagee and mortgagor: the law

Under Alabama law, the mortgagor loses any right to possession of the property when he executes the mortgage to the mortgagee, unless there is a specific agreement otherwise. The Alabama Supreme Court, in *Mallory v. Agee*, 226 Ala. 596, 147 So. 881 (1932), defined the relationship between the mortgagee and mortgagor as follows:

"It matters not whether the status was created before or after default. While a mortgagor, after default, is said to be a tenant of a mortgagee by sufferance, such status relates to his possessory right and not to the character of his property right. . . .

We merely incidentally as a premise refer to the principle established in Alabama that a mortgage on real estate passes to the mortgagee a fee simple title, unless otherwise expressly limited.

The mortgagor, before or after default, except by agreement, does not possess even the right of possession, as against the mortgagee."

See *id.* at 599-600, 147 So. at 882-83. The relationship between a mortgagee and mortgagor before default was further defined in *Buchmann v. Callahan*, 222 Ala. 240, 131 So. 799 (1931), in which the court held, "If the mortgagor is permitted to remain in possession, he is the mere tenant at will of the mortgagee." *Id.* at 242. The court also indicated, in *Buchmann*, the remedy of unlawful detainer is available to the mortgagee.

The relationship between the mortgagee and mortgagor is extremely important in concluding what specific remedies are available to a mortgagee for obtaining possession before or after foreclosure because the Code provisions dealing with actions for ejectment, in the nature of ejectment, for unlawful detainer and for possession wrongfully withheld to obtain a writ of eviction do not contemplate expressly how a tenancy at sufferance shall be treated.

Taking possession after default but prior to foreclosure

The provisions of the mortgage, and the fact that a mortgagor is a tenant at sufferance of the mortgagee after default, must be superimposed in examining the preliminary premise that a mortgagee has a right to obtain possession of the mortgaged property as soon as a default under the terms of the mortgage has occurred. The nature of a tenant at sufferance's right to possession also must be considered in establishing the mortgagee's right to re-

gain possession after default, and prior to foreclosure, but applies equally to the mortgagee's remedies after foreclosure.

Virtually all mortgages contain language in the power of sale provision, reciting that, if a default occurs and the mortgagee elects to accelerate the indebtedness, "in such event the mortgagee shall have the right and is hereby authorized to enter upon and take possession of said property, and, after or without taking possession, to sell the same before the Courthouse door. . . ." In addition to the contractual language of the mortgage, the Alabama Supreme Court has established "it is settled case law that a tenant at sufferance is not entitled to any statutory form of notice to quit in order to terminate his tenancy. [citations omitted] His tenancy can be terminated by simple entry or demand." *Miller v. Faust*, 250 Ala. 545, 548, 35 So. 2d 162 (1948)

The contractual language of the mortgage and the opinion of the state supreme court clearly indicate that, if the property is vacant prior to the foreclosure sale, the mortgagee may enter the property and take possession without fear of having a valid lawsuit for trespass, conversion or other similar causes succeed against the mortgagee. The mortgagee's remedies for exercising its rights to possession prior to foreclosure have not been defined specifically by case law or the Alabama Code, however, and the Alabama Supreme Court has held fairly recently that, while the mortgagee has a right to take possession, if the mortgagee does so prior to foreclosure, it may become liable to the mortgagor for any damage to the property while in the possession of the mortgagee. See *Nettles v. First National Bank of Birmingham*, 388 So. 2d 916 (Ala. 1980). If the property is not vacant after default but prior to disclosure, the legal actions necessary to

How Does the Mortgagee Take Possession of Mortgaged Property After Default?

remove the mortgagor or other occupant from the property appear to be the same as those available to the mortgagee after foreclosure.

Actions to obtain possession of real property

Three basic actions are available for a person or entity to gain possession of real property from another who entered onto the real property lawfully. Two actions may originate in state district court, and the other must be brought in state circuit court.

The author points out there is a lack of uniformity of opinion among the various Alabama circuit courts as to whether the two primarily district court actions are available to mortgagees, and it is his position that all three actions should be available to mortgagees for the following reasons.

Action for possession wrongfully withheld in district court

The quickest method for a mortgagee to obtain possession of real property after a foreclosure sale is to file an action under *Code of Alabama* 1975 Sections 35-9-80 *et seq.* The action provides for gaining possession when it is wrongfully withheld and was established ostensibly to afford a landlord a speedy reme-

dy for removing tenants from property after the lease term had expired. See *Williams v. Prather*, 236 Ala. 653, 184 So. 473 (1938). See also *Hicks v. Longfellow Dev. Co.*, 362 So. 2d 219 (Ala. 1978). The action is somewhat in the nature of an unlawful detainer action and must be construed with the provisions contained in *Code of Alabama* 1975 Section 6-6-310 setting forth the principles and proce-



dures for an unlawful detainer action. *Riley v. Riley*, 257 Ala. 636, 60 So. 2d 432 (1952) and *Glenn v. Nixon*, 248 Ala. 569, 28 So. 2d 718 (1946)

A mortgagee's right to file an action for possession wrongfully withheld in district court, with the ultimate objective of obtaining a writ of eviction, is based on the fact Alabama views the mortgagor as a tenant at sufferance. Although some district courts have decided not to allow a mortgagee access to the action, the mortgagee is, in effect, a landlord to a tenant at sufferance, and should be entitled to seek relief under Section 35-9-80. Indeed, Section 35-9-100, while not a part of the Code provisions dealing with an action for possession wrongfully withheld, does provide specifically that a landlord of a tenant at sufferance may recover from the tenant double the value of the customary rent for the property as damages for the tenant's use and occupation of the land.

The action for possession wrongfully withheld contemplates that a landlord may file an action to regain possession after the tenant's term has ended or his right to possession has otherwise been terminated. A precondition to filing the action is that the owner of the property or his agent has made a demand that the tenant turn over possession and the tenant has refused to do so. The notice of termination of tenancy required under Code of Alabama 1975 Section 6-6-310 is added to the precondition of a demand for possession under Section 35-9-80 but the notice provisions contained in Section 6-6-310 et seq. are predicated on the existence of a lease term.

What type of notice, then, is required to a tenant at sufferance? The Alabama Supreme Court has held a tenant at sufferance is not entitled to notice to quit except notice sufficient to give him an opportunity to vacate the premises. See *Bush v. Fuller*, 173 Ala. 511, 55 So. 1000 (1911). It would appear, therefore, that the mortgagee need not give any notice to the mortgagor of the termination of the tenancy at sufferance.

Nevertheless, the statute is to be construed Section 6-6-310 et seq., defining unlawful detainer, see *Garrett v. Reid*, 244 Ala. 54, 13 So. 2d 97 (1943). Such construction is problematic because case law further adds the notice requirements contained in Code of Alabama 1975 Sec-

tions 35-9-3 et seq., pertaining to the method of terminating a tenancy, to the notice required for unlawful detainer actions. See generally *Roberson v. Baldwin*, 38 Ala. App. 269, 82 So. 2d 348 (1955). An understanding of the various notice provisions is critical to proper initiation of an action for possession wrongfully withheld.

A demand for possession under Section 35-9-80 must be made, in most cases, after a notice of termination of tenancy has been given as required by Section 35-9-5 in the form set out in Section 35-9-6. See *Hyde v. Bains*, 247 Ala. 8, 22 So. 2d 324 (1945) and *Garrett v. Reid*, supra. Section 35-9-5 applies to all tenancies by the month or for any term less than a year where the tenant holds over without special agreement and requires that termination of such tenancies is had on ten days' written notice. The section must be read with Section 6-6-310 et seq., which implies that the ten-day notice of the landlord's intent to terminate the tenancy under Sections 35-9-5 and 35-9-6 must be delivered first and followed by a ten-day demand in writing for delivery of possession. See *Garrett v. Reid*, supra.

It is arguable, however, that no notice of termination under Sections 6-6-310, 35-9-5, 35-9-6 or 35-9-80 is necessary when a tenancy at sufferance is involved. See *Jones v. Duncan*, 250 Ala. 587, 35 So. 2d 345 (1948); *Bush v. Fuller*, supra, and *Johnson v. Miller*, 161 Ala. 632, 49 So. 8585 (1909). None of the notice provisions expressly or implicitly relate to a tenancy at sufferance arising under a mortgage. See *Sherrill v. Garth*, 230 Ala. 397, 161 So. 482 (1935).

The wisest course for a mortgagee is to give the termination of tenancy notice required by the Code to avoid any possibility of having the action for possession wrongfully withheld found to be defective by the district court. The mortgagee should provide the mortgagor with a letter, including a statement that termination of the mortgagor's tenancy at sufferance occurred immediately after default under the mortgage and a demand that possession be delivered to the mortgagee within ten days of receipt of the written demand.

An alternative is to have a notice of termination of tenancy served personally on the former mortgagor and then

follow the notice of termination ten days later with personal service of the form of demand for possession set forth in Section 35-9-6. Such letters are certain to satisfy the requirements of Sections 35-9-5, 35-9-6, 35-9-80 and 6-6-310 (2). See *Moss v. Hall*, 245 Ala. 612, 18 So. 2d 368 (1944).

A mortgagee also should give notice of a demand for possession for purposes of Section 6-5-233 dealing with redemption. Including such a notice in the demand-for-possession letter serves to cut off the former mortgagor's right of redemption if he does not vacate the property within ten days after delivery of the letter. Giving such notice often provides the former mortgagor with the incentive necessary to vacate the property without any action for possession.

Most district courts have forms of complaint complying with the statutory provisions and used to file the action for possession wrongfully withheld. The form of complaint is based on Section 35-9-80 providing after a demand for possession of the property has been made and, if the tenant refuses to deliver possession when demanded, the owner, his agent or attorney-at-law or attorney-in-fact may go before the district court in the county in which the land lies and make oath of the facts.

Some district courts have interpreted the Code section to mean the owner or attorney actually takes the completed but unexecuted form of complaint to the district court, makes oath before the clerk of the district court and then signs the pleading in front of the district court clerk. Other district courts have found the complaint may be completed and notarized without requiring the attorney to actually appear before the clerk and make oath. The complaint must give the correct street address of the property to be vacated as well as the address of each defendant to be served.

After the complaint form has been filed with the district court, a district judge issues a writ to the sheriff's department, requiring a deputy to deliver a copy of the complaint to the defendants named in the complaint. The mortgagee should be certain to name as defendants not only the mortgagors appearing on the fact of the mortgage but any others known to be occupying the premises.

The sheriff will serve a copy of the complaint on those named as defendants, together with notice that the sheriff will proceed to execute the relief sought in the complaint after seven days unless a counteraffidavit is filed with the sheriff's department by the defendants within that seven-day period. *Code of Alabama* 1975 Sections 35-9-82 and 35-9-85

If the defendants do not file a counteraffidavit, there will be no trial and the sheriff's department will contact the attorney filing the complaint to make arrangements to have the defendants and their personal property removed from the premises. If any defendants should file a counteraffidavit stating under oath that his right to possession has not been terminated or forfeited, he has a good and lawful right to possession of the property or his lease or term of rent has not expired and he is not holding over beyond his term, the defendant will not be removed from the property and the sheriff's department will return the process to the court issuing the writ. A copy of the defendant's counteraffidavit normally will not be sent to the mortgagee.

The third day after the sheriff returns the writ to the clerk of court's office, the district court is supposed to hold a trial on the merits. *Code of Alabama* 1975 Section 35-9-85 After a trial on the merits, if it is determined the former mortgagor has no right to the possession of the property, the court will issue a writ of possession, often called a writ of eviction, requiring the sheriff to place the mortgagee in full possession of the premises. *Code of Alabama* 1975 Section 35-9-86

The benefit of filing an action under *Code of Alabama* 1975 Section 35-9-80 for possession wrongfully withheld is that it provides for a speedy remedy to the mortgagee who seeks only to recover possession of the property. The plaintiff is not entitled to recover damages such as lost rents through this action. See *Garrett v. Reid*, 244 Ala. 254, 13 So. 2d 97 (1943).

There are some drawbacks to the procedure, including allowing the defendants to remove the action to the circuit court where it will be treated in the same

manner as if originally filed as an unlawful detainer action in circuit court. There also is the possibility the district court's decision in favor of the mortgagee will be appealed to the circuit court under Section 35-9-87, where it will be tried *de novo*. See *Hyde v. Isabell*, 254 Ala. 373, 48 So.2d 465 (1950) and *Williams v. Prather*, 236 Ala. 652, 184 So. 473 (1938). Trial *de novo* can be costly and time consuming, but such a trial *de novo* does allow the mortgagee to seek limited damages. If there are no counteraffidavits, motions to remove the action to circuit court or appeals of the decision of the district court, the procedure outlined hereinabove is by far the least expensive and most expeditious for gaining possession of property.

The greatest problem by far is that some district courts have decided the action is available only to landlords seeking to remove a tenant under a lease and do not allow a mortgagee to file such an action. Those jurisdictions appear to require an action for or in the nature of ejectment be filed in circuit court.

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

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

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

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

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

AFFORDABLE TERM LIFE INSURANCE — FROM COOK & ASSOCIATES

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

MALE AGES	\$250,000	\$500,000	\$1,000,000
25	250.00	455.00	670.00
30	252.50	460.00	677.50
35	255.00	465.00	685.00
40	330.00	595.00	880.00
45	412.50	760.00	1,127.50
50	542.50	1,015.00	1,510.00
55	810.00	1,520.00	2,267.50
60	1,355.00	2,535.00	3,790.00
65	2,372.50	4,385.00	6,565.00

(smoker's rates slightly higher)

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

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

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

Action for unlawful detainer in district court

As an alternative to filing a proceeding under *Code of Alabama* 1975 Section 35-9-80 for possession wrongfully withheld, the mortgagee also should be allowed to file in district court a complaint for unlawful detainer under Section 6-6-310(2). That section provides for the following:

"[W]here one who has lawfully entered into possession of lands as tenant fails or refuses, on ten (10) days' demand in writing after the termination of his possessory interest, to deliver the possession thereof to anyone lawfully entitled thereto, his agent or attorney; and it is sufficient to leave a copy of such demand in writing at the usual place of abode of the party holding over."

The argument is that the relationship of landlord and tenant arose under the mortgage by the mortgage terms and operation of law when the mortgagor executed the mortgage deed so that the mortgagor entered into possession of the real property as a tenant at will and is a tenant at will until the debt is fully paid or a default occurs. Upon default, the mortgagor becomes a tenant at sufferance. Therefore, the requirements of Section 6-6-310 are satisfied.

Alabama Code Section 6-6-311 provides further that an unlawful detainer action may be brought in connection with all estates, whether freehold or less than freehold, including the estate created by execution of and default under the mortgage.

Under a normal landlord-tenant relationship where a lease is involved, a notice of termination of the tenancy must be given as set forth in Section 35-9-3, as discussed above, terminating the tenancy, followed by a separate written demand for possession, giving ten days to vacate the property. *Martin v. Carroll*, 259 Ala. 197, 66 So. 2d 69 (1953) In a mortgagee-mortgagor relationship where the mortgagor is a tenant at sufferance wrongfully withholding possession of the property, no notice of the termination of the tenancy appears to be required but it is advisable to give the ten-day written demand for possession set forth in Section 6-6-310. See *Sherrill v. Garth*, 230 Ala. 397, 161 So. 482 (1935). The demand for possession need not specify the date

on which the tenant at sufferance is required to give up possession or fix a date when an action will be commenced if possession is not surrendered. See *Edkins v. Galloway Coal Company*, 205 Ala. 361, 87 So. 557 (1921) and *Johnson v. Blocton-Cahaba Coal Company*, 205 Ala. 373, 87 So. 559 (1921). The mortgagee should provide the ten-day written demand for possession in the form set forth in Section 35-9-6. See *Martin v. Carroll*, 259 Ala. 197, 66 So. 2d 69 (1953) and *King v. Housing Authority*, 670 F.2d 952 (11th Cir. 1982).

Early cases held that the demand for possession was effectively served by leaving the original paper on the rented or leased premises. See *Vinyard v. Republic Iron & Steel Company*, 205 Ala. 269, 87 So. 552 (1921). More recent cases appear to hold that posting, on the premises, the notice of demand for possession does not provide adequate notice; it must be served on the tenant by leaving a copy of the demand with someone on the premises. *Greene v. Lindsey*, 456 U.S. 444, 102 S.Ct. 1874 (1982)

An early case held the complaint must follow the proper form or it will be subject to a motion to dismiss, *Sandlin v. Anders*, 205 Ala. 453, 88 So. 560 (1921), and the form of complaint has been made uniform as *Alabama Supreme Court, Department of Court Management Form SC-C-31*. The form basically provides a demand for possession and states the terms of the tenancy and reason the tenant no longer has a right to possession.

After the complaint has been filed, a notice must be issued by the district court judge requiring the defendant to appear on a date certain to answer the complaint, and the complaint form indicates that an answer must be filed within seven days after receipt. The *Code* provides, however, notice of the hearing must be served on the defendant at least six days prior to return day of the process served. See *Code of Alabama* 1975 Section 6-6-332(b) and *Krasner v. Gurly*, 248 Ala. 686, 29 So. 2d 224 (1947). The form of notice to be used by the court is set forth in Section 6-6-332(a).

At the trial, the estate or merits of the title cannot be inquired into but the defendant can raise all legal and equitable defenses available against a recovery for

damages. See *Code of Alabama* 1975 Section 6-6-336.

After a hearing, the court may enter a judgment on behalf of the mortgagee containing a writ of restitution or possession allowing the mortgagee to recover possession of the property and costs of the proceedings. *Code of Alabama* 1975 Section 6-6-377 A tenant who entered the property under a contract of lease also may sue for rent and special damages. *Code of Alabama* 1975 Section 6-6-314 A landlord of a tenant at sufferance may sue under Section 35-9-100(3) for damage connected with the tenant's use and occupation.

An unlawful detainer action brought pursuant to Section 6-6-310 can be filed first only in district court so that if damages in excess of \$5,000 are sought by the complaint the case will be dismissed. Any party may appeal from a judgment entered by the district court within 14 days after the entry of the judgment by following the general rules for appeal of an action from district court to the circuit court. When the case reaches the circuit court, a new complaint or amendment to the old complaint may be filed by the plaintiff, seeking additional damages, adding attorney's fees, if they were not claimed below, and a new trial will be held as if the action had originated in the circuit court. *Vinyard v. Republic Iron & Steel Company*, 205 Ala. 269, 87 So. 552 (1921)

One apparently unusual aspect of a proceeding under the unlawful detainer section of the *Code* is that if the defendant does not appear or does appear and refuses to plead, the case will proceed as if the defendant had denied the allegations in the complaint, meaning the mortgagee who is a plaintiff in such a case must be prepared to present his case even if the defendant fails or refuses to appear. *Code of Alabama* 1975 Section 6-6-335

If the former mortgagor is allowed to remain in possession of the premises for three years after the date on which the mortgagee obtains the right to demand possession, an action for unlawful detainer will be barred by a specific statute of limitations. *Code of Alabama* 1975 Section 6-6-315

Bringing an unlawful detainer action under Title 6 of the *Code*, as opposed to

bringing an action for possession of property wrongfully withheld under Title 35, does provide the mortgagee with an opportunity to obtain damages and attorney's fees. Further, the unlawful detainer action is somewhat confusing because the form of complaint promulgated by the Department of Court Management indicates the complaint must be answered within seven days, or the relief sought could be entered by default.

The major drawback to bringing the action under Title 6 is that there is no statutorily prescribed expedited timeframe requiring the district court to quickly set the action for trial. After the complaint is filed the court may set the action for hearing at any time, as long as the hearing is held six days after notice of the hearing is served on the defendant. See *Code of Alabama* 1975 Section 6-6-332. This aspect of the unlawful detainer action is somewhat confusing because the form of complaint promulgated by the Department of Court Management indicates the complaint must be answered within seven days, or the relief sought could be entered by default.

What appears to have occurred with actions filed under Title 6, for unlawful detainer, and Title 35, for possession wrongfully withheld, is that the district courts have treated them as being the same action, referring to both in daily practice as an action for eviction. The result is that either action is effectively a hybrid to which the same procedures and prohibitions are often applied, including the prohibition against a mortgagee bringing either action because the mortgagee has no lease. Nevertheless, there are distinctions, as pointed out hereinabove, none statutorily barring a mortgagee from access to the actions.

Ejectment in circuit court

The third alternative for obtaining possession of property after a foreclosure sale is to file a complaint in circuit court as provided by *Code of Alabama* 1975 Section 6-6-280. This is the alternative required in some counties which do not allow the mortgagee to proceed under the previously discussed actions. The action is initiated by the filing of a complaint so that the mortgagee is not required to deliver any notice to the former mortgagor terminating the tenancy and demanding possession. It is advisable,

however, to make a demand for possession before filing the complaint.

The complaint should take the basic form of a complaint for any other action, setting forth that the plaintiff sues to recover possession of certain real property, giving the legal description of the property, stating the facts supporting the plaintiff's right to possession, asserting that the defendant unlawfully retains possession after a demand for possession has been made and claiming specified damages. The complaint also must name, as defendants, all those believed to be in possession of the property. The use of fictitious parties is prudent to insure that the plaintiff can add the names of persons it may later learn actually occupy the premises.

The claim for damages may include the reasonable rental value due from the date of default and any actual damage to the property. *Johnson v. Salter*, 359 So. 2d 417 (Ala. Civ. App. 1978)

The complaint and a summons must be served on the defendants by the sheriff or special process server just as in any other civil action. Service often is difficult to obtain because the former mortgagor is aware the property has been sold at foreclosure and will attempt to avoid service so he may retain possession as long as possible.

After the complaint has been served, the mortgagor may not enter any appearance or file an answer, and a default judgment may be taken with a subsequent writ of execution on the default judgment issued under Alabama Rule of Civil Procedure 55.

The Alabama Supreme Court, in *Jones v. Butler*, 286 Ala. 69, 237 So. 2d 460 (1970), made clear that an action in stat-

utory ejectment is proper and available to a purchaser of property at a mortgage foreclosure sale. Section 6-6-282 addresses itself specifically to actions between mortgagees and mortgagors. The case and the Code do not, however, establish that an action in ejectment is the only recourse a mortgagee or other purchaser at foreclosure has for obtaining possession of the foreclosed property. The allegations in the complaint may be somewhat simplified because title is gained through the foreclosure sale, but that does not relieve the plaintiff from setting forth, in some detail, the facts supporting the plaintiff's claim to legal title to the land and that the defendant entered the lands and unlawfully withholds possession of those lands. See *Atlas Subsidiaries of Florida, Inc. v. Kornegay*, 288 Ala. 599, 264 So. 2d 158 (1972).

The major drawback to bringing an action in ejectment to obtain possession of real property is that it takes substantially more time than either of the two procedures which should be readily available to mortgagees in district court. Additionally, the costs for bringing an action in circuit court may be considerably greater than those in district court.

Conclusion

It is hoped the district courts now denying mortgagees access to actions for possession wrongfully withheld and unlawful detainer will re-examine their position in light of the mortgagee's status as a landlord to a tenant at sufferance. Allowing mortgagees access to those actions would provide a starting place for the preservation of the bundle of rights a mortgagee is meant to receive when a mortgage is given. ■

Romaine S. Scott, III, received his undergraduate degree from Washington & Lee University and his law degree from Cumberland School of Law. He is a partner in the Mobile firm of Inge, Twitty, Duffy & Prince and serves on the editorial board of The Alabama Lawyer and the executive board of the Bankruptcy and Commercial Law Section of the Alabama State Bar.



Bar Briefs

Sacher joins nation's largest firm

Barton S. Sacher, former chief of the branch of Investigations and Enforcement of the Securities and Exchange Commission's Atlanta regional office, has joined the Florida office of the nation's largest law firm, Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson and Casey. He is a partner in



Sacher

the firm's litigation, corporate/securities and municipal bonds department.

Sacher, 38, joined Finley, Kumble, et al., in January after six years with the Atlanta regional office of the SEC. In addition, he was an adjunct professor of law for five years at Emory Law School in Atlanta and supervised the SEC/Emory Law School internship and clinical program. From 1977-79 he served as attorney and trial counsel for the SEC, division of enforcement, in Washington, D.C.

Sacher is a graduate of the University of Alabama and the Univer-

sity's School of Law. He is a member of the Alabama State Bar and the Birmingham Bar Association, in addition to several other bars.

Steagall newest justice

Henry Bascom Steagall, II, took an oath of office April 30, becoming the newest associate justice of the Supreme Court of Alabama. Chief Justice C. C. Torbert administered the oath to Steagall as friends and family watched.

Steagall was born in Abbeville, Alabama, September 4, 1922. He is the son of the late Susan Koonce Steagall and Orlando Marvin Steagall and named for his uncle, the late Henry B. Steagall, who served in the United States Congress from 1914 until his death in 1943. His paternal grandfather and his maternal great-grandfather served in the Alabama Legislature.

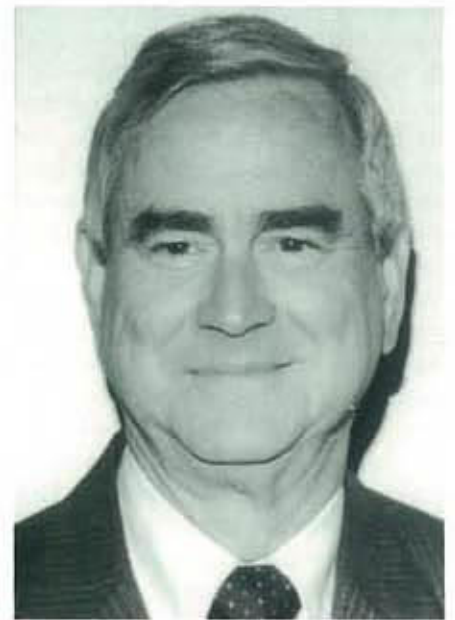
He has practiced law in Ozark since June 1951, except for the periods 1975-79 when he served as executive secretary to Governor George C. Wallace and 1983 to April 30, 1986, when he served as state finance director, again for Wallace.

Justice Steagall is a graduate of Auburn University and the University of Alabama Law School, where he was a member of the editorial board of the *Alabama Law Review*. He received the Bureau of National Affairs award as a senior for outstanding scholastic progress.

He was a member of the Alabama Legislature from Dale County from 1954-70, a member and chairman of the Dale County Democratic Executive Committee and a member of the State Democratic Executive Committee.

Steagall has served as state bar commissioner for the 33rd Judicial Circuit. He is a member of the Alabama State Bar and American Bar Association.

Justice Steagall is a member of the First United Methodist Church of Ozark and a former chairman of the administrative board; member of the VFW and American Legion; charter member and past president of the Ozark Rotary Club; a Mason and Shriner; and a Navy veteran of three years' active duty in World War II (Pacific Theatre). He has been a member of the Auburn



Steagall

University Board of Trustees since 1971 and served as *president pro tempore* of the Auburn Board.

He is married to the former Frances Rector of Chilhowie, Virginia, and they have three children: Henry, III, an attorney in Ozark; Susan Steagall Brown of Auburn; and Fred, a district judge in Ozark. They have six grandchildren.

He was appointed by Governor George C. Wallace and assumed the office of associate justice on May 1, 1986, replacing retired justice James H. Faulkner.

Powell graduation speaker

The Cumberland School of Law is celebrating its 25th year in Birmingham, Alabama, this year (the school was founded in 1847 in Lebanon, Tennessee), making it the fifth oldest law school in the nation. Samford University purchased Cumberland and moved it to its present location in 1961.

As part of the tradition on which Cumberland prides itself, each year a graduate is invited to address the graduating class. This year's speaker was Dayle Endfinger Powell, class of 1976. She is the first female Cumberland graduate to receive this honor.



Powell

Powell presently serves as associate director of The Carter Center of Emory University, a public policy center founded and headed by former U.S. President Jimmy Carter. Previously, she served as assistant United States Attorney for the Northern District of Alabama. She also served as law clerk to Chief Judge John R. Brown, Fifth Circuit Court of Appeals, Houston, Texas.

Powell attended Jacksonville State University, graduating with honors in 1971. She is married and has two children, and presently resides in Lilburn, Georgia. ■

Everybody Wants To Be Creative.

When you think about it, time is the most valuable commodity my company has to sell. So the more time I have, the more business I can do. That's why I chose the professionals at Creative Leasing to handle my transportation problems.

They're trained, highly-skilled go-getters who designed the perfect plan to meet my company's needs. Their program lets me maximize cash flow, save valuable administrative time, even includes maintenance for my entire fleet!

For me, it's just a matter of creative management and good business. Everybody wants to be creative. Creative Leasing.



Birmingham	251-0137
Montgomery	264-8421
Tuscaloosa	345-6494
Huntsville	880-0175



Riding the Circuits

Baldwin County Bar Association

The Baldwin County Bar Association held its annual meeting April 17, 1986, and the following officers were elected for the 1986-87 year:

President: Marion E. Wynne, Jr.
Vice president: Samuel N. Crosby
Secretary/treasurer: Mollie P. Johnston

Calhoun County Bar Association

May 1 the Calhoun County Bar Association held its annual prayer breakfast. Francis "Brother" Hare, Jr., addressed the bar on how to be a Christian lawyer.

The highlight of the Law Week celebration was May 9, when the bar

hosted a luncheon held in honor of Justice Sandra Day O'Connor of the Supreme Court of the United States. She and her husband visited Calhoun County and the State of Alabama for the first time that day.

Justice O'Connor gave a presentation on the history of Alabamians who have been on the high court. She discussed John McKinley, John Archibald Campbell, William B. Woods and Hugo Black. She joked by stating that, in preparing for her address to the bar, she discovered her appointment created a "stir," primarily because she was neither born in nor appointed from Alabama. She added there had been

Alabamians sitting on the U.S. Supreme Court for 64 of the 197 years the court has been in existence.

Approximately 375 people attended the luncheon. In addition to the bar, those in attendance included most of the Alabama Supreme Court justices and judges from the court of criminal appeals and court of civil appeals. There were several United States district judges in attendance from the Northern District of Alabama, including Chief Judge Sam Pointer. Also included were Alabama Supreme Court Chief Justice Bo Torbert; Alabama State Bar President James North; Presiding Calhoun



At the head table, left to right, are Paula I. Cobia of the Law Week Committee, Chief Judge Sam Pointer of the United States District Court for the northern district of Alabama and Justice O'Connor.



A. W. Bolt, II, president of the Calhoun County Bar, presented the O'Connors with Redskins Jackets. (Mr. O'Connor is on the far right.) Alabama Supreme Court Chief Justice Torbert is seated to the left of the podium, with Calhoun County Circuit Judge Malcom Street, Jr., to the right.



United States Supreme Court Justice Sandra Day O'Connor

County Circuit Judge Malcolm Street, Jr.; Major General Gerald Watson, who is the commanding officer at Ft. McClellan, Alabama; Andrew W. Bolt, II, Calhoun County Bar Association president; and Bruce Adams and Paula I. Cobia of its Law Week Committee. Many members of the local Chamber of Commerce and community were there also.

Justice and Mr. O'Connor were given gifts of appreciation, all manufactured in Calhoun County. Mr. O'Connor received a knife manufactured by Parker-Edwards Ironworks, and Justice O'Connor was given a brass apple made by Lee Brass Company, the largest employer in the county and largest brass foundry in the country. They also received Washington Redskins sports jackets, manufactured locally by Chalkline, Inc.

That evening a cocktail party and dance were held at the Anniston Country Club.

Chilton County Bar Association

Alabama State Bar President James North attended the luncheon meeting of the Chilton County Bar April 22 at The Shed Restaurant in Clanton; the meeting was attended by most members of the local bar. Also present were

local officials who work closely with the courts.

North outlined present state bar activities and programs, and gave the Chilton County group insights into recent developments and trends affecting lawyers and the clients they serve.

The Chilton County Bar extends an invitation to other state bar officials and program directors to attend its monthly meetings. Meetings are regularly held at noon on the third Tuesday of each month.

Dale County Bar Association

The Dale County Bar Association had almost 100 percent participation in this year's Law Day activities. The judges and members of the bar planned an extensive program including lectures and speeches to the various schools in the county on "The Foundations of Freedom."

In addition, the bar association conducted numerous moot court trials during the week of April 28 through May 2. Almost 1,000 students were able to view and participate in these activities.

Also, the bar sponsored lectures, and speeches to various civic and social organizations in the county; it has incorporated in its by-laws a standing

committee for Law Day activities and plans to expand its program next year. The bar is also planning to provide CLE programs for its members.

Escambia County Bar Association

In observance of Law Week, for the second year in a row the Escambia County Bar sponsored the actual trial of a criminal case. The case was decided by a jury made up of seniors from T.R. Miller, W.S. Neal and Southern Normal High Schools, all located in the eastern end of Escambia County.

This year an actual DUI case was tried by the State, and the defendant stipulated the case could be heard by a jury of seniors and their verdict would be the actual verdict in the case. The case was tried before approximately 200 high school seniors with Circuit Judge Earnest Ray White presiding, and the defendant was found guilty.

The Coca-Cola Bottling Company and several local grocery stores donated refreshments.

There are plans to invite the high school seniors from the western end of the county for a similar case and program next year. ■



A Partnership of Love and Care

For over 120 years, the Presbyterian Home for Children has served children and families in need. During this time Alabama attorneys have been very important partners in this Christian work with children and their families.

The needs of today's children and families are more complex than in the past and so the expertise and philosophy of the Presbyterian Home for Children has expanded and grown to meet those needs. One need, however, does not change, and that is the need for financial resources to sustain this work for the future.

The tax laws for your clients are in a constant state of flux but in many cases a mutual benefit will accrue to them as well as the Presbyterian Home, particularly in the area of wills, bequests, and estate planning. Remember, too, gifts to this agency during your client's lifetime can provide your client with **significant** tax advantages.

We at the Presbyterian Home for Children stand ready to help you and your clients in ways that will mutually benefit them as well as children and families over the next 120 years.

Contact: **Benjamin S. Booth, President • Presbyterian Home for Children**
P. O. Drawer 577 • Talladega, Alabama 35160
205/362-2114

Birmingham

Keeping the Magic in "The Magic City"

by Gregory H. Hayley



This year's Annual Meeting will be held in Alabama's largest city, Birmingham.

If you visited "the Magic City" 30 years ago, you probably would have stayed at The Redmont or The Tutwiler Hotel and had a businessman's lunch at John's, a barbecue at Ollie's or a hot dog at one of the stands in town. For an evening dinner, you could have gone back to your hotel or, if you were lucky, privileged or sufficiently important, you would be invited to dinner at the Mountain Brook Club. Then, if you were looking for real entertainment, you would have gone to Rickwood Field to watch the Birmingham Barons play minor league baseball. To top it off, you might have taken a tour of Vulcan to see the lights of Birmingham. Sounds dull? Hardly. Face it, this was the 1950s.

With the exception of lodging at The Tutwiler Hotel (which will not reopen until December 1986) you can still do all those things, plus many others, in the Magic City. The Redmont Hotel was renovated and reopened in December of 1985. John's is still the traditional place for businessmen and -women to have lunch, and the hot dog stands are numerous and terrific.

If you choose, you can try to snag an invitation to a country club for dinner and catch the Barons playing double "A" baseball (The Chicago White Sox farm

team) at Rickwood field (the second oldest professional baseball park in the country).

Birmingham's new magic, however, lies in its interesting blend of traditional and new, ironic juxtapositions of mundane and urbane and frequent flashes of up-scale, high-gloss and chic.

Birmingham is, in many interesting ways, a city of contradictions. If you walk inside the Jefferson County Courthouse, you will see enormous WPA-style murals depicting the southern way of life. One depicts a Southern belle (hooped skirt, of course) with slaves carrying cotton bales in the background. Only a few blocks away is a recently dedicated statue of Martin Luther King, Jr., in the middle of Kelly Ingram Park.

If you take a stroll through Birmingham's business district, you will find that several turn-of-the-century buildings, representing Victorian, Richardsonian and Romanesque-revival architectural styles, have been restored to reflect the brash emergence of Birmingham in the post-Civil War Industrial era. Note, for example, the Steiner Building (1890) on the corner of 21st Street and 1st Avenue North; the Zinszar Building, 2117 Second Avenue North; the McAdory Building (1888) on 1st Avenue North between 20th

and 21st Streets; or the Harris Building on 21st Street between 1st and 2nd Avenues North.

On the other hand, you can hardly miss noticing the new SouthTrust Tower with its granite and glass angles; the modern Birmingham Public Library, with its glass and steel corner facade pointing skyward; the Atrium, an urban mall/office complex on 3rd Avenue North between 19th and 20th; or the new federal courthouse. As you walk along 21st Street, you will see the new Downtown YMCA's glass brick walls refracting the cool blue of the indoor swimming pool. While retaining its sense of history, Birmingham's increasingly diversified economy reflects eclectic tastes in architecture, design and lifestyle.

For entertainment, the Magic City offers smoky jazz bars, a nightclub for standup comics, numerous clubs for local rock and roll groups and several places where you can find footstomping blends of blue grass and country music. In addition, the drama and music departments at UAB, Birmingham Southern and Samford frequently host musical or dramatic shows, even in the summertime. With the regular season ended, the Alabama Symphony Orchestra has a special summer season, including outdoor con-

certs at neighborhood parks in Birmingham and a series of outdoor concerts at Oak Mountain State Park, 20 miles to the south. The Birmingham Summerfest Theatre presents several productions each summer at the Municipal Auditorium, including "The King & I" during the weekend of the state bar's annual meeting.

The Birmingham Museum of Art is the largest municipal museum in the southeast. Its permanent collection is among the finest and includes an outstanding display of Western American art, the world's largest collection of contemporary Chinese paintings outside of China and a beautiful grouping of Italian Renaissance, pre-Columbian and Asian art.

A most unusual—and frequently overlooked—Birmingham landmark is the Sloss Furnaces National Historic Landmark. At one time, millions of tons of iron flowed from the furnaces, but in 1971 it ceased operation. Now it has been turned into a downtown park and museum where visitors can walk into the heart of the once-thriving furnace complex and learn about these enormous industrial machines and the men who operated them. The giant casting shed at the furnaces frequently plays host to concerts by the Alabama Symphony Orchestra, jazz bands, other musical groups and storytellers. Visitors to Birmingham might also be interested in the Birmingham Zoo, whose diverse collection spans more than 100 acres and includes Siberian tigers and white rhinoceroses.

The Red Mountain Museum is a museum of science, whose focal point is the enormous slice taken out of Red Mountain to build the Red Mountain Expressway from the southern suburbs into the city. Amateur scientists, especially geologists or archaeologists, find the exhibits, audiovisuals and other displays at this museum quite fascinating.

For those interested in shopping, the new magnificent Riverchase Galleria, which opened in mid-February, is a great attraction. This enormous mall encloses 1.75 million square feet of shopping space, including a skylight nearly a quarter of a mile long, and offers many stores new to Alabama.

For conversation after a long day or getting the evening off to a roaring start, Birmingham offers a wide variety of neighborhood bars, "fern bars," "brass and glass" bars, sandwich shops and other spots for a light snack or a beer after work.

Not to be missed is Five Points South, in the heart of the area around University of Alabama at Birmingham. A quiet place of shops and boutiques during the day, this newly restored section of Southside contains some of the most interesting restaurants, bars and nightclubs that come alive after dark.

In dining, the contrasts range from the traditional family-styled restaurants (meat-and-potatoes-and-seafood-on-the-side) to the more posh (and expensive) modern restaurants featuring nouvelle, American and traditional French and Continental cuisine and extensive wine lists. While not a mecca for exotic foreign food, Birmingham has more than its share of Mexican, Chinese, Italian, Lebanese and Greek restaurants.

In short, the Magic City has much to offer both its residents and the visitor. So, if you have not been to Birmingham in several years—or even if you live here—and you have a sense of adventure, you may find that Birmingham really is the Magic City and doing its best to spread the magic.

Restaurants

The variety of restaurants available in Birmingham is great. The following list is not exhaustive, but merely representative of favorite spots of Birmingham lawyers. For a more complete guide to restaurants, consult your local hotel or telephone directory.

Family Restaurants

John's Restaurant
112 21st Street North
11 a.m. to 10 p.m.
Monday—Saturday

The vinyl dining booths, the hustle and bustle of the kitchen and the way Miss Lena calls everyone "hon" or "dear" as they leave, tells you promptly this is a family restaurant. The seafood is always fresh, the cornbread is good, the cole



Vulcan, Birmingham's most familiar landmark

slaw cannot be beat and the steaks (I am told) are more than adequate. Do not pass up the softshell crabs if available.

Michael's Sirloin Room
431 20th Street

Michael's is the place to go in Birmingham to get a steak. Michael's touts itself as "where sportsmen meet and eat." If you want your basic meat and potatoes fare and entertain yourself by looking at photos of sports heroes, Michael's is your place.

Down the Street
414 21st Street South

Down the Street has terrific food usually very well prepared. Fortunately, visitors find the garish decorations quaint, especially when they find the food wonderful. Like John's and Michael's, Down the Street's fare is straightforward. Do not expect too many subtleties to hit your palate. For the unusual, however, try a side order of spaghetti with burnt butter sauce. For dessert, get the best Irish coffee in town.

Alabama Seafood
611 21st Street South

If you want good seafood (broiled or fried) on plastic plates, with plastic uten-



Familiar sight at the popular Birmingham zoo

sils, you have found your spot. If you are in a hurry, go to Alabama Seafood; if you want to linger over a meal at a location with some atmosphere, go elsewhere. For future reference, remember that Alabama Seafood has a very good selection of fresh fish in its market.

The Social Grill
231 23rd Street North

The only remarks ever made about The Social Grill are all variations on, "The vegetables are the best in town." If you are coming to Birmingham to eat vegetables, go there. In the middle of July, however, you should be able to find better vegetables closer to home.

The Bright Star Restaurant
304 19th Street North in Bessemer

The Bright Star is Bessemer's answer to John's. Most Birminghamians find that John's is a good enough answer in itself. If you want to explore, however, try Bessemer.

Nicki's Restaurant #1
1101 Second Avenue, North
10:30 a.m. to 10:30 p.m.

The folks who run Nicki's are related to the folks who run John's. They haven't exchanged all the family secrets, however. If John's is crowded, try Nicki's.

LaParee Restaurant
2013 5th Avenue North
11 a.m. to 10 p.m.

Like other restaurants of its kind, it is all too frequently compared with John's. Unfortunately for LaParee, John's usually wins; some say it's a close call. If John's is crowded, try LaParee.

Leo's Seafood and Steak House
401 18th Street South

Like others, Leo's seems to have followed the John's model. If it's straightforward fried or broiled seafood you want, try Leo's.

Barbeque
Carlile Barbeque
3511 6th Avenue South

Among members of the Birmingham Bar, Carlile's gets many votes for the best barbeque in Birmingham, with an old fashioned vinegar and pepper sauce. The meat is smoked for hours. To top it off, Carlile's has a liquor license. A plate of pork barbeque and a cold beer are hard to beat.

Ollie's
515 University Boulevard

Touted for years as "the world's best barbeque," Ollie's is also a favorite among Birmingham lawyers. Ollie's is

clean, well-lit, with friendly service and good barbeque. If you have an appreciation for history, review *Katzenbach v. McClung*, 379 U.S. 294 (1964), before you go to Ollie's.

Old Plantation Barbeque
830 First Avenue North

While Old Plantation probably has a catchier name and a quainter setting than Ollie's or Carlile's, the barbeque seems to lack zest.

T.J.'s Barbeque
3608 5th Avenue South

A crowd of labor lawyers in Birmingham claims T.J.'s has the best barbeque in town. If you disagree, please do it discreetly.

Green Top Cafe
Highway 78 in West Sumiton

Some Birminghamians actually drive halfway to Jasper to get barbeque.

Johnny Ray's Barbeque
Various locations

Johnny Ray's is becoming very popular in Birmingham, especially among the younger set. They tend to like its sweet and sour barbeque sauce more than the old fashioned vinegar and pepper sauce found at Ollie's or Carlile's.

Uptown/Pish-Posh
Highland's Bar and Grill
2011 11th Avenue South

This is the place to be seen in Birmingham. Clearly, it is the "best" restaurant in town according to Birmingham's yuppies, jet-setters and other fast-trackers. The martinis are outstanding, the wine list is remarkable and the variety of interesting American and nouvelle cuisine is worth trying. For those who do not want to break the budget, you should go to the bar, have a martini and try some of the crab claws. Then go out and grab a hamburger or barbecue.

Southpoint American Cafe
1931 11th Avenue South

If you want food that is not quite as good as Highland's, where reservations are easier to obtain and the premium "on

being seen" is not quite so high, try Southpoint. The service is sometimes less than adequate, but the food is usually very good.

Dexter's on Hollywood

354 Hollywood Boulevard between Mountain Brook and Homewood

Dexter's is a less self-conscious version of Highland's. It does not try quite as hard as Southpoint to copy Highland's menu, atmosphere or wine list. It is intimate, without being showy, and the service is usually excellent.

LaVieille Taverne

1318 20th Street South

To have an adequate French meal served outdoors under the trees and stars, La Taverne may be it. It could be the most charming and frequently overlooked dining in Birmingham, and it certainly makes up with atmosphere what it lacks in preparation.

Christian's Classic Cuisine

2031 East Cahaba Road

Reportedly the best French restaurant in Birmingham, it places less emphasis on nouvelle or American cuisine and more on traditional French, with traditional French prices.

Chinese/Japanese

Great Wall

730 Valley Avenue

This Chinese restaurant is very small and serves exceptionally good food. The hot and sour soup is probably the best in town; the service is excellent and prices reasonable.

The Cathaway Inn

1926 29th Avenue South

This is a good Chinese restaurant, but similar to others.

The China Garden

7929 Crestwood Boulevard

This is another good Chinese restaurant with good atmosphere and service. The food is like many Chinese restaurants in Birmingham—better than adequate.



The Southern Museum of Flight



Five Points South

Joy Young

Brookwood Gallery

For years this was the only Chinese restaurant in town and located on 20th Street. For old fashioned Chinese-American dishes where you still get rolls and rice with your meal, try Joy Young's. The emphasis is on Cantonese and American dishes, including seafood and

steaks, rather than more unusual Chinese dishes.

Renge' Japanese Restaurant

68 Greensprings Highway

This is possibly the only place in Birmingham to serve sushi, and, also, possibly its only claim to fame.

Birmingham

Mexican

LaCocina—Mountain Brook

LaCocina previously was located on the southside of Birmingham. After a fire at that location, the owners decided to move to Mountain Brook. The atmosphere is nice, the food very good. Unfortunately, the service is frequently terrible, but this is still a pleasant place to spend an evening.

Amigo's

20th Street South

This Mexican restaurant probably has the most authentic Mexican food of any restaurant in Birmingham. The service is friendly, and Jesse Hernandez, the owner, will probably drop by your table if he is not too busy.

El Gringo's

5500 Crestwood Boulevard

El Gringo's has adequate-to-good Mexican food, very good service, red plastic tablecloths and traditional Mexican decor (including the obligatory portraits of a senorita and a matador). While the food may not be the best in town, the tacky decor, prompt and friendly service and sufficient quantities of beer make El Gringo's a good choice.

Italian

Romeo's

7th Avenue South

between 21st and 22nd Streets

Be careful descending the steps to the basement of Romeo's. Once you are there, however, the Romeo family will take care of you. While Mrs. Romeo prepares your meal in the kitchen in the back, Herb and Ernie will take care of you out front. The selection of meals is not outstanding, but you will never complain about the service, the wine list or the atmosphere. Romeo's has the real feel of an Italian cantina and, after a glass of Chianti and an appetizer, you will feel as if you are hardly in Birmingham at all. The food is not always outstanding, but it is still the best Italian meal in town.

Rossi's

20th Street South

While Rossi's claims to be an Italian restaurant, it is more like a Michael's that serves some Italian food. While the food is fairly well prepared, the menu covers too much ground to expect the chef to be able to prepare an outstanding Italian meal. Therefore, if you are with a large group, some of whom are reluctant to go to an Italian restaurant, you might choose Rossi's. If everyone in your group wants Italian, make reservations and go to Romeo's.

Other

The Pita Stop

This is a small Lebanese restaurant with outstanding food. Most dishes are chicken or lamb casseroles, kabobs or roasts and served with rice pilaf. The prices are good, the service excellent and the food outstanding.

The Mediterranean Restaurant

7th Avenue South between

21st and 22nd Streets

This restaurant serves Italian/Greek/Lebanese dishes. The atmosphere is quite nice, the service is very good and, while perhaps overpriced, the selection and preparation of the meals are more than adequate.

Breakfast

Your hotel may serve an adequate breakfast in its restaurant, but the best breakfast in town clearly is at Bogue's, 3028 Clairmont Avenue. A cup of coffee and a tall stack of blueberry pancakes will make your day. If you do not feel so adventuresome, try the ham and cheese omelette and an order of biscuits.

Fern Bars/Brass and Glass Bars

The following establishments cater to the after-work crowd in search of a quick dinner, a slow beer and night life in Birmingham.

Billy's

2012 Cahaba Road

English Village

The only real neighborhood bar in Birmingham, Billy's is a favorite spot for many lawyers and their spouses. It offers

a variety of sandwiches and beer and a casual atmosphere; it is frequently referred to as the Cahaba Road conference room for a number of Birmingham law firms.

Wanda June's Deli and Wine Shop

2031 Cahaba Road

English Village

Wanda June's is a sandwich shop also serving beer. It attracts basically the same clientele as Billy's, but the variety on the menu is greater, and the emphasis on food is stronger.

Dugan's

Corner of Highland Avenue

and 20th Street

Dugan's may have the distinction of being the first fern bar established in Birmingham. Although it may have been overtaken by some of the flashier bars around the Five Points' area, Dugan's is still a good standby.

Rube Burrows

Five Points South

20th Street

Rube Burrows may have the best hamburgers in Birmingham. They try to get too fancy with their nachos, and the music is usually too loud, but the bottom line is good, but overpriced, hamburgers.

Clyde Houstons

Five Points South

This is another flashy brass and glass bar in the Five Points' area offering a variety of sandwiches, appetizers and other bar food.

Hopper's

Five Points South

If Clyde Houstons is crowded, go to Hopper's, and vice versa.

Cabana Cafe

Brookwood Village

This place tries to create the atmosphere of a bar/restaurant in Destin without the fragrance of a sea breeze nor the aroma of cooked, fresh snapper. Nevertheless, the atmosphere and variety on the menu are different from most bars

and sandwich shops in Birmingham. Also, you can usually find a nice filet of fish as an entree.

Fred Gang's

Highway 280 near Mountain Brook

It is unclear whether Fred Gang's is a restaurant with a bar or a bar with a restaurant. The Hare/Wynn football brunch is held here annually and always is outstanding. Beyond that, the jury is still undecided.

Art Galleries

There are a number of art galleries in the Birmingham area; some are listed below.

Maralyn Wilson Gallery

2010 Cahaba Road
English Village
879-0582

Little House

2915 Linden Avenue
Homewood

Cobb Gallery

One Cobb Lane
(near Five Points)

Henderson Fine Arts

2015 Third Avenue North

Village Framers

2000 Cahaba Road
English Village

Antiques

Also, there are numerous places to look for antiques in Birmingham, found principally in three areas: near Magnolia Park—Five Points South, in Mountain Brook Village and in Homewood.

Five Points South

Birmingham Antiques Mall
2211 Magnolia Avenue
10:30 a.m. to 5:30 p.m.
Monday through Saturday

Hanna Antique Mall

2200 Magnolia Avenue



Arlington antebellum home and gardens

Tuesday through Saturday
10 a.m. to 5 p.m.

Magnolia Antiques
2237 Magnolia Avenue

Pyburn's Antiques
912 22nd Street South

Homewood

Frankie Engel Antiques
2949 18th Street
Homewood

Antiques South
1722 28th Avenue South
Homewood

Horse of a Different Color
1813 29th Avenue South
Homewood

Martin Antiques
1923 29th Avenue South
Homewood

Michael's Antiques
1831 29th Avenue South
Homewood

Mountain Brook
King's House Antiques
2418 Montevallo Road

Dande' Lion
2701 Culver Road

Edward's Galleries
66A Church Street

Gregory H. Hawley is a graduate of Harvard College and the Georgetown University Law Center. He clerked for the Honorable U.W. Clemon, United States district judge, and is an associate with the Birmingham firm of Bradley, Arant, Rose & White. He also serves on the editorial board of The Alabama Lawyer.

cle opportunities



july

16-18

SUMMER CONFERENCE
Gulf State Park Resort, Gulf Shores
Alabama District Attorneys Association
(205) 261-4191

17-18

**CURRENT DEVELOPMENTS IN
TRADEMARK LAW**
The Halloran House, New York
Practising Law Institute
Credits: 12.0 Cost: \$395
(212) 765-5700

17-19

ANNUAL MEETING
Wynfrey Hotel, Birmingham
Alabama State Bar
Credits: 13.0 maximum Cost: \$45
(205) 269-1515

21-22

**FINANCE AND ACCOUNTING FOR
LAWYERS**
The Westin Bonaventure, Los Angeles
Southern Methodist University School of
Business
Credits: 9.9 Cost: \$360
(214) 692-3336

21-25

LAND USE INSTITUTE
University of Colorado School of Law,
Boulder
American Law Institute-American Bar
Association
Credits: 25.8 Cost: \$600
(215) 243-1600

25 friday

**CHECKLIST FOR SHAREHOLDER
AGREEMENTS**
Birmingham
Birmingham Bar Association
Credits: 1.0
(205) 251-8006

july-august

28-1

ESTATE PLANNING
Hilton Inn, Dallas
Southwestern Legal Foundation
(214) 690-2377

**POSTMORTEM PLANNING AND
ESTATE ADMINISTRATION**
Virginia School of Law, Charlottesville
American Law Institute-American Bar
Association
Credits: 33.6 Cost: \$600
(215) 243-1600

4-5

BLUE SKY LAWS
The Ambassador West Hotel, Chicago
Practising Law Institute
Credits: 12.6 Cost: \$360
(212) 765-5700

7-8

**QUALIFIED PENSION AND PROFIT-
SHARING PLANS**
The Drake Hotel, Chicago
Practising Law Institute
Credits: 14.4 Cost: \$390
(212) 765-5700

BUSINESS LOAN WORKOUTS
Century Plaza Hotel, Los Angeles
Credits: 13.2 Cost: \$390
(212) 765-5700

14-15

CREATIVE REAL ESTATE FINANCING
The Stanford Court, San Francisco
Practising Law Institute
Credits: 13.2 Cost: \$390
(212) 765-5700

14-17

SUMMER SEMINAR
Gulf Shores Yacht & Racquet Club, Gulf
Shores
Alabama Trial Lawyers Association
(205) 262-4974

18 monday

BASIC UCC SKILLS—ARTICLES 3 and 4
Holiday Inn Union Square, San Francisco
Practising Law Institute
Credits: 6.6 Cost: \$225
(212) 765-5700

19-20

BASIC UCC SKILLS—ARTICLES 5 and 9
Holiday Inn Union Square, San Francisco
Practising Law Institute
Credits: 13.2 Cost: \$390
(212) 765-5700

21 thursday

WILL DRAFTING

Ramada Inn Airport, Mobile
Alabama Bar Institute for CLE
(205) 348-6230

5 friday

REAL ESTATE

Birmingham
Alabama Bar Institute for CLE
(205) 348-6230

19-20

EVIDENCE

Civic Center, Birmingham
Alabama Bar Institute for CLE
(205) 348-6230

22 friday

WILL DRAFTING

Civic Center, Birmingham
Alabama Bar Institute for CLE
(205) 348-6230

11 thursday

REAL ESTATE

Mobile
Alabama Bar Institute for CLE
(205) 348-6230

22-26

ANTITRUST LAW

Westin, Dallas
Southwestern Legal Foundation
(214) 690-2377

28 thursday

SOCIAL SECURITY

Civic Center, Birmingham
Alabama Bar Institute for CLE
(205) 348-6230

11-12

TRYING CASES TO WIN

Dallas
Professional Education Systems, Inc.
Credits: 15.6 Cost: \$345
1-800-826-7155

24-27

SUPERSTARS OF CRIMINAL DEFENSE

Ritz-Carlton Hotel, Atlanta
Atlanta Bar Association
Credits: 24.3 Cost: \$325
(404) 521-0781

28-29

PROFESSIONAL LIABILITY

Brown Palace, Denver
Defense Research Institute
(312) 944-0575

12 friday

REAL ESTATE

Montgomery
Alabama Bar Institute for CLE
(205) 348-6230

25 thursday

TORT REVIEW

Huntsville
Alabama Bar Institute for CLE
(205) 348-6230

september

4 thursday

REAL ESTATE

Huntsville
Alabama Bar Institute for CLE
(205) 348-6230

18 thursday

LITIGATION RISK ANALYSIS

Plaza of the Americas, Dallas
Litigation Risk Analysis, Inc.
Credits: 7.7 Cost: \$600
(415) 854-1104



Attorneys Admitted to Bar, Spring 1986

Marcia Jane Bachman	Madison, Alabama	Frank Reinholdt LaBudde, III	Anniston, Alabama
David Paul Bains	New Orleans, Louisiana	Welborn LaRoy Matthews, Jr.	Danville, Alabama
David Norman Blaikie	Birmingham, Alabama	Teresa Lynn McClendon	Birmingham, Alabama
Craig Stewart Bonnell	Birmingham, Alabama	Russell Thomas McDonald, III	Birmingham, Alabama
Patricia Lynne Bortz	Birmingham, Alabama	Michael John McHale	Birmingham, Alabama
Clifford Claborne Carter	Mobile, Alabama	John Randle McKinney	Gulf Shores, Alabama
Kim James Chaney	Carbon Hill, Alabama	James Russell McMurry	Guntersville, Alabama
Bobby Hill Cockrell, Jr.	Birmingham, Alabama	Aubrey Wayne Mills	Andalusia, Alabama
Timothy Barnabas Crowson	Huntsville, Alabama	Michael Royce Mills	Atlanta, Georgia
Manley Lafayette Cummins, III	Tuscaloosa, Alabama	Deborah Butler Montgomery	Birmingham, Alabama
William Lawrence Cunningham, Jr.	Birmingham, Alabama	John Joseph Park, Jr.	Birmingham, Alabama
Timothy Bledsoe Davis	Alexander City, Alabama	Michael Albert Parman	Birmingham, Alabama
Joseph Carl Denison	Pensacola, Florida	James Hiram Patrenos, Jr.	Livingston, Alabama
Dorothy Rush Drake	Tuscaloosa, Alabama	Randall Brooks Perry	Huntsville, Alabama
Melvin Leon Drake, Jr.	Birmingham, Alabama	Andy Scott Poole	Montgomery, Alabama
Silver Broome Eberly	Mobile, Alabama	Kathy Amelia Powell	Birmingham, Alabama
John William English, Jr.	Auburn, Alabama	Richard Allen Reed	Montgomery, Alabama
James Richard Frees	Madison, Alabama	Shirley Beasley Roberson	Prattville, Alabama
Jeffrey Edwin Friedman	Birmingham, Alabama	Sidney Owens Roebuck, Jr.	Birmingham, Alabama
Frederick Jerome Gant	Pensacola, Florida	Robert Jackson Russell, Jr.	Montgomery, Alabama
Kerry Randall Gaston	Montgomery, Alabama	Celeste Wallner Sabel	Montgomery, Alabama
Donald Gautney	Montgomery, Alabama	Yusuf Abdul Salaam	Selma, Alabama
Steven Dale Giddens	Talladega, Alabama	Martha Lynn Sherrod	Huntsville, Alabama
Alma Jayne Gordon	Nashville, Tennessee	Richard Simon	Birmingham, Alabama
William Stephenson Halsey, III	Birmingham, Alabama	Andrew Appling Smith	Tuscaloosa, Alabama
John Thomas Harmon	Montgomery, Alabama	Daniel Davidson Sparks	Birmingham, Alabama
Deward John Harrison	Montgomery, Alabama	Maurice John Steensland, Jr.	Dothan, Alabama
John Newman Hester	Birmingham, Alabama	Gerald Bernard Taylor, Jr.	Altamonte Springs, Florida
David Allen Hilleren	New Orleans, Louisiana	Jack Anthony Taylor	Birmingham, Alabama
Michael Jackson Hollingsworth	Birmingham, Alabama	Kevin Denver Teague	Decatur, Alabama
Christopher Manning Hopkins	Alexandria, Virginia	Charlotte Ming Tesmer	Letohatchee, Alabama
Andy Karl Hughes	Ozark, Alabama	Jerome Murlan Twiggs, Jr.	Union Springs, Alabama
Carolyn Carr Hyman	Gadsden, Alabama	Earl Price Underwood, Jr.	Jacksonville, Alabama
Angelina Dee Dee Barnes Jackson	Montgomery, Alabama	James Dean Vilos	Trussville, Alabama
Eric Daniel Jackstadt	Granite City, Illinois	John George Vlahakis	Birmingham, Alabama
Lillie Bell Jones	Eutaw, Alabama	Charles Victor Welden, III	Birmingham, Alabama
Hattie Engel Kaufman	Birmingham, Alabama	Guy Rodney Willis	Millbrook, Alabama
Thomas Lauren Kelly	Bessemer, Alabama	Thomas Allan Wingo, Jr.	Birmingham, Alabama
Gregory Allen Kenemer	Birmingham, Alabama	Mickey Womble	Monroeville, Alabama
Karen Elaine Kimbrell	Montgomery, Alabama	John Genaro Zingarelli	Cullman, Alabama

Spring 1986 Bar Exam Statistics of Interest

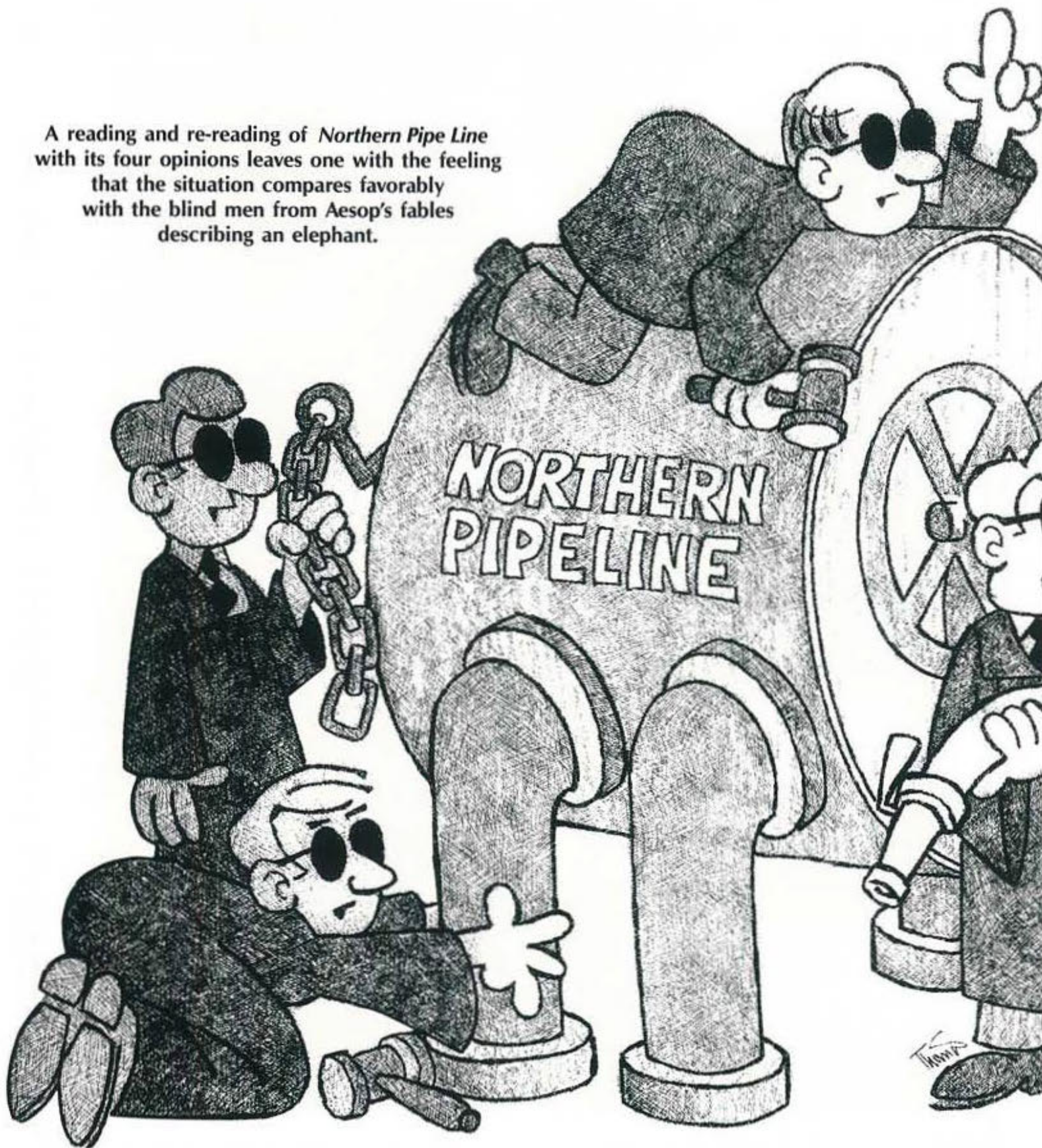
Number sitting for exam	191
Number certified to Supreme Court	80
Certification rate	42%
Certification percentages:	
University of Alabama	56%
Cumberland	40%
Alabama nonaccredited law schools	30%

SPRING 1986 ADMITTEES



Comfort Orders, Legal

A reading and re-reading of *Northern Pipe Line* with its four opinions leaves one with the feeling that the situation compares favorably with the blind men from Aesop's fables describing an elephant.



Title and the Constitution

Should Sales by the Trustee be Judicial Sales?

by the Honorable Stephen B. Coleman

"The First Thing We Do, Let's Kill All the Lawyers"

Shakespeare: "Henry VI"—Part II,
Act IV, Scene ii

The remnant¹ of us still in office composing the bankruptcy judge system view the ruins of the Bankruptcy Act of 1978 with the conviction that those who "build a house on quicksand, labor in vain." A reading and re-reading of *Northern Pipe Line*² with its four opinions leaves one with the feeling that the situation compares favorably with the blind men from Aesop's fables describing an elephant. The chief justice presented the easiest solution—"route the case through the district court."³

Congress did just that in the 1984 amendments⁴ and, in my opinion, "fixed it" by going back to the pre-code era, except that this time Congress kept the bankruptcy judges and neutralized bankruptcy courts.⁵ The scheme is working very well, and the bankruptcy judges, as always, are bending to the task. Bankruptcy cases are flowing at a normal pace in most divisions.

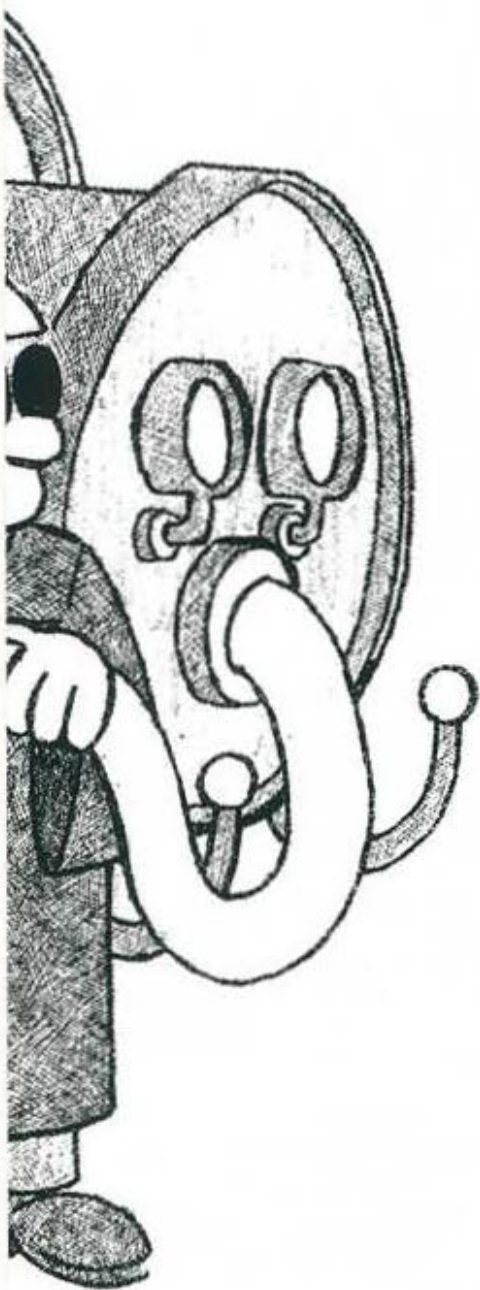
The Bankruptcy Code was modified and refined by bankruptcy amendments and the Federal Judgeship Act of 1984, but essentially left intact, and the spirit and reforms sought to be asserted in 1978 remain with us—together with some unresolved problems and unanswered questions.

Assuming that the only excuse for statutes and acts of Congress stems from the need to bring about justice, clarify rights of litigants and modernize procedure, we view with conviction the

proposition that the courts really exercise the prerogative to declare the law in myriads of cases decided over a period of many years—yea, centuries. Law is the combined wisdom of the multitude of decisions. The Supreme Court of the United States as the watchdog for the Constitution has been a bulwark for the clarification of bankruptcy law.⁶ In part, bankruptcy is a procedure by which property is taken from one and given to another and contracts are annulled and rights lost, subject to compensation in proper cases for damages.⁷

The Bankruptcy Code has as one of its purposes the facilitation and quickening of the process of liquidation. Liquidation of the estate is only one facet of a bankruptcy case, but a very essential part, if not the prime purpose.⁸ Since it is assumed that in the process of converting assets to cash a sale is necessary, most if not all asset estates end up in a sale. Sales in bankruptcy has been the subject of many cases and articles.⁹

To facilitate and quicken sales by the trustee certain changes were deemed essential to the adoption of the Code. Title passing under old section 70a upon adjudication from the debtor to the trustee was eliminated. Instead, section 541 set up a definition of property of the estate,¹⁰ without a conveyance or expressed transfer of title to the trustee, but with his right under 363b to *use, sell or lease property of the estate, after notice and a hearing*. If notice was given by the trustee and



Section 102(1) was complied with, no court action was conceived to be necessary.

Under this section, if no one objects or requests a hearing, the trustee is deemed authorized to convey the property and collect the consideration without the knowledge or assistance from the court. The trustee sells just as any private owner without the need for help or permission from the court, or gets the debt or to, since he has no title. He executes his own deed and conveys title on his own initiative. The trustee makes a sale as an individual under the authority presumably granted by law, and the sale is in no sense a judicial sale by the court.¹¹

The writer is very conscious of suggestions by advisory committees and the fine print suggestions by commentators of legislative history that the trustee should be able to sell without help from the court; the writer may in a sense be

swimming upstream. However, a judge should interpret for himself what a law means and not be bound by how non-judicial writers seek to influence courts or impress their will as part of the new deal or the desired movement. Fundamental principles of law and constitutional restraints cannot be ignored. Exhibit and behold *Northern Pipe Line*.

The trustee does not necessarily give an *unimpeachable title* because the bankruptcy judge, on objections later filed, may refuse to confirm the sale for various reasons or set aside the sale. What the trustee does must ultimately be reported to the court and accounted for, or the trustee will not be discharged or released from his bond under section 350a. Suppose the court considers the consideration wholly inadequate or the sale voidable—who takes this risk?

Since most real estate sales are made on a written contract of sale, they con-

tain clauses for the furnishing of a title policy. Title companies usually stipulate a condition for court orders with other conditions. Since the trustee has no vested statutory title but a statutory right to sell under section 363b, the writer conceives the trustee should not try to avoid a court hearing, but seek one after notice to all creditors to comply with the Bankruptcy Rules of Procedure 2002 and 363b. This is the rationale of *In re Hooten Enterprises*.¹²

To suggest one can make a title company eliminate the conditions it insists upon is in the writer's mind a childish notion and equates with making a mule drink when he does not want to drink. The buyer will not buy. Those who go around the country preaching "title is not important" and "parties do not have a right to ever have a jury trial in bankruptcy proceedings" apparently disregard constitutional limitations and historical precedents. Do they really mean the trustee can sell property, whether he has title, and thus sell other people's property just to facilitate his liquidation?

The trustee should seek a notice and actual court hearing before the bankruptcy judge to exercise his statutory right to sell under 363b. Otherwise, he frustrates himself.

If so-called *Comfort Orders* relate to requests to validate *without hearing* what the trustee has done, no bankruptcy judge should give one. He is not in-

WE WANT YOU TO JOIN OUR SPEAKERS BUREAU!

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



SPEAKER'S BUREAU APPLICATION

Name _____

Firm Name (if applicable) _____

Address _____

City _____ State _____ Zip _____

Telephone _____

Please list subjects on which you are willing to speak:

1) _____

2) _____

3) _____

NOTICE

Although the Alabama State Bar directory will not be published until August, you can save money by ordering **extra** copies now!

Subscriptions are available at an advance cost of \$7.50 each (members of the state bar, in good standing, will receive one complimentary copy in August), and may be ordered by writing:

Margaret Lacey
Alabama State Bar Directory
P.O. Box 4156
Montgomery, AL 36101
(205) 269-1515

terested. No relief has been properly sought from the judge.

The trustee has a right to seek an order of confirmation on his original report of sale under 363b and Rule 6004 of the Bankruptcy Rules of Procedure. The court cannot refuse him, and the judge must order the clerk to give notice under section 2002 and as contemplated under BRP 6004. The practice of giving double notice and charging the estate for two notices should be discontinued.

Rarely does the trustee sell unencumbered real estate. If he seeks to sell *free and clear of liens* he proceeds under 363(f). The procedure is quite different and has quite a historical background¹³ requiring more understanding of adversary proceedings and legal titles to land. The bankruptcy court always should observe the requirements of due process and give parties ample notice and an opportunity to be heard and to be represented by counsel. Reciting in a deed or bill of sale that the sale is free and clear of liens is ineffectual and meaningless unless due process is observed or the lienholder consents or is paid in full satisfaction on closing. Section 363(f)

Northern Pipe Line should have been convincing enough that neither courts nor trustees can ignore constitutional rights or take property without due process of law¹⁴ or supply title where none exists or *give notice* unless authorized. The writer, for one, would heartily agree for the U.S. Trustee to take over liquidation and distribution of the estate, pay dividends to creditors and be able to sell *willy nilly* without let or hinderance. Let the judge handle only judicial matters. Unfortunately, the trustee cannot conduct a hearing, authorize the giving of notice, make an order or confirm a sale. He cannot convey or transfer title he does not have. Congress has prescribed the procedure. The trustee can sell after *notice and hearing* by the court, and he has no title or authority except after notice and hearing before the court, because Congress has so stipulated. Can the trustee decide that he will give notice and thereby dispense with hearing? Does section 102 authorize the trustee to give notice? Do the rules authorize the trustee to give notice? Has the code effectually dispensed with judicial sales? The writer fears we still are bound by constitutional and statutory restraints. ■

FOOTNOTES

1 *The Administrative Office of the United States Courts reports that 54 bankruptcy judges have retired or resigned since July 10, 1984.*

2 *Northern Pipe Line Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982)

3 *In that regard, Chief Justice Burger stated as follows in his dissenting opinion:*

It will not be necessary for Congress, in order to meet the requirements of the Court's holding, to undertake a radical restructuring of the present system of bankruptcy adjudication. The problems arising from today's judgment can be resolved simply by providing that ancillary common-law actions, such as the ones involved in this case, be routed to the United States district court of which the bankruptcy court is an adjunct.

458 U.S. at 92; 102 S. Ct. at 2882; 73 L. Ed. 2d at 629

4 *Bankruptcy Amendments and Federal Judgeship Act of 1984*, Pub. L. No. 98-353, 98 Stat. 333 (codified at 28 U.S.C. §151 et seq. and 11 U.S.C. §101 et seq.)

5 28 U.S.C. §157 (1984)

6 See, generally, E. Dryer, *Supreme Court Bankruptcy Law*, (1937); T. Finletter, *The Law of Bankruptcy Reorganization* (1939); 1 *Collier on Bankruptcy* §51.2 (15th ed. 1985); Coleman, *Quo Vadis? An Echo from the Past*, Vol. II, No. 2, A.B.I. Newsletter, at 6 (1984).

7 *Wright v. Union Central Life Ins. Co.*, 304 U.S. 502, 58 S. Ct. 1025, 82 L. Ed. 1490 (1938); cf. *Ashton v. Cameron County Water Improvement District No. One*, 298 U.S. 513, 522, 56 S. Ct. 892, 897, 80 L. Ed. 1309, 1315 (1936) (Cardozo, J., dissenting)

8 2 *Collier on Bankruptcy* §363.03 (15th ed. 1985); 4B *Collier on Bankruptcy* §70.97 (14th ed. 1978)

9 2 *Collier on Bankruptcy* §363.03 (15th ed. 1985); 4 B *Collier on Bankruptcy* §70.97 (14th ed. 1978)

10 11 U.S.C. §541 4 *Collier on Bankruptcy* §541.01 et seq. (15th ed. 1985)

11 The following statement appears in 2 *Collier on Bankruptcy* §363.03 at 363-17 (15th ed. 1985): "A court order is not required. The trustee is required to give notice of any proposed use, sale, or lease to provide an opportunity for objections and a hearing if there are objections." In this writer's opinion, both statements are misleading. Where do the authors of that treatise find authority for the trustee to give notice? Bankruptcy Rule 2002(a) provides that the clerk shall give notice of any proposed sale and nothing in Bankruptcy Rule 6004 grants the trustee

that authority except in the case of sales of less than \$2,500 and nothing appears in 11 U.S.C. §102 which confers authority on the trustee to give his own notice. In the writer's opinion, this is a fatal obstacle to dispensing with "notice and a hearing." But see, *In re Northern Star Industries, Inc.*, 38 B.R. 1019 (E.D.N.Y. 1984); *In re Prescott College*, 10 B.R. 316 (D. Ariz. 1981); *In re Robert L. Hallamore*, 40 B.R. 181 (Bkrcty D. Mass. 1984); *In re Hanline*, 8 B.R. 499 (Bkrcty N.D. Ohio 1981).

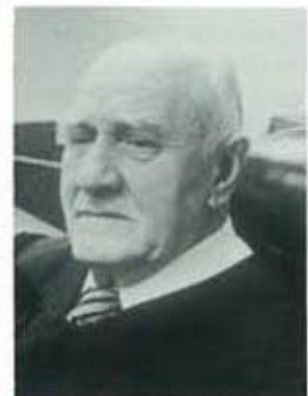
12 *In re Hooten Enterprise, Inc.*, 21 B.R. 499 (Bkrcty N.D. Ala. 1982) Note the warning stated in 2 *Collier on Bankruptcy* §363.03 at 363-19 (15th ed. 1985):

A legitimate question at this time is whether sales grounded upon an "authorization" arising from a failure to timely object by requesting a hearing will be viewed as being entitled to the full dignity of a judicial sale. Certain aspects of Bankruptcy Rule 606 were clearly superseded by the Code, including those parts of the Rule providing for judicial supervision of the sale, and it is clear that Rule 6004 does not contemplate judicial involvement in the sale. In addition, Rule 6005 precludes any court officer or employee from acting as auctioneer. It remains to be seen whether the appellate courts will, as we hoped, find that the procedure outlined in the Code, while clearly complying with due process, is to be given the same degree of appellate support as the bankruptcy sales of the past which were carefully supervised by the courts. Until title companies become familiar with the Code it may well be that where the proposed sale is significant, the trustee should request a formal hearing so that an order approving both the notice and the sale may be obtained. In light of the radical changes in the Code in connection with the sale of property of the estate, it need hardly be observed that much of the prior case law dealing with bankruptcy court sales must be viewed with suspicion and careful inquiry made into whether the statutory foundations for the case in question remain in the Code.

13 *Wright v Union Central Life Ins. Co.*, 304 U.S. 502, 58 S. Ct. 1025, 82 L. Ed. 1490 (1938); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 55 S. Ct. 854, 79 L. Ed. 1593 (1935); *Van Huffel v. Harkelrode*, 284 U.S. 225, 52 S. Ct. 115, 76 L. Ed. 256 (1931); 2 *Collier on Bankruptcy* §363.07 (1985); 4 A *Collier on Bankruptcy* §70.99 (1978)

14 "The exercise of the power is, nevertheless, subject to the commands of the Fifth Amendment." *Kuekner v. Irving Trust Co.*, 299 U.S. 445, 451, 57 S. Ct. 298, 301, 81 L. Ed. 340, 345 (1937)

Judge Coleman is a graduate of the University of Alabama and its law school. Prior to his appointment in 1938 as a bankruptcy judge for the northern district of Alabama, he was in the private practice of law. Judge Coleman retired in 1985 and serves on a recall basis.



About Members, Among Firms

ABOUT MEMBERS

Salem N. Resha, Jr., attorney at law, announces the removal of his office to 700 South 28th Street, Suite 200, Birmingham, Alabama 35233. Phone (205) 324-2020.

James T. Metrock, attorney at law, announces the opening of his office at Suite 104, Metrock Building, Helena, Alabama.

Micki Stiller, former attorney for the Jefferson County Office of Senior Citizens' Activities, announces the opening of her law office at 516 S. Perry Street, Montgomery, Alabama 36104. Phone (205) 834-5544.

Marilyn C. Newhouse is pleased to announce the relocation of her offices for the general practice of law to 1400 Broad Street (entrance and parking in rear), Phenix City, Alabama 36867. Her telephone number and mailing address remain the same: (205) 297-9057; P.O. Box 1607.

James Michael Perry, formerly an assistant district attorney in Montgomery, is pleased to announce the opening of his private practice at 217 Belleville Ave., Suite 10, P.O. Box 484, Brewton, Alabama 36427. Phone (205) 867-3271.

Connie W. Parson was chosen to be a member of an American legal team visiting China and Taiwan in June at the invitation of the Chinese Ministry of Justice and under the auspices of the Citizen Ambassador Program of People to People International. She is a sole practitioner with offices in Tuscaloosa and Birmingham.

The Birmingham Tax Club recently elected **William S. Fishburne**, an attorney with **Sadler, Sullivan, Sharp and Stutts**, as president for the 1986-87 year.

Other elected officers include vice president, membership—**William R. Blankenship** of **Cherry, Bekaert & Holland**; vice president, programs—**Lynda A. Kern** of **AmSouth Bank**; secretary—**Leroy W. Woody** of **Ernst & Whinney**; assistant secretary—**Bob R. McBrayer** of **Sonat, Inc.**; treasurer—**Melinda Mathews** of **Sirote, Permutt, Friend, Friedman, Held & Apolinsky**; and assistant treasurer—**Harry M. Donaldson** of **Donaldson & West**.

W. Caffey Norman, formerly in the Washington, D.C., office of **Cleary, Gottlieb, Steen & Hamilton**, has become senior counsel for banking in the office of the general counsel at the **Department of the Treasury**.

H. Edward Persons is pleased to announce he is now in the private practice of law at 1416 Greensboro Avenue, Suite A, Tuscaloosa, Alabama 35401. Phone (205) 345-4500.

Lee B. Lloyd, of the Birmingham firm of **Dominick, Fletcher, Yeilding, Wood & Lloyd, PA**, has been elected a Fellow of the College of Probate Counsel.

The American College of Probate Counsel is an international association of lawyers for the improvement of the standards of persons specializing in wills, trusts, estate planning and probate, and the modernization of the administration of our tax and judicial systems in these areas.

AMONG FIRMS

Kenneth W. Underwood, Jr., and **Lucie U. McLemore** announce the formation of a partnership for the practice of law, with offices at the Moore Building, 217 South Court Street, Montgomery, Alabama.

The law office of **John T. Moore-smith, PC**, is pleased to announce the association of **J. Tim Coyle**, as of April 1, 1986, with offices at Suite 3001-A, The LaClede, 150 Government Street, Mobile, Alabama 36602.

William H. Roe and **Jeffrey E. Rowell** announce the formation of a partnership for the general practice of law under the name of **Roe & Rowell**, with offices located at 1933 Montgomery Highway, Suite 130, Birmingham, Alabama 35209.

Gaillard, Hume & Sullivan takes pleasure in announcing **John Carney Dobbs** has joined the firm as an associate, and the firm name has been changed to **Hume & Sullivan**. Offices are located at 10th Floor, First Alabama Bank Building, P.O. Box 164, Mobile, Alabama 36601. Phone (205) 432-1832.

Cabaniss, Johnston, Gardner, Dumas & O'Neal is pleased to announce **Kay K. Bains** became a member of the firm January 1, 1986, and **Wesley C. Redmond** and **Patrick D. Seiter** have become associates of the firm. Offices are located at 1900 First National, Southern Natural Building, Birmingham, Alabama 35203, and 2210 First National Bank Building, Mobile, Alabama 36602. Phone (205) 252-8800 in Birmingham and 433-6961 in Mobile.

Gullett, Sanford & Robinson and Martin & Cochran are pleased to announce they are joining to continue the practice of law under the firm name of **Gullett, Sanford, Robinson & Martin**. Offices are located at Third Floor, Metropolitan Federal Building, 230 Fourth Avenue North, P.O. Box 2757, Nashville, Tennessee 37219-0757. Phone (615) 244-4994.

The firm name of **Thomas, Taliaferro, Forman, Burr & Murray** was changed to **Burr & Forman**, effective April 1, 1986.

The law firm of **McPhillips, DeBardelaben & Hawthorne** is pleased to announce **Kenneth Shinbaum** has

become an associate of the firm. His address is 516 South Perry Street, P.O. Box 64, Montgomery, Alabama 36104. Phone (205) 262-1911.

Walter B. Chandler, III, formerly of Chandler and Pool, and **Julian B. Brackin**, formerly of Foster, Brackin and Bolton, are pleased to announce the formation of a partnership for the general practice of law with offices at 201 North Alston Street, P.O. Box 998, Foley, Alabama 36536.

The law firm of **Drinkard & Sherling** is pleased to announce **C. Gary Hicks** has become associated with the firm. Offices are located at 1070 Govern-

ment Street, Mobile, Alabama 36604. Phone (205) 432-3531.

The law firm of **Emond & Vines** is pleased to announce **Kenneth W. Hooks, David H. Marsh** and **Frank O. Hanson, Jr.**, have become partners of the firm.

J. Vernon Patrick, Jr. & Associates, PC, is pleased to announce **Jeffrey E. Holmes**, former law clerk to Hon. J. Foy Guin, Jr., U.S. district judge, and **Lisa J. Collins**, former law clerk to Hon. W. Erwin Kilpatrick, Ohio Court of Common Pleas, have become associates with the firm. Offices are located at 1201 Financial Center, Birmingham, Alabama 35203. Phone (205) 323-5665.

The Wynfrey, the Galleria and Birmingham at its best . . .

all are waiting for you at the
1986 Annual Meeting
of the Alabama State Bar,
July 17-19. Be there!



Recent Decisions

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

Recent Decisions of the Alabama Court of Criminal Appeals

Vehicular homicide statute held constitutional

Newberry v. State, 20 ABR 1880 (May 2, 1986)—The *Newberry* case presents the single issue of whether the vehicular homicide statute is valid under the state constitutional guarantee that a defendant has the right to know the nature and cause of the accusation against him.

Newberry was convicted of vehicular homicide and sentenced to five years in prison.

The court of criminal appeals reversed the conviction, holding that the statute was unconstitutional because it authorized both misdemeanor and felony punishment for the same offense. The State of Alabama petitioned the supreme court for *writ of certiorari*. The supreme court, through Justice Shores, held the statute constitutional.

Specifically, Justice Shores wrote:

"Therefore, we disapprove of the statement in *Hall v. The State of Alabama*, 24 Ala. App. 336, 134 So. 398 (1931), that an offense cannot provide for punishment in both felony and the misdemeanor range.

We do not decide whether the offense of vehicular homicide is a felony or a misdemeanor, but only that its punishment provisions are constitutionally valid. We hold that the vehicular homicide statute, §32-5 (a)-192(b), does not violate the guarantee of Article I, §6 of the Alabama Constitution, because from a reading apprised of the accusation against him or her and the possible penal consequences."

Recent Decisions of the Supreme Court of Alabama—Civil

Arbitration . . .

when does one waive one's right to arbitrate

Ex parte: Merrill Lynch, Pierce, Fenner and Smith, Inc., (In Re: Atchison v. Merrill Lynch, Pierce, Fenner and Smith, Inc.), 20 ABR 1812 (April 4, 1986)—*Atchison* purchased an annuity from one of the defendants and subsequently lost her investment. She filed suit for breach of contract and fraud. The defendants filed a motion to dismiss and then filed a motion to compel arbitration and stay the litigation pending arbitration. The circuit court refused to grant the motion, and the defendants waived their right to compel arbitration. The supreme court disagreed and granted the writ.

The supreme court stated that there is a strong federal policy favoring arbitration, and the burden on one seeking to prove waiver is a heavy one. The courts have developed a two-prong test when considering whether a party has waived the right to arbitrate. First, the party opposing arbitration must prove there has been a "substantial invocation of the litigation process." Second, he must show he suffered prejudice as a result of the litigation.

With regards to the first prong, it has been held that service of an answer does not constitute a waiver even though the answer does not raise the arbitration clause as a defense. Likewise, even a counterclaim or a cross-claim or participating in discovery, without more, may not constitute a waiver. In the final analysis, each case must be decided on its own peculiar facts. Here, the defendants simply filed a motion to dismiss. Therefore, *it is clear the defendants did not participate in litigation to a degree that evinced an intent to abandon the right to seek arbitration.*

Estates . . .

Section 12-22-73, appeal "penalty" statute construed

Hall v. Mazzone, 20 ABR 1637 (March 21, 1986)—The residual bene-

fiary of an estate sued for an accounting, removal of the co-executors, damages for mismanagement of the estate and a determination of their interest in certain land. Pursuant to Section 12-22-73, Ala. Code 1975, she also claimed she was entitled to a judgment against the defendants in the amount of the supersedeas bond posted by the defendants. Section 12-22-73, *supra*, provides that "when an appeal is taken by the claimant on a trial of right of property" and judgment is stayed by a supersedeas bond and the appellate court affirms the trial court, it also must enter judgment in an amount equal to 10 percent of the alternative value of the property as fixed by the trial court.

In deciding whether the statutory penalty applied in this case, the supreme court noted this statute applies only to "a trial of right of property" and consequently sought to determine the meaning of this phrase. The supreme court noted the phrase is a term of art found in §6-6-160, Ala. Code 1975. Section 6-6-160, *supra*, "applies only to personal property levied on under writs of execution or of attachment."

A trial of the right of property is not an independent suit but derives its existence from the pendency of an attachment suit.

The supreme court concluded it believed that the legislative intent behind §12-22-73 was to provide a penalty provision only when a claimant misused §6-6-160. Since that section was not involved, the 10 percent penalty was not appropriate.

Insurance . . .

group insurer required to notify participant if modification of policy adversely affects his interests

Newton v. United Chambers Insured Plans, 20 ABR 1576 (March 7, 1986)—Newton, an employee, was a participant in her employer's group medical insurance program. The employer paid all the premiums; Newton did not contribute in any way.

The employer paid the premiums for approximately six months. The next premium check was returned for insufficient funds. Under the terms of the policy, coverage automatically terminated one month later. The employee was not made aware of the termination and con-

tinued to incur previously-covered medical expenses for approximately four months after coverage terminated.

In a certified question from the federal court, the supreme court was asked whether the group insurer was required to give notice of the employer's default in paying premiums to an employee who did not pay any of the premiums.

The court answered the question in the affirmative.

The court, however, recognized that previously the right to notice of change in a group policy was limited to participants who paid part of the premiums. The court noted that a sounder basis (for requiring notice to an employee of changes in or cancellation of the policy) than the fact that he pays part of the premiums is that he has an interest in the policy which will be adversely affected.

Therefore, group insurers are required to notify participants of cancellation or modification of the policy if the interests of the participants are adversely affected, regardless of whether the participant pays any part of the premiums.

Torts . . .

interference with business relations and contractual relations, new, broader rules stated

Gross v. Lowder Realty Better Homes and Gardens, 20 ABR 1886 (April 18, 1986)—The supreme court used this case to abolish the distinction between the causes of action for interference with contractual relations and interference with business relations and to expand the cause of action for interference with contractual relations so as to incorporate the broader majority rule.

Specifically, the court stated the elements of these two causes of action are as follow:

- (1) The existence of a contract or business relation;
- (2) The 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

Introduce Your Clients to a Valuable Service.

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

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

Contact Dr. John H. Davis, III

4 Office Park Circle • Suite 304 • Birmingham, Alabama 35223
P.O. Box 7633 A • Birmingham, Alabama 35253
(205) 870-1026

(5) Damage to the plaintiff as a result of the defendant's interference.

The court noted that "justification" for the defendant's interference is still an affirmative defense and usually a question of fact. Justification involves the balancing of interests tests. *Restatement (Second) of Torts*, §767 (1979) Also, because the tort is an intentional tort, punitive damages may be awarded if the interference was wanton, spiteful or malicious.

Torts . . .

auto dealers have an affirmative duty to investigate odometer "rollbacks"

Simmons Auto Sales, Inc. v. Royal Motor Company, Inc., 20 ABR 1450 (February 28, 1986)—After purchasing a car, Simmons discovered the odometer reading had been "rolled back" to reflect a substantially lower mileage than actually accumulated. Simmons sued Royal, the auto dealer, under §6-5-101, Ala. Code 1975, claiming legal fraud by virtue of the certification of correctness of the odometer reading. The certification provided that "to the best of our knowledge the odometer reading . . . reflects actual mileage . . . the odometer . . . was not altered . . . while in our possession, and we have no knowledge of anyone else doing so."

Royal filed a motion for summary judgment claiming that this certification

could not form the basis of a misrepresentation to support an action for legal fraud. The trial court agreed and granted summary judgment. The supreme court disagreed and reversed.

In a case of first impression in Alabama, the supreme court examined the legislative intent and public policy behind 15 U.S.C. §1981, the "Motor Vehicle Information and Cost Savings Act," and found the act mandated a national policy against the disconnection or setting back of odometers. The court reasoned that because auto dealers generally are equipped to discover odometer "rollbacks," public policy demands these dealers utilize their expertise to discover the alterations.

Consequently, the law places a duty on auto dealers to use reasonable care inspecting the cars they purchase to reasonably insure the odometer readings they certify are accurate. If the auto dealer cannot inspect to reasonably determine the accuracy of the odometer reading, it can simply certify "actual mileage unknown."

Here, Royal chose to certify that to the best of its knowledge the odometer reading was correct, and consequently, questions arose as to whether it had utilized reasonable care.

Recent Decisions of the Supreme Court of the United States

Peremptory challenges on the basis of race . . .

Swain revisited

Batson v. Kentucky, (No. 84-62, 63); 54 U.S.L.W. 4425 (April 30, 1986)—The Supreme Court held that the prosecutor's use of peremptory challenges to exclude from the jury members of the defendant's race solely on racial grounds violates the equal protection rights of both defendants and excluded jurors. The Supreme Court expressly overruled the test mandated under *Swain v. Alabama*, 380 U.S. 202 (1965).

Batson, a black man, was indicted in Kentucky on charges of second degree burglary and receipt of stolen property. The first day of trial, the circuit judge conducted *voir dire* examination of the venire excusing certain jurors for cause and permitting both sides to exercise peremptory challenges. The prosecutor used his peremptory challenges to strike all four black persons on the venire. Ultimately, a jury composed only of white persons was selected.

Defense counsel moved to discharge the jury before it was sworn on the ground the prosecutor's removal of the blacks violated the defendant's right under the Sixth and 14th Amendments to a jury drawn from a cross-section of the community. Without expressly ruling on the defendant's request for a hearing, the trial judge denied the motion, and the jury ultimately convicted the defendant.



UNITED COMPANIES
FINANCIAL CORPORATION

REALLY GOOD NEWS

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

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

Bankers: We can provide Forward Commitments, up to one year in advance, for permanent loans to cover your construction loans.

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

Phone:
(205) 979-0367

Andrew T. Graybar, CCIM
Southcrest Bldg., Suite 201
1025 Montgomery Highway
Birmingham, AL 35216

The Kentucky Supreme Court affirmed the conviction based upon the rationale of *Swain v. Alabama* and the failure of defense counsel to demonstrate "systematic exclusion of blacks."

The Batson case required the Supreme Court to reexamine that portion of *Swain v. Alabama* concerning the evidentiary burden placed on a criminal defendant claiming he has been denied equal protection through the state's use of peremptory challenges to exclude members of his race from the petit jury.

Justice Powell, writing for the majority, reversed. The portion of *Swain v. Alabama*, concerning the evidentiary burden placed on a defendant claiming he has been denied equal protection through the state's discriminatory use of peremptory challenges, was rejected. In *Swain* it was held that a defendant, in order to make out a *prima facie* case of purposeful discrimination, had to prove "systematic exclusion" of the particular race by the prosecutor.

In replacing the *Swain* test, the Supreme Court noted a defendant may establish a *prima facie* case of purposeful discrimination solely on evidence concerning the prosecutor's exercise of peremptory challenges at the defendant's trial.

Specifically, the defendant first must show that he is a member of a cognizable racial group and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race. The defendant may also rely on the fact that peremptory challenges constitute a jury selection practice permitting those to discriminate who are of the mind to discriminate. Finally, the defendant must show that such facts and any other relevant circumstances raise an inference that the prosecutor used peremptory challenges to exclude the veniremen from the jury because of race.

Once the defendant makes a *prima facie* showing, the burden shifts to the state to come forward with a neutral explanation for challenging black jurors. The prosecutor may not rebut a *prima facie* showing by stating he challenged the jurors on the assumption that they would be partial to the defendant because of their shared race or by affirming his good faith in individual selections.

Voir dire to determine racial bias

Turner v. Murray, (No. 84-6646); 54 U.S.L.W. 4411 (April 30, 1986)—Turner, a black man, was indicted in Virginia on charges of capital murder for fatally shooting the white proprietor of a jewelry store in the course of a robbery.

During *voir dire*, the state trial judge refused the defendant's request to question the prospective jurors on racial prejudice. The jury convicted the defendant, and, after a separate sentencing hearing, recommended he be sentenced to death. The trial judge accepted the jury's recommendation.

The Virginia Supreme Court upheld the death sentence rejecting the defendant's argument that the trial judge deprived him of a fair trial by refusing to

question the prospective jurors on racial prejudice.

After exhausting his state remedies, the defendant then sought *habeas corpus* relief in federal district court which rejected the same argument; the court of appeals affirmed.

The Supreme Court reversed and held that a defendant accused of an interracial capital crime is entitled to have prospective jurors informed of the victim's race and questioned on the issue of racial bias. However, the court in its holding limited the potential scope of the *voir dire* by noting that the trial judge retains substantial discretion as to the form and number of questions, including whether to question the venire individually or collectively. Moreover, a defendant cannot complain of a failure to question the

COLUMBUS CLAIMED THE NEW WORLD



AND THOUGHT THAT WAS ENOUGH!

When Columbus landed, he planted a flag, made a speech, looked around, then sailed back to Spain. If he'd known about title insurance, we'd all be speaking Spanish now.

A simple claim isn't enough. With title insurance from Mississippi Valley Title, your clients are assured of clear ownership and title protection. That's why people all over the land Columbus lost choose Mississippi Valley Title for their title insurance needs.

Title insurance from Mississippi Valley Title.
It can make a world of difference.



Mississippi Valley Title Insurance Company

Home Office, Jackson, MS 39205
Wholly owned subsidiary of Title Insurance Company of Minnesota

venire on racial prejudice unless he has specifically requested such an inquiry and preserved the issue on appeal.

The Sixth Amendment a bar to police interrogation

Michigan v. Jackson, (No. 84-1531); 54 U.S.L.W. 4329 (April 1, 1986)—The Supreme Court held that once an accused requests counsel before a judicial officer, the Sixth Amendment bars the police from initiating interrogation of the accused until counsel has been made available to him.

In 1981, the Supreme Court set down a "bright line" rule that once a person in custody asks for a lawyer, police must stop questioning him and may not resume questioning until the lawyer arrives, unless the suspect himself, without prompting, asks to confess. *Edwards v. Arizona*, 451 U.S. 477 (1981) *Michigan v. Jackson* holds that the same rule applies after formal criminal charges have been filed even if the defendant is not in custody, as long as the defendant has asked for a lawyer.

Justice Stevens reasoned in part as follows:

"The question is not whether respondents had a right to counsel at their post-arraignment, custodial interrogations. The existence of that right is clear. It has two sources. The Fifth Amendment protection against compelled self-incrimination provides the right to counsel at custodial interrogations. *Edwards*, 451 U.S., at 482; *Miranda v. Arizona*, 384 U.S. 436, 470 (1966) The Sixth Amendment guarantee of the assistance of counsel also provides the right to counsel at post-arraignment interrogations. The arraignment signals the initiation of adversary judicial proceedings and thus the attachment of the Sixth Amendment, *United States v. Gouveia*, 467 U.S. 180, 187 (1984); thereafter, the Government's efforts to elicit information from the accused, including interrogation, represents a critical stage at which the Sixth Amendment applies. . . ."

Grand jury systematic exclusion on the basis of race

Vasquez v. Hillery, (No. 84-836); 54 U.S.L.W. 4065 (January 15, 1986)—The systematic exclusion of blacks from grand jury membership requires the defendant's conviction be set aside, whether on di-

rect appeal or on federal *habeas corpus* review, without regard to the alleged harmless error rule or the amount of time passed since the trial.

Justice Marshall, writing for a majority of the court, held that intentional discrimination in the selection of grand jurors is a grave constitutional trespass, possible only under color of state authority and wholly within the state's power to prevent. The court reasoned further that "even if the Grand Jury's determination of probable cause to believe that a defendant has committed a crime is confirmed in hindsight by a conviction on the indicted offense, that confirmation does not suggest that discrimination did not impermissibly infect the framing of the indictment and, consequently, the nature of the proceedings to come."

Lawyer's threat to disclose client's perjury did not deny effective assistance of counsel

Nix v. Whiteside, (No. 84-1321); 54 U.S.L.W. 4194 (March 4, 1986)—Does a lawyer violate the rights of his client by threatening to disclose to the judge that his client intends to commit perjury? The Supreme Court unanimously said no.

The court rejected a decision by the Eighth Circuit that Whiteside was denied effective assistance of counsel in his trial on second degree murder charges when his lawyer threatened to withdraw from the case and tell the judge the reason if Whiteside gave perjured testimony.

The majority opinion written by Chief Justice Burger held that a lawyer ethically is obligated to disclose perjury; however, four justices expressed fear that the court went too far in the direction of con-

stitutionalizing lawyer ethical standards which properly should be left to state regulation.

Capital punishment phase . . . all relevant evidence

Skipper v. South Carolina, (No. 84-6859); 54 U.S.L.W. 4403 (April 29, 1986)—Skipper was convicted of capital murder and rape after a jury trial in South Carolina. The state sought the death penalty, and a separate sentencing hearing was held before the trial jury.

Following the state's introduction of evidence in aggravation of the offense, the defendant presented as mitigating evidence his own testimony and that of his former wife, his mother, his sister and his grandmother. Skipper then sought to introduce testimony of two jailers and a "regular visitor" to the effect that he had made a "good adjustment" during the seven and one-half months he spent in jail between his arrest and trial.

The trial court ruled the evidence was irrelevant and inadmissible.

Skipper was sentenced to death. The South Carolina Supreme Court affirmed the death sentence and expressly rejected the defendant's contention that the trial court had committed constitutional error in excluding the testimony of the jailers and visitors.

The Supreme Court, through Justice White, reversed and held that the trial court's exclusion from the sentencing hearing the testimony of the jailers and the visitors denied the defendant his right to place before the sentencing jury "all relevant evidence" in mitigation of punishment. See also *Lockett v. Ohio*, 438 U.S. 586; *Eddings v. Oklahoma*, 455 U.S. 104. ■



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.

Young Lawyers' Section

In 1978, when I first decided to become active in the Young Lawyers' Section, I felt it would help me better understand the association of my profession. I had no idea how rewarding the next eight years would be.

Over the years I watched the section become a public service arm of the Alabama State Bar. I saw young lawyers right out of school become active servants of the bar and the public, enjoying every minute of that service. As president of the section, I have been fortunate to have excellent lawyers serving on the Executive Committee, and I take this opportunity to laud them for the many hours and untiring efforts they put forth serving members of the bar and the public.

Those who work so hard for our association are proudest to be lawyers. With that pride comes a deep desire to make our association better and create the image in the community best exemplifying the hardworking majority in our most noble profession.

By the time this goes to press, my official involvement with the YLS will have ended, but I forever will be supportive of the fine work of young lawyers across the state. Should anyone ever doubt whether the bar will be in good hands in the future, they need only look at the accomplishments of those people who made my job so easy, and I thank them: Honorable Claire Black, Tuscaloosa, Long-Range Planning Committee; Honorable Charles R. Mixon, Jr., Mobile, Meeting Arrangements Committee; Honorable N. Gunter Guy, Montgomery, ABA/YLS Liaison Committee; Honorable Robert T. Meadows, III, Auburn, immediate past president; Honorable Keith Norman, Montgomery, Youth Legislature Judicial Program Committee; Honorable Laura Crum, Mont-

gomery, Bar Admissions Committee; Honorable John W. Donald, Jr., Mobile, Disaster Emergency Legal Assistance Committee; Honorable Ronald L. Davis, Tuscaloosa, Public Information Committee and Sub-Committee on Publication; Honorable Holley Crim, Montgomery, Domestic Abuse Committee/Missing Children Project; Honorable Edward A. Dean, Mobile, By-Laws Committee; Honorable D. Patrick Harris, Montgomery, Administration Committee; Honorable Frederick T. Kuykendall, III, Birmingham, Local Bar Coordinating Committee, Jefferson County and north; Honorable Lynn McCain, Gadsden, Community Law Week/Constitutional Bicentennial; Honorable James A. Miller, Birmingham, Continuing Legal Education Committee; Honorable Caine O'Rear, III, Mobile, Annual Seminar Sub-Committee; Honorable Sidney W. Jackson, III, Mobile, Local Bar Coordinating Committee, South of Jefferson County; Honorable Randolph P. Reaves, Montgomery, Legislative Committee and Conference for the Professions; Honorable Percy Badham, Birmingham, Leadership on Issues/Grants Committee; Honorable James Anderson, Montgomery, Alabama Bar Information Sub-Committee and Newspaper, Television and Radio Sub-Committee; Honorable William H. Traeger, III, Demopolis, Law Student Liaison Committee; and Honorable Rebecca L. Shows, Birmingham, Legal Services to the Elderly. These people and countless others worked extremely hard the past year to make your profession better, and when you see them in courthouses across the state, please thank them and give a word of encouragement to keep up the good work.

In a recap of what has been accom-



J. Bernard Brannan, Jr.
YLS President

plished in the last year, the section provided two excellent admissions ceremonies for admittees to the bar; coordinated a Youth Judicial Program, second to none in the country; provided continuing legal education programs with substance beneficial to all lawyers, especially those in their first years of practice; and furnished free legal assistance to victims of hurricane Helena. The section also laid the groundwork for a celebration of the bicentennial of the Constitution, a program to provide free legal assistance to the elderly and a program advising college students about legal education and career rewards and demands of practicing law.

All in all, this has been a very good year for the YLS, but I personally give the entire credit for its success to the hardworking people of the Executive Committee.

I look forward to an excellent future for the YLS, and I feel it has been left in good hands. I cannot encourage you enough to contact Claire Black and become active in the YLS. It has been one of my greatest rewards over the past eight years. ■

Committee Report

Survey

"Only 7 percent of Alabama's July 1985 bar examinees clearly were involuntarily unemployed at the time of the examination," reports Birmingham Southern College Professor Nancy Campbell-Goymer.

Her study, "A Second Look at the Lawyer Explosion," was the second undertaken pursuant to a recommendation by the bar's 1983-84 Task Force to Evaluate the Lawyer Explosion and commissioned by the board of bar commissioners. The results are excerpted here, in accordance with the board's decision to disseminate the results to members of the bar through *The Alabama Lawyer*.

Although approximately 20 percent of the examinees were unemployed, about half, for various reasons, had not been seeking employment. A few more were planning to pursue advanced study and therefore not seeking employment.

The 26 examinees actively but unsuccessfully seeking employment reported

having made from two to 75 unsuccessful attempts to secure work. About half had made more than ten such attempts. Most (80 percent) wanted jobs in Alabama's five largest cities, where almost 70 percent of the bar's in-state members work: Birmingham, 46 percent; Mobile, 12 percent; Tuscaloosa, 11 percent; Huntsville, 7 percent; and Montgomery, 4 percent.

More than three-fourths of the examinees were working full-time—12 percent more than reporting having obtained full-time employment at the time of the 1984 survey. Approximately half were in private practice, about 14 percent held judicial clerkships, 13 percent worked in business and almost 9 percent held other government positions. Only 3 percent had undertaken solo practice.

Not only were they employed, the examinees were highly satisfied with their job location (49 percent), type of employer (53 percent) and type of work (48

percent). They were less satisfied with their starting salaries, but still gave them an average rating of +2.0 on a 4-point scale.

Excluding an anomalous \$100,000 starting salary reported, the average starting salary was \$26,409. The highest average starting salary, \$33,031, was reported by examinees working outside the state. Other figures of interest include: Birmingham, \$26,969; Mobile, \$26,837; Huntsville, \$26,286; Montgomery, \$23,919; and Tuscaloosa, \$22,611. Examinees working in other Alabama locations reported an average starting salary of \$21,084. The lowest starting salary reported was \$10,800.

Copies of Dr. Goymer's report may be obtained by calling or writing Mary Lyn Pike, Assistant Executive Director, Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101. Telephone: (205) 269-1515. MLP■

Job Satisfaction Ratings
(Average number ratings per dimension = 272)

DEGREE OF SATISFACTION	JOB LOCATION	TYPE OF EMPLOYER	TYPE OF WORK	SALARY	OVERALL SATISFACTION
+4 (highest)	49 percent	53 percent	48 percent	29 percent	37 percent
+3	21	24	25	22	33
+2	12	9	12	19	14
+1	6	5	4	11	6
0 (neutral)	5	3	4	7	4
-1	2	1	2	4	1
-2	2	1	1	3	1
-3	2	2	3	3	2
-4 (lowest)	2	2	2	3	2
AVERAGE RATING	+2.7	+2.9	+2.8	+2.0	+2.6

**Employers of Alabama Bar Examinees
1984 and 1985**

TYPE OF EMPLOYER	1984 (270)	1985 (284)
Private Practice	50 percent	51 percent
Solo practice	3	3
Very small firm (2-10)	29	29
Small firm (11-25)	10	9
Medium firm (26-50)	4	4
Large firm (50+)	4	6
Judicial Clerkships	16 percent	14 percent
Federal	6	6
State appellate	6	5
State circuit/district	4	3
Other Government	11 percent	9 percent
Federal prosecutor		1
State prosecutor	2	<1
Local prosecutor		1
Other federal	4	3
Other state	4	4
Other local	<1	<1
Business	17 percent	13 percent
Corporation	8	6
Accounting firm	2	2
Insurance firm	1	1
Financial institution	2	2
Other business	4	2
Public Sector	3 percent	3 percent
Legal services	2	1
Public interest law	1	1
Other public sector	<1	1
Military	2 percent	1 percent
JAGC	2	1
Other	unknown	<1
Academic	3 percent	5 percent
Law school faculty	<1	1
Other higher education	2	2
Other academic setting	1	2
Self-employed, nonlegal	<1 percent	unknown
More than one employer	1 percent	4 percent

**Demographic Data and
Employment of Alabama
Bar Examinees—July 1985
(Average number per
category = 343)**

AGE	
23-27	53%
28-32	24%
33-37	11%
38-42	7%
43-47	4%
48 and older	1%
SEX	
Female	32%
Male	68%
RACE	
Black	6%
Hispanic	<1%
Caucasian	94%
RESIDENCY DURING LAW SCHOOL	
Alabama	91%
Other state	9%
TYPE LAW SCHOOL ATTENDED	
Accredited, Alabama	64%
Nonaccredited, Alabama	22%
Accredited, outside Alabama	14%
PREVIOUS ATTEMPTS AT EXAM	
None	91%
One	6%
Two	2%
Three or four	1%
EMPLOYMENT STATUS	
Full-time	77%
Legal	55%
Law-related	8%
Nonlegal	14%
Part-time or temporary	4%
Legal	1%
Law-related	2%
Nonlegal	1%
Unemployed	20%

Lawyers in the Family



Timothy Bledsoe Davis (1986), Dianne J. Davis (1982); and Rosa Hamlett Davis (1972) (admittee, wife and sister-in-law)



Celeste Wallner Sabel (1986) and M. Wayne Sabel (1968) (admittee and husband)



Robert Jackson Russell, Jr. (1986) and Robert Jackson Russell, Sr. (1966) (admittee and father)



Deborah Butler Montgomery (1986) and Brenda Montgomery (1981) (admittee and sister-in-law)



Dorothy Rush Drake (1986) and Jack Drake (1969) (admittee and husband)



Charles Victor Welden, III (1986) and Charles Victor Welden, Jr. (1964) (admittee and father)



William Stephenson Halsey, III (1986) and William Stephenson Halsey, Jr. (1950) (admittee and father)



Steven Dale Giddens (1986) and Rod Giddens (1982) (admittee and brother)



Angelina Dee Dee Jackson (1986); J. Theodore Jackson, Jr. (1969); J. Theodore Jackson, Sr. (1938); and Edward Jackson (1973) (admittee, husband, father-in-law and brother-in-law)

Opinions of the General Counsel

by William H. Morrow, Jr.

QUESTION I:

Must a professional card of a non-lawyer employee of a lawyer or law firm contain the identification of the non-lawyer employee as "non-lawyer assistant" or will an identification such as "paralegal," "legal assistant," etc. suffice?

QUESTION II:

Is the identification contained on the professional card of a non-lawyer employee of a lawyer or law firm limited to the words "non-lawyer assistant," or may the card contain additional information such as "non-lawyer assistant investigator," "non-lawyer assistant law clerk," etc.?

ANSWER QUESTION I:

A professional card of a non-lawyer employee of a lawyer or law firm must contain the precise words "non-lawyer assistant," and similar designations of "paralegal" or "legal assistant" will not satisfy the requirement of Temporary DR 2-106.

ANSWER QUESTION II:

Although the precise words "non-lawyer assistant" are required on a professional card of a non-lawyer employee of a lawyer or a law firm, the card may contain additional information if it is not false or misleading.

DISCUSSION:

Disciplinary Rule 2-102(A)(1) heretofore provided:

"(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, similar professional notices or devices or newspapers, except that the following may be used if they are in dignified form:

(1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm and any information permitted under DR 2-106. A professional card of a law firm may also give the names of members and associates. A professional card of a non-lawyer employee of the law firm must contain the identification of the non-lawyer employee as 'Non-Lawyer Assistant.' Such cards may be used for identification but may not be published in periodicals, magazines, newspapers,

or other media." (emphasis and parentheses added) (Former DR 2-106 dealt with the traditional specialties of patents, trademarks and admiralty.)

Temporary Disciplinary Rule 2-101(A) adopted October 25, 1985, by the Supreme Court of Alabama provides as follows:

"A lawyer shall not make or cause to be made a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(A) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading."

Temporary Disciplinary Rule 2-106 adopted October 25, 1985, by the Supreme Court of Alabama provides as follows:

"A professional card of a non-lawyer employee of a lawyer or law firm must contain the identification of the non-lawyer employee as 'Non-Lawyer Assistant.' Such cards may be used for identification, subject to Temporary DR 2-103." (emphasis added)

Temporary Disciplinary Rule 2-103 adopted October 25, 1985, by the Supreme Court of Alabama provides as follows:

"A lawyer may not solicit nor cause to be solicited on his behalf professional employment from a prospective client, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term 'solicit' includes contact in person or by telephone."

Although the language of Temporary DR 2-106 appears to be clear and unambiguous, numerous inquiries have been made to the Office of General Counsel and the Disciplinary Commission as to whether other designations such as "paralegal" or "legal assistant" are sufficient to satisfy the rule.

A number of lawyers have interpreted DR 2-106 to permit no identification other than "non-lawyer assistant."

The Office of General Counsel and the Disciplinary Commission have consistently held that the precise words "non-lawyer assistant" are required on the card of a non-lawyer employee of a lawyer or law firm, but that other information can be contained thereon as long as it is not false or misleading. Because of the numerous inquiries we were of the opinion this might be helpful to the bar in clarifying the meaning of the applicable Disciplinary Rules.

This rule is to insure that members of the public dealing with a non-lawyer employee of a lawyer or law firm know they are not dealing with a lawyer. ■

Disciplinary Report



Public Censures

● Huntsville attorney **Henry S. Mims** received a public censure March 19, 1986, from the Alabama State Bar Board of Commissioners for violation of Disciplinary Rule 6-101(A). Mims willfully neglected a legal matter entrusted to him by failing to properly and promptly pursue a client's legal claims against a municipal corporation prior to the expiration of the statute of limitations for the filing of such claims. [ASB 83-565]

● Selma attorney **Bruce Carver Boynton** received a public censure March 19, 1986, for violation of Disciplinary Rule 6-101(A). The Disciplinary Commission found Boynton accepted a \$700 retainer in a domestic relations case and then did not take any action on behalf of his client. [ASB 85-555]

● March 19, 1986, Anniston lawyer **James A. Mitchell** was publicly censured for having been guilty of willful neglect, in violation of DR 6-101(A); failure to carry out a contract of employment entered into with a client for professional services, in violation of DR 7-101(A)(2); and misrepresentation in violation of DR 1-102(A)(4).

Mitchell's violations consisted of failing to file suit on behalf of a client prior to the expiration of the statutory period of limitations, and not refunding a retainer of \$500, even after having promised the client, in writing, to do so. Finally, he failed to cooperate with the Disciplinary Commission's investigation of the client's complaint. [ASB 85-518]

● Greenville lawyer **Warren J. Williamson, Jr.**, was publicly censured May 30, 1986, having been found guilty of willful neglect, in violation of DR 6-101(A), *Code of Professional Responsibility* of the Alabama State Bar. He was also found guilty of intentionally failing to seek the lawful objectives of a client through reasonably available means, in violation of DR 7-101(A)(1). Williamson was retained in July 1984 to handle the estate of Linda E. Newton, deceased, with the assets of the estate being delivered to him, along with a list of the debts of the estate, but he failed to initiate an administration of the estate. [ASB 85-429]

Private Reprimands

● March 19, 1986, a lawyer was privately reprimanded for having willfully neglected a legal matter entrusted to him, in violation of DR 6-101(A). Also, he did not carry out a contract of employment entered into with a client for professional services, in violation of DR 7-101(A)(2). He agreed to file suit in August on behalf of a client, and accepted a \$300 retainer, plus \$38.50 for the filing fee. The attorney failed to either file suit for the client or notify the client and refund the retainer and filing fee money, until the client filed a complaint with the state bar in late September 1985. [ASB 85-573]

● March 19, 1986, a lawyer was privately reprimanded for willful neglect, in violation of DR 6-101(A), by having delayed, for almost four months, the obtaining of an uncontested divorce for a client, after the parties had signed an agreement. After the divorce decree was rendered, the lawyer, for more than three months, delayed sending the "Final Judgment of Divorce" to the client. [ASB 85-420]

● A lawyer was privately reprimanded May 30, 1986, for having twice engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(A)(6). He accepted a fee and court costs to file a divorce action for a client, but then failed to do so; after the client filed a complaint against him with the state bar 17 months later, he ignored five requests from the bar to provide a written response to the client's complaint. [ASB 84-354]

● An Alabama attorney received a private reprimand May 30, 1986, for violation of Disciplinary Rule 5-102. The attorney participated as both an attorney and witness in a trial by examining three witnesses, offering rebuttal testimony and then presenting closing arguments to the jury. The Disciplinary Commission found this conduct to violate Disciplinary Rule 5-102 and determined that a private reprimand should be administered. [ASB 86-71] ■

SMITH-ALSOBROOK & ASSOC. EXPERT WITNESS SERVICES

- Tire consulting
- Rim/tire explosions
- Traffic accident reconstruction



BOBBY D. SMITH, B.S., J.D., President
P.O. Box 3064 Opelika, AL 36803 (205) 749-1544

VIDEO TREASURES

VIDEO OF:
**DEPOSITIONS,
ACCIDENT
RECONSTRUCTION,
COPIES MADE,
ALL FORMATS**



Telephone: (205) 265-2999

Et Cetera

Privatization laws

A *Compendium of Privatization Laws* is now available through the Privatization Council, containing enacted or pending legislation of 23 states relating to privatization. The Privatization Council is a nonprofit organization composed of public- and private-sector members whose purpose is to inform the public, private industry and government about the potential benefits of private implementation, ownership, operation and management of public services and projects.

Contained are general enabling statutes, as well as laws specific to sewer treatment, corrections, solid waste disposal and other areas and includes a state-by-state summary of all legislation and a cross-index by topical area.

The *Compendium of Privatization Laws* is available for \$60 (prepaid orders only) from the Privatization Council, Inc., 30 Rockefeller Plaza, Suite 3755, New York, NY 10112. Price includes postage and handling.

Asbestos Claims Facility

The Asbestos Claims Facility announces the completion of officer and senior staff selection, as it moves toward full operation. Claims handling supervisors and analysts are currently being recruited to fill facility staffing requirements.

The facility is a private, nonprofit corporation established to handle asbestos-related personal injury claims on behalf of its 50 member companies. It provides claimants with a more efficient and equitable private alternative to the tort system, as well as reduces legal costs for plaintiffs and defendants.

While the facility is not yet fully operational, an interim claims handling system has been adopted. Cases currently are being handled on behalf of the facility by 63 law firms throughout the country, a dramatic decrease from the 1,000 firms that represented the facility's individual members over a year ago. Since September 1985, this network of liaison counsel

has already resolved over 1,600 cases, with less than 1 percent actually going to trial.

Intimidation tactics

Eighty percent responding to a survey of a group of criminal defense lawyers believe the United States Department of Justice is investigating and prosecuting attorneys representing criminal defendants to inhibit and discourage zealous representation, as reported by the inaugural issue of *Criminal Justice*, a quarterly magazine published by the American Bar Association Section of Criminal Justice.

The defense lawyers said the Justice Department uses grand jury subpoenas, IRS summonses, information obtained by unidentified informants, attacks on the lawyers' fees and motions to disqualify the lawyers of the defendants' choice to interfere with the quality of criminal defense.

Of those who felt the Justice Department was intentionally inhibiting them, 46 percent said they had made changes in their criminal defense practices because of these prosecutorial techniques. They said they were less open with clients and more guarded in advising them because of fear their advice might be misinterpreted and turned against them.

A limited number of review copies of *Criminal Justice* are available. Please call editor Frederic G. Melcher at the ABA, 312/988-6077, or write to him at 750 N. Lake Shore Dr., Chicago, IL 60611.

Two new audiocassette programs

The American Law Institute-American Bar Association Committee on Continuing Professional Education announces the release of two new audiocassette programs, "Representing the Bank as Lender" and "Pension Law and Practice Update."

"Representing. . ." (order number M653) is an intensive review for the banking practitioners, covering topics typically encountered by counsel representing banks in lending or enforcement capacities. Subjects covered include negotiation, structure and documentation of commercial loans; granting, perfecting and enforcing of collateral rights; and the

Bankruptcy Code and workout strategy. "Pension. . ." (order number M652) updates experienced pension practitioners in two areas—the Retirement Equity Act of 1984 and distributions from qualified plans.

Both programs were originally telecast live in winter 1985, and each consists of three cassettes and costs \$45, plus \$7.20 for postage and handling.

Please send a check or money order to ALI-ABA, 4025 Chestnut Street, Philadelphia, PA 19104. For credit card orders telephone (outside of Pennsylvania) 1-800-CLE-NEWS. In Pennsylvania call 215/243-1650.

Consumer credit handbook

A new edition of an expert guide for attorneys counseling clients in credit trouble has just been published, offering detailed commentary and supporting information on all aspects of consumer protection in installment sales and consumer loan transactions.

Handling Consumer Credit Cases, third edition, provides a one-stop resource of the history of new and revised credit statutes and regulations, official text and in-depth analyses of developing consumer credit areas, including truth-in-lending, consumer leasing, bankruptcy, plain language litigation, electronic funds transfer act and regulation E, fair debt collection practices act litigation, credit cards and more.

Appendices include articles on the federal regulation of computer banking transactions, bank technology and the law and credit life insurance.

For more information, please contact: The Lawyers Co-operative Publishing Company, Microlex Building, Rochester, New York 14694; west of the Missouri: Bancroft-Whitney Company, 301 Brannan Street, San Francisco, California 94107.

Special Supreme Court issue

The *ABA Journal* published a special issue June 15 devoted to the United States Supreme Court.

Among the features is an article written by Rex Lee, former U.S. Solicitor General, on arguing before the court. Geof-

frey Stone, professor of law at the University of Chicago Law School, wrote on the Burger court, and leaders in business, the legal profession and politics proposed some surprising replacements to the Supreme Court should a vacancy occur.

Also featured in this issue are articles written by prominent law professors and former Supreme Court clerks.

For more information contact Laurence Bodine, editor and publisher, ABA Journal, 750 North Lake Shore Drive, Chicago, IL 60611, (312) 988-6003.

Tulane Tax Institute

The 36th annual Tulane Tax Institute will be held October 15-17, 1986, at the Hilton Hotel in New Orleans.

Subjects to be covered include:

What Tax Reform Does for You—or to You

Recent Developments in the Taxation of Corporations and Shareholders

The *General Utilities* Doctrine—Its Questionable Future

Caution: Operational Problems of S Corporations

Planning Acquisitions That Preserve Loss Carryovers

Taxes and the Client Facing Bankruptcy Perplexing and Provoking Procedural Problems

Getting the Most Time Value for Your Money

The New 702(b) Regulations—Whew!

Ongoing Problems of Limited Partners

The At-Risk Rules—a Phoenix

Recent Developments in Oil and Gas Taxation

Recent Developments in Estate and Gift Taxation

Income Shifting Through Trusts and Estates

Taxation of Qualified Plan Distributions

Recent Developments in the Income Taxation of Individuals

Tax Problems in Exchanging Insurance and Annuity Policies

The registration fee is \$300. Brochures and further information may be obtained from Ann Hopkins, School of Law, Tulane University, New Orleans, Louisiana 70118.

Tales of the Bench (and some Bars)

Y.D. "Bay" Lott, Jr., of Mobile, Alabama, is soliciting favorite humorous stories of each bar for incorporation in a book to be entitled as above.

Please send entries to Post Office Drawer 2426, Mobile, Alabama 36652.

Lawyer discipline

Do lawyers have an ethical obligation to report attorneys and judges who lie and cheat? "Yes," says Anton Valukas, in a special issue of *Bar Leader* addressing differing perspectives on lawyer discipline. Valukas, a prosecutor in the federal Greylord investigation which revealed wide-spread corruption in the Cook County, Illinois, court system, is United States attorney for the Northern District of Illinois. He asserts that one of the most startling revelations from the investigation was "that it had gone on as long as it had with no one coming forth to complain or otherwise disclose what was happening."

Other articles in this special issue include:

- "The Rat-Fink Rule: Why Lawyers and the Bar Should Police the Profession;"

- "No Easy Answers: Can an Admission Litmus Test Reduce the Need for Discipline?";

- "The Key to Self-Regulation: Reporting Duty, Commitment of Resources Vital;"

- "Unethical Conduct: How to Deter it Through Education;"

- "On the Horns of a Dilemma: Spending Is Up—But So Are Complaints;"

- "Fixing the System: How Three States Altered Discipline Rules;" and

- "Mixed Reviews: ABA Discipline Standards Get Bouquets, Brickbats."

Marriage and divorce

The third edition of *Tax Consequences of Marriage, Separation, and Divorce*, by Lowell S. Thomas, Jr., has just been pub-

lished. The book covers pertinent changes effected by the Deficit Reduction Act of 1984 and other recent changes in federal tax law.

The work offers information and advice to lawyers on tax matters for persons contemplating marriage, divorce or separation.

The new edition is a hardbound book priced at \$60 plus \$3 for postage and handling. To order, write to ALI-ABA, 4025 Chestnut Street, Philadelphia, PA 19104, or telephone (215) 243-1650.

Good writing

These rules for good writing were part of a feature entitled "Eschew Obfuscation or How Not to Sound Like a Lawyer."

The entire article, by Robert B. Smith, assistant professor of law and director of the Legal Writing, Research and Appellate Advocacy Program at the University of Oklahoma Law Center, appeared in the March-April 1986 issue of *Bar Leader*.

1. Never tolerate even a small error in grammar, punctuation, spelling or syntax.

2. Edit above all for precision of expression and clarity of meaning.

3. Use the active voice.

4. Always prefer the simple, everyday word to the arcane, the archaic or the jargon word.

5. Use plain, vigorous words.

6. Use short words, short phrases, short sentences, short paragraphs.

7. Keep modifiers close to what they modify.

8. Use the right word, not the almost-right word. Remember Mark Twain's maxim: "The right word is to the almost-right word as lightning is to lightning bug."

9. If a word can be cut, cut it."

Survey results

During 1982-84, an extensive survey, of a sample of 485 criminal defense attorneys, was conducted. Subject matter included personnel and practice information, methods and procedures, motivations for becoming criminal defense attorneys, attitudes and perceptions toward

Etc.

the criminal justice system and allied matters.

The principal researcher, Norman G. Kittel, St. Cloud State University, has compiled the survey results in three papers. Subject matter and titles are as follows:

"Criminal Defense Attorneys: Bottom of the Legal Profession's Class System?"

"Police Perjury: Criminal Defense Attorneys Perspective"

"Criminal Defense Attorneys: A Study of Pluralism in Practice Styles and Conditions"

Any attorneys interested in receiving copies may write to:

Norman G. Kittel, Ph.D.
Department of Criminal Justice
Lawrence Hall
St. Cloud State University
St. Cloud, Minnesota 56301

Etc.

Computerizing law offices

"Lawyers don't have time to examine every new software package on the market," says Francis H. Musselman, a partner in the New York law firm of Milbank, Tweed, Hadley & McCloy and volunteer chairman of the American Bar Association's Legal Technology Advisory Council.

LTAC's goal is to test computer software for various types of law offices and publish the findings. The needs of both large and small firms are considered, and systems meeting LTAC's testing standards are awarded the approval of the ABA.

The results of LTAC's exhaustive testing are published in 40- to 60-page reports. The *Software Review* profiles software

systems, describing LTAC's test results in detail. Every function of a system is analyzed and discussed, and customer services offered by the manufacturer are described.

Software Review also includes a series of charts summarizing the entire report. This blue eight-page section lists all technical data, installation information, security, entry input, options, reports and bills, program "bugs," cost and other system features.

To order issues of *Software Review*, for manufacturer information on applying for testing or other questions, contact LTAC, Box 11, American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611, or call (312) 988-5642. ■

Et Cetera

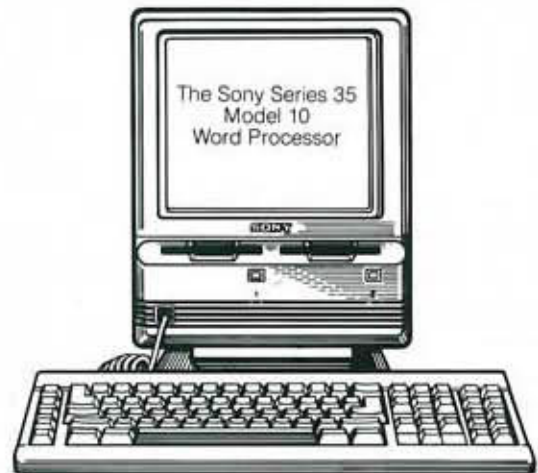
CORPORATE COUNSEL Expanding Legal Department Of Fortune 500 High Tech Leader!

INTERGRAPH CORPORATION, an international leader in the design and manufacture of turnkey interactive computer graphics systems, desires a qualified professional to serve as Corporate Counsel at our Huntsville, Alabama headquarters.

This highly visible position requires 2-5 years experience in general corporate legal matters including taxation, ERISA, contract preparation and acquisitions. LL.M. in Taxation is preferred. Professional experience with computer industry clients and intellectual property rights is desirable.

INTERGRAPH offers exceptional compensation/benefit programs and an achievement-oriented professional environment. For prompt, confidential consideration, please send resume with salary history/requirements to: **W.A. Dornbos, Corporate Employment Manager, Dept. AL, INTERGRAPH CORPORATION, One Madison Industrial Park, Huntsville, AL 35807-4201.** An Equal Opportunity Employer, M/F/H/V.

 **INTERGRAPH**



**Powerful, yet simple to learn,
easy to use and small enough
to fit on any desk.**

DICTATION EQUIPMENT COMPANY, INC.

Birmingham 205 323-8564
Montgomery 205 277-9388
Tuscaloosa 205 752-8978

Memorials



Berkowitz, Abraham—Birmingham

Admitted: 1928

Died: December 20, 1985

Gibson, Wallace Clifton—Cropwell

Admitted: 1940

Died: March 28, 1986

Jordan, James Wilbert—Mobile

Admitted: 1940

Died: February 5, 1986

Thompson, William Alexander, Jr.—Birmingham

Admitted: 1952

Died: March 28, 1986

Wadsworth, Davis Cooper, Jr.—Gadsden

Admitted: 1955

Died: April 21, 1986

Wright, George Herbert, Jr.—Auburn

Admitted: 1955

Died: April 21, 1986

RUSSELL HAMPTON BOUNDS

Russell Hampton Bounds, a promising young member of the Mobile, Alabama and American Bar Associations, died March 18, 1986.

He was born in Mobile August 4, 1958, and is survived by his father, D. Richard Bounds, a distinguished member of the Mobile Bar, and his mother, Laura F. Bounds. He began his education at St. Paul's School in Mobile, Alabama, from which he graduated in 1977.

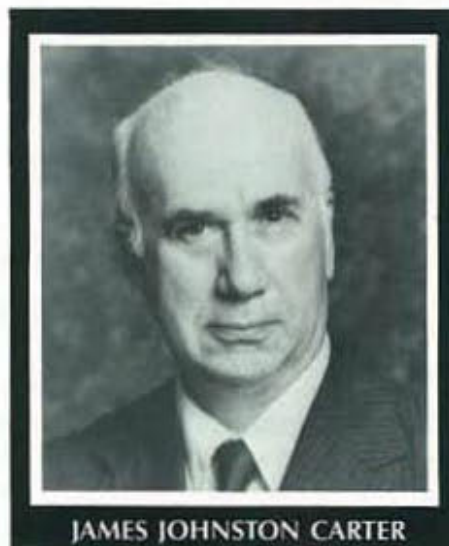
Russell's undergraduate study was at Southern Methodist University where he was a member of the Kappa Alpha Order

Social Fraternity, on the Dean's list and a member of the Student Senate. In fall 1981 he entered Cumberland School of Law in Birmingham, Alabama, and received his J.D. degree in May 1984. While at Cumberland, he was a member of Phi Delta Phi Legal Fraternity, program coordinator for Law Week for two years, and Law Week committee chairman his senior year; a member of the Student Bar Association; and senior class representative to the executive board.

Upon graduation he began practice with the firm of Cunningham, Bounds, Yance, Crowder & Brown in Mobile and earned high respect as a promising young lawyer.

Russell enjoyed life and developed many friends among his contemporaries, both within the Mobile Bar Association and the community in general, all of whom were saddened by his untimely illness and death.

The Mobile Bar Association assembled the life of Russell Hampton Bounds be recognized as one of deep dedication to his family and the law, and his untimely death represents a great loss to each.



JAMES JOHNSTON CARTER

Past Alabama State Bar President Jimmy Carter died October 4, 1985.

Jimmy, born in Samson, Alabama, had no other professional ambition from childhood than to be a lawyer. Graduating from high school in the depths of the

Depression, he worked a 70-hour week in a grocery store and attended Jones Law School at night. He was admitted to the bar in 1934.

A few years later he began an experience he once described as one of the outstanding influences in his life. He began clerking for Judge Leon McCord, one of five Fifth Circuit Court of Appeals judges, and, simultaneously with his clerking position, took advanced legal studies at the Universities of Michigan and Virginia during the summer court recesses. This clerkship continued for nine years, with a three-year leave of absence for service as part of the legal staff of the Supreme Commander for the Allied Powers in Japan.

Upon his return to Montgomery in 1947, Jimmy entered private practice as a senior partner in Hill, Hill, Stovall and Carter, now Hill, Hill, Carter, Franco, Cole and Black.

Describing himself as "essentially a trial lawyer," he practiced law in courts ranging from the old Montgomery Police Court to the Supreme Court of the United States.

Realizing his childhood dream meant for Jimmy that he busy himself in service for his chosen profession of 50 years. Serve he did, on local, state and national bar association levels. He served as president of the Alabama State Bar from 1962-63 and was appointed by six governors to serve in various capacities, including special circuit judge of the 15th Judicial Circuit and special assistant attorney general of the State of Alabama. In recognition of his unstinting service to the bar, he was honored by Jones School of Law as one of its most distinguished alumnus by having an award bearing his name given to the graduating senior with the highest grade point average.

Jimmy was appointed in 1974 to the court of the judiciary by the board of bar commissioners and served until his death. His hard-nosed, trial lawyer instincts for the bottom line characterized his tenure on that court, especially his penetrating questions from the bench.

Richard Wilson & Associates

Registered
Professional
Court Reporters

132 Adams Avenue
Montgomery, Alabama 36104

264-6433

The Alabama Lawyer

BAR
DIRECTORY
EDITION

is seeking subscribers and
advertisers for its 1986 issue to
be published in August.

The directory contains an
alphabetical and geographical
listing of all members of the
Alabama State Bar, with their
addresses and telephone num-
bers, comprehensive listings
of state and federal officials,
state bar information, the *Code
of Professional Responsibility*
and miscellaneous charts and
fees.

Subscriptions are available at
an advance cost of \$7.50 each.

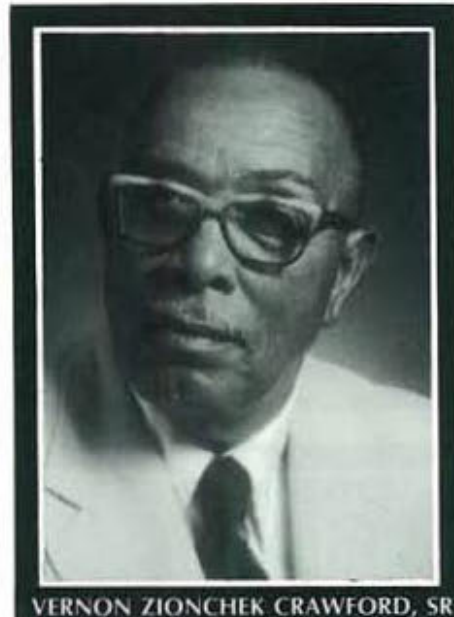
Advertising rates are available
upon request.

PLEASE WRITE
OR CALL:

Margaret Lacey or
Ruth Strickland
Alabama State Bar
P.O. Box 4156
Montgomery, AL 36101
205/ 269-1515

In his later years Jimmy limited his practice hours so he could spend time with his lifemate, Eva, who was confined to a nursing home for several years before her death in 1983. His daily visits and ministrations for her serve as eloquent statement of his personal qualities of devotion and singlemindedness of purpose. One of the nurses said of Jimmy, "You could set your watch by the time of his arrival each morning and afternoon."

Jimmy is survived by four children: Harold, a West Point graduate and retired Army colonel; David, a high school principal in Enterprise; Jimmy, an executive producer for WSMV, TV-4 in Nashville, Tennessee; and Kathy, a Montgomery homemaker.



VERNON ZIONCHEK CRAWFORD, SR

Vernon Z. Crawford, Sr., died January 12, 1986; he was a member of the Mobile Bar Association and the Alabama State Bar.

He was born December 19, 1919, in Mobile, Alabama, and served in the United States Merchant Marine during World War II. Crawford later attended Alabama State Teachers College, graduating in 1951. He obtained his law degree in 1955 from Brooklyn Law School in Brooklyn, New York, and was admitted to the Supreme Court of Alabama in May 1956, the U.S. District Court for the Southern District of Alabama in October 1956 and the U.S. Court of Appeals for the Fifth Circuit in June 1961. He was subsequently admitted to practice before the United States Supreme Court.

Crawford was actively associated with a number of landmark cases relating to the constitutionality of various statutes and was successful in pursuing major matters in the field of civil rights.

In 1965, he represented a group of Mobile citizens who ultimately organized Gulf Federal Savings & Loan Association; he served as a director of that association until his death.

Crawford was married to Jean G. Crawford and they had four sons: Vernon Z. Crawford, Jr.; Jarrett C. Crawford; John W. Crawford; and Victor T. Crawford.

The commitment of Vernon Z. Crawford to his community, his church and the legal profession was in every respect outstanding. ■

Notice Re: New Rule 11, F.R.Civ.P.

Rule 11, Federal Rules of Civil Procedure, as amended effective August 1, 1983, is entitled "Signing of Pleadings, Motions and Other Papers; Sanctions." Alabama lawyers slowly are becoming aware of the possibility of sanctions being imposed under Rule 11, but apparently many are totally unaware of the following language in Rule 11:

"Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated." (emphasis supplied)

The rule calls for papers not properly signed to be *stricken*. Members of the bar are asked to understand that the *signature of a law firm is not the signature of a lawyer in his individual capacity.*

Classified Notices

RATES: Members: No Charge; Nonmembers: \$35 per insertion of (50) words or less. \$50 per additional word. 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.

EXPERT TESTIMONY

ADDICTIONOLOGIST: Is your client "weaked-willed," suffering from a "bad habit" or "psychiatric illness;" or is he chemically dependent, impaired from a chronic, fatal medical disease? Physician, one of 179, certified in medicine's newest specialty—addictionology. Expert testimony and case analysis for plaintiff/defense. Alcohol, drug, nicotine, issues in criminal law, DUI, malpractice, wrongful death, personal injury, worker's compensation, family law and product liability. **Peter M. Macaluso, MD, PA, 1885 Professional Park Circle, #10, Tallahassee, Florida 32308, (904) 878-0304**

FOR SALE

FOR SALE: Am Jur 2d; Am Jur, Proof of Facts, 2d. **Contact Lisa, (205) 365-2286 at Howell, Sarto & Howell, 147 East Main Street, Prattville, Alabama 36067.**

FOR SALE: Federal Reporter Second Series, Volume 1 through 354. **Those interested contact Tamara at (205) 432-0701.**

FOR SALE: Collier Bankruptcy Manual—\$150; Collier Bankruptcy Practice Guide—\$350; Collier on Bankruptcy, 15th Ed.—\$400; Criminal Defense Techniques—\$350; Prosecution & Defense of Criminal Conspiracy Cases—\$50; Defense of Narcotics Cases—\$100; Defense of Drunk Driving Cases—\$160; Trauma—\$250; Attorney's Textbook of Medicine—\$600; Larson's Workmen's Compensation—\$90; Southeast Transaction Guide—\$500; (negotiable) Federal Practice & Procedure—Wright, Miller, Cooper; West's Federal Forms; Federal Procedural Forms; Am Jur Pleading & Practice Forms; ALR, 1st—4th; and Am Jur Proof of Facts, 1st & 2nd. **Contact Claire Black or Walter Crownover at (205) 349-1727, or write Crownover & Black, P.O. Box 2507, Tuscaloosa, Alabama 35403.**

POSITIONS OFFERED

POSITION AVAILABLE in small law firm for lawyer with two—five years' experience and interest in business litigation, corporate law and corporate bankruptcy. Experience in tax law helpful, but not a prerequisite. All inquiries confidential. **Send resume to: Hiring Partner, P.O. Drawer 1865, Birmingham, Alabama 35201-1865.**

SECURITIES LAWYER: Major New Orleans law firm with sophisticated and expanding securities practice is seeking two associates with three-five years' experience in securities law. Candidates must possess outstanding academic credentials. Competitive compensation package. **Recruitment Coordinator, P.O. Box 60643, New Orleans, Louisiana 70160-0643**

SERVICES

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

BARRISTERS' RESEARCH GROUP: Legal research and writing services performed by a group of licensed Alabama attorneys. A unique, timely and inexpensive way to solve your research needs. Requesting attorney controls deadlines and total time expended on each request. Rate \$30 per hour. **Contact Barristers' Research Group, P.O. Box 6981, Birmingham, Alabama 35210. (205) 595-5426 No representa-**

tion is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services. All services will be performed at the request of and become the sole and exclusive work product of the requesting attorney.

NOW AVAILABLE in Alabama—the nation's largest, most comprehensive legal information service. United LawSearch accesses Westlaw, Lexis and hundreds of other databases on a daily basis. United LawSearch is affordable, fast—and you don't need a computer. **Call 1-800-221-1580 toll-free for information.**

Don't let your
Alabama Lawyers
get worn, torn or
thrown away.

Order a binder
(or two!)

at \$6.50 each
from:

The
Alabama Lawyer

P.O. Box 4156
Montgomery, AL

36101

or call

(205) 269-1515

SERVICES

LITIGATION SUPPORT/Evidence Development: Conduct interviews, obtain affidavits and collect evidence. Thirty years' experience as a Federal investigator and supervisor including special agent, USAF Office of Special Investigations; special investigator, Veterans Administration Headquarters; and chief of investigations and security, Chicago area office, Federal Aviation Administration. Member Mississippi State Bar, American Bar Association, Federal Bar Association, Association of Federal Investigators and American Arbitration Association. **Charles A. Haycraft, 2107 5th Avenue North, Suite 501, Birmingham, Alabama 35203, (205) 322-0501**

LEGAL RESEARCH HELP: Attorney with seven years' experience in legal research/writing. Access to University of

Alabama and Cumberland libraries, Westlaw available. Prompt deadline service. \$35/hour. **Sarah Kathryn Farnell, 112 Moore Building, Montgomery, Alabama 36101, phone 277-7937.** *No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.*

LAMAR MILLER, Examiner of Questioned Documents: Qualified in most Alabama courts. American Society of Questioned Document Examiners, American Academy of Forensic Sciences, certified by American Board of Forensic Document Examiners. Handwriting, forgery, typewriting, alteration of medical and other records. Miscellaneous document authentication problems. **P.O. Box 55405, Birmingham, Alabama, 35255, (205) 979-1472**

WANTED TO BUY

WANTED: Volumes 280 through 288; 299 through 330 of the Southern Reporter 2nd Series; also, volumes 398 through 474 of the Alabama Reporter. **Please call Bob Rieder at (205) 895-6633.**

The Alabama Lawyer

BAR DIRECTORY EDITION

is seeking subscribers and advertisers for its 1986 issue to be published in August.

The directory contains an alphabetical and geographical listing of all members of the Alabama State Bar, with their addresses and telephone numbers, comprehensive listings of state and federal officials, state bar information, the *Code of Professional Responsibility* and miscellaneous charts and fees.

Subscriptions are available at an advance cost of \$7.50 each.

Advertising rates are available upon request.

**PLEASE WRITE
OR CALL:**

**Margaret Lacey or
Ruth Strickland**

**Alabama State Bar
P.O. Box 4156
Montgomery, AL 36101
205/ 269-1515**

BE A BUDDY

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

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



Local Bar Activities and Services Buddy Program Application

Name _____

Firm Name (if applicable) _____

Address _____

City _____ State _____ Zip _____

Telephone _____

New Lawyer

Experienced Lawyer

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

UNDERSTANDING THE LEGAL MIND

It is a special mind, one that:

- Must be precise
- Must be able to adapt to each new case
- Must be ready for change

We understand the legal mind. We are precise, we are adaptable and geared for those last-minute changes. We've gotten this way in 75 years of working with attorneys. You'll like working with us.



BIRMINGHAM PRINTING AND PUBLISHING
130 SOUTH 19TH STREET
205/251-5113

Financial and Legal Printing Professionals

“We changed
to Westlaw
for the pricing.
We’ve stayed with



Holley Marker Blair
Associate/Librarian
John R. Lukens
Partner
*Jackson, Kelly, Holt &
O'Farrell
Charleston,
West Virginia*

it for the results
we receive.”

Call or write today for more information
or to arrange for a free WESTLAW
demonstration in your office.

WESTLAW®

1-800-328-0109
(MN, AK 612/228-2450)
P.O. Box 64526
St. Paul, MN 55164-0526

©1986 West Publishing Co. 9340-8/6-86

