

# The Alabama Lawyer

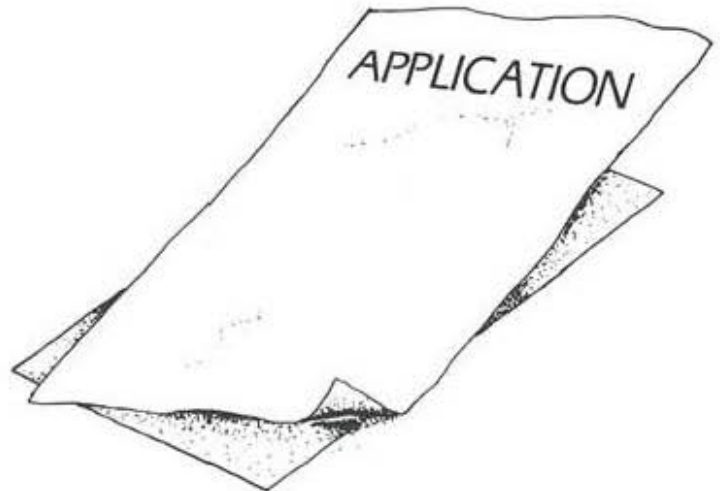
Vol. 52, No. 4

JULY 1991

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# IN BRIEF

JULY 1991

Volume 52, Number 4

**ON THE COVER:** Attendees of the 1991 Alabama State Bar Annual Meeting can expect informative sessions, entertaining events and beautiful sunsets.

*Photo by J. W. Guier, Jr., Montgomery*

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# The Alabama Lawyer

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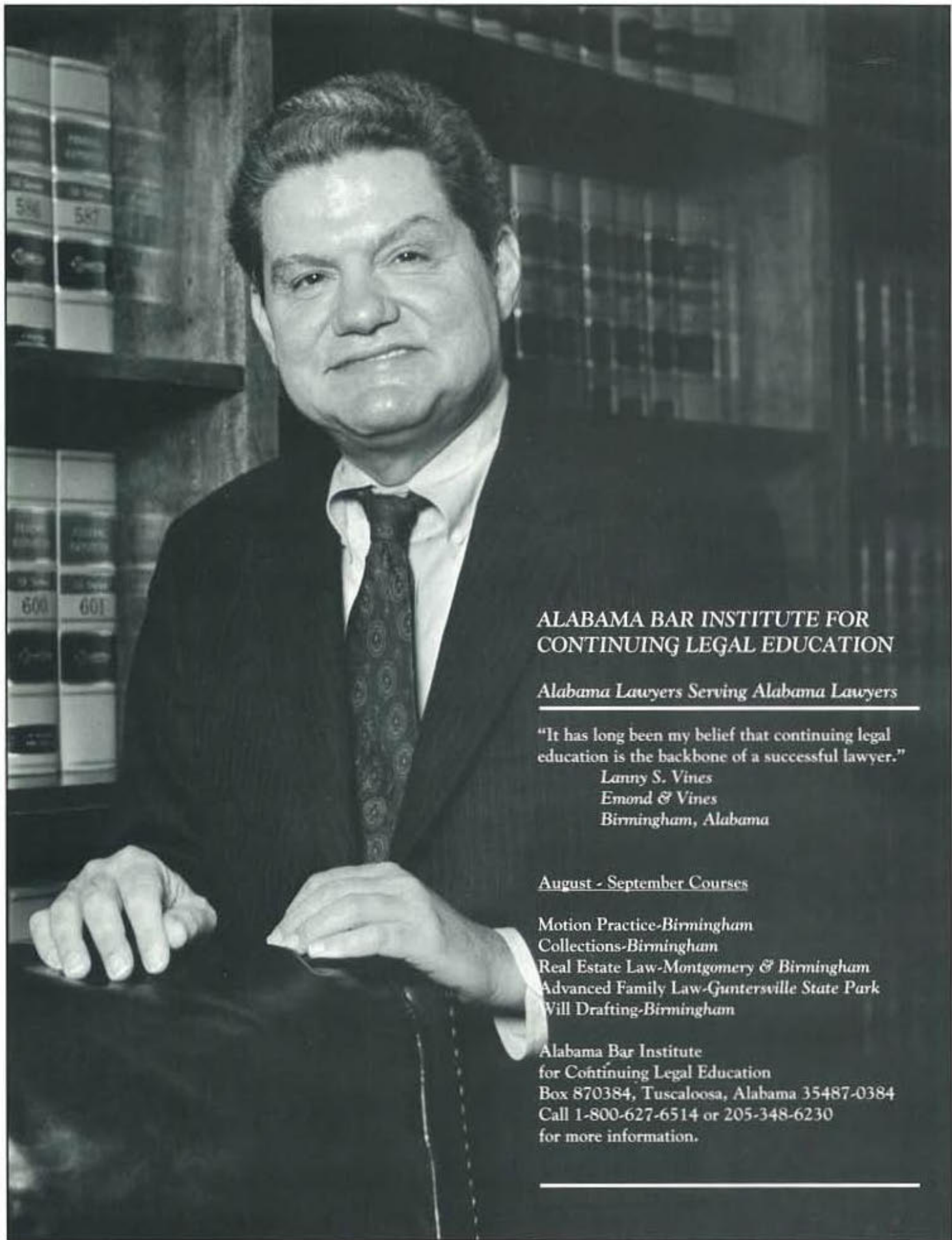
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# PRESIDENT'S PAGE

**A**s my year as your president draws to an end, I ask you to indulge me with some personal reflections. As Paul Harvey puts it, "Over my shoulder, a backward glance."

What a year!

After a lifetime of being exposed to the law, 30 years of practicing law and a longtime involvement in various aspects of organized bar activities, this brought it all together. I have had the opportunity to see our profession spread out in all of its many forms—from the country lawyer to the big city practitioner; lawyers in sole practice, members of large firms, corporate counsel, law professors, judges, and lawyers working for the Government; male and female, black and white; tax lawyers, civil trial lawyers, prosecutors, criminal defense lawyers, real estate lawyers, divorce lawyers, collection lawyers, business counselors, and pro bono lawyers making legal services available to the poor. And the view has been thrilling.

The year really began at the 1990 Annual Meeting in Mobile with the Saturday morning breakfast for committees and task forces. For four days, a couple of months earlier, I had worked at bar headquarters with the staff on the difficult task of making approximately 400 appointments from a list of 700 volunteers. Looking out over the tables where over 40 groups were discussing plans for the coming year, I connected faces with names and felt a growing sense of excitement.

So much of the bar's work is done by our committees and task forces. In late August, we held a training session for committee and task force chairpersons, as well as for section chairpersons and new commissioners. The meeting was held in Tuscaloosa, lasted a full day, was beautifully organized by Keith Norman, director of programs, and was very well-attended.

It has been rewarding to view this committee work in its various stages.

Some work is just beginning, such as that of our new Task Force on Minority Opportunity and Participation. Building on the foundation laid this year, this task force will firmly establish in the years ahead that the Alabama State Bar seeks and welcomes the active participation of all of its members.

Other projects are in the intermediate stage. For example, the Committee on Access to Legal Services has organized the Volunteer Lawyers Program, has hired a statewide coordinator and is ready to launch this new effort to provide pro bono legal services to the poor.

After three years of work, the Task Force on Appellate

Court Restructuring has obtained endorsements from the state's appellate courts and the board of bar commissioners for its legislative proposals, and a bill will be introduced. The board of commissioners has approved and recommended to the supreme court a mediation system designed by the Task Force on Alternative Methods of Dispute Resolution. In addition, the Impaired Lawyers Committee has obtained approval for its new PALS program to assist lawyers in overcoming the ravages of substance abuse. Then, we have seen the flourishing of completed projects, a shining example of which is Attorneys Insurance Mutual (AIM), our highly successful captive professional liability insurance company which was organized two years ago through the efforts of the Insurance Programs Committee. These are just a few examples of the important work being carried out by our many committees and task forces.

During the year, unforeseen developments, such as the introduction in the Legislature of a bill to totally restructure and drastically change the state's workers' compensation laws, have created the need to respond quickly through new volunteers. Lawyers have unselfishly answered the call. A project which has been going on the entire year has been our much-needed building expansion. Fund raising has taken me throughout the state. I wish that I could report a completed campaign, but I cannot. While we have made a big start, we still have a way to go to reach our goal for needed funds. I urge every member to

make a pledge to help with this cause. A real highlight of the year for me has been my association with the members of the board of bar commissioners. Representing every judicial circuit and every possible opinion on every possible subject, this diverse group of men and women sets policy and takes official action on behalf of the state bar, as well as conducting hearings as members of disciplinary panels. They have served tirelessly and well. The board's Executive Council has been diligent in working between board meetings, in coming to Montgomery the day before each board meeting to discuss all matters requiring action, and in providing counsel to the president. The members are past President Alva Caine, President-elect Phil Adams, Vice-president John Owens, Joe Cassidy, Broox Holmes, and Tim Dillard. We spent a planning weekend together, along with staff, at the beginning of the bar year, and they have continued to give dedicated service throughout the year. A downside of this work is the bar's disciplinary function. It

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**Hon. W. Harold Albritton, III**



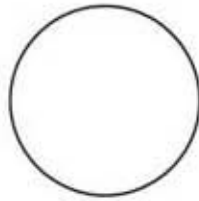
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*Hon. Myron H. Thompson, presiding judge of the United States District Court for the Middle District of Alabama, introducing members of the Albritton family*



*Wife Jane Albritton holding the Bible and son Harold Albritton, IV administering the oath of office*



*Representatives of the federal and state judiciary*



*Jane Albritton assisting in the robing ceremony as sons Tom and Ben Albritton watch*



*Bar Commissioner Ab Powell of Andalusia, lifelong friend of Judge Albritton's, recounting highlights of Albritton's illustrious legal career*



*Senior Judge and former ASB President Truman Hobbs welcomes Judge Albritton to the bench. From left to right, front row, are Judges Albritton, Thompson and Frank M. Johnson, Jr. Back row are Judges E.B. Haltom, Jr., Hobbs and Robert E. Varner*



## PRESIDENT'S PAGE

*Continued from page 180*

is sad to see dishonor brought on our entire profession by the actions of a relative few. But this happens, and since it does, it has been good to see the highly competent manner in which our disciplinary staff, directed by general counsel Bob Norris, and our Disciplinary Commission and panels work. We police our own very well.

Your president represents you at various meetings around the country, and this has been most rewarding. The Alabama State Bar is held in high regard in national legal circles. Through attending meetings of the National Council of Bar Presidents in Chicago and Seattle, the Southern Conference of Bar Presidents at The Greenbriar, and the ABA Annual Pro Bono Conference in Philadelphia, I was able to bring back much information which has been helpful in numerous programs. Fortunately, the bar makes family life easier for its president by providing for the president's spouse to also make such trips. Jane and I both thank you for this.

It has been a pleasure to visit with a few of the local bars around the state. This included speaking to the Birmingham Bar Association and attending its famous Christmas Party, making a presentation on the building expansion and a plea for funds to the Mobile Bar Association, and attending the annual Law Day luncheons of the bars in Montgomery and Tuscaloosa. I only regret that I was unable to accept more such invitations.

A special treat for me was speaking to the two classes of admittees to the bar. The eager faces of the soon-to-be lawyers and the proud faces of their families were a pure tonic for me as I shared with them my thoughts on what it meant to be a lawyer.

I can report to you without reservation that this bar is served well by its staff of employees. Led by executive director Reggie Hamner, they are highly competent, hardworking and dedicated to their mission. Working with them has been a pleasure.

When President Bush nominated me for a federal judgeship near the end of my term, I was pleased and flattered for the board of bar commissioners to ask

me to serve out my term. This is what I wanted to do, and, although unusual, it is not prohibited for a judge to serve as bar president, so I readily accepted.

Regarding the judgeship, I must share with all of you some feelings which I have expressed recently to several lawyers and judges. I have received congratulations from a number of persons on my "elevation" to the bench. While I understand that our judicial system does require a certain degree of separation from and respect for the office of judge in order for the system to function properly, I assure you that I do not feel personally "elevated". A change from lawyer to judge is a lateral transfer. The lawyer and the judge each performs equally essential functions in our system. We first are lawyers, and, of that, I am deeply proud.

As this is being written, we are on the eve of our 1991 annual meeting and the end of my service to you. When a person has been as deeply involved in something as is required in serving as state bar president, it is hard to think of turning loose and walking away. I am fortunate in that this is made easier for me by the knowledge that matters will now be in the capable hands of Phil Adams. With Phil's extensive bar experience and

proven ability, we will be in good hands.

It has been an interesting year, too, for my faithful secretary, Cindy Cook, whose juggling of schedules, soothing of impatient clients, making, changing and changing again of reservations, taking of dictation from various airports and hotels, tracking me down at remote locations, handling drawers full of files, and putting up with it all behind a big smile will always be remembered.

I thank my partners, John Givhan, Rick Clifton and Hal Albritton, and our associate, Bill Alverson, for their understanding, their filling in for me in my frequent absences, and their generous willingness to accept my preoccupation with the bar in what turned out to be my last year of practice with them.

Special thanks, which cannot be expressed adequately, to Jane, my wife, advisor and travelling buddy, who kept our bags packed, went everywhere with me, and would be embarrassed if I tried to tell you all of the many things that she did to help me serve as your president.

And, finally, for allowing me to serve as president of this bar which I love, for the high honor and for the sheer fun of this past year, I thank you, my brothers and sisters at the bar. ■

## CORRECTIONS!

Please make these corrections in your copy of the 1990-91 *Alabama Bar Directory*.

The telephone number of the Mobile firm of **McRight, Jackson, Dorman, Myrick & Moore** was listed incorrectly. The correct number is (205) 432-3444.

Please note that **Elmer E. White, III**, who was listed as an out-of-state attorney with the Louisiana firm of **Kullman, Inman, Bee, Downing & Banta**, actually works in the firm's Birmingham office. His address should be listed as 3125 Independence Drive, Suite 102, Homewood, Alabama 35209. Phone (205) 871-5858.

The Bibb County branch office of the Tuscaloosa firm of **McElvy & Ford** was omitted. Offices are located at 117 Court Square West, Centreville, Alabama 35042, and the mailing address is P.O. Box 517, Centreville, Alabama 35042. Phone (205) 926-9796.

**Thomas R. Olsen**, of the Orlando firm of **Olsen & Olsen**, was omitted. He is a 1989 admittee to the bar, and his office is located at 2518 Edgewater Drive, Orlando, Florida 32804. Phone (407) 423-5561.



# EXECUTIVE DIRECTOR'S REPORT

## THE PLATE IS BEING PASSED

**T**he fundraising effort to pay for the expansion of state bar headquarters began in earnest six months ago. At this writing, we are near the one-third mark of our goal of \$3.5 million. At the end of May (this column must be written two months prior to publication), we had received \$1,115,060 in pledges and contributions. This figure is both encouraging and disappointing.

The total pledged is significant, but an analysis of the pledge sources gives pause for concern. This bar — your bar — now has 9,400 active members; however, only 1,519 of them have made a pledge or contribution to the building fund. This figure includes 1,298 individuals and 59 firm pledges which encompass another 221 individuals. These 1,519 persons, to date, have pledged \$471,659.

The remaining \$643,400 pledged thus far represents 28 gifts to dedicate specific areas within the new building. These gifts range from \$10,000 to a single pledge of \$150,000 which allows dedication of the new board of commissioner's meeting room. In most instances, these donors have made an additional individual pledge of \$300 per lawyer when the original pledge was in a firm name.

When this campaign was undertaken, perhaps too optimistically, it was anticipated that a significant majority in the bar would pledge the suggested \$300 amount, payable over a three-year period. Not unrealistically, it was also assumed some simply could not pledge this amount right now, but that every lawyer would wish to make some contribution toward this effort at some time during the fundraising. The first return envelope we received contained a \$1,000 check from a longtime member and supporter of the bar. Another envelope

in the same batch contained a pledge from a newer member of the bar who, only a year before, had lost an entire practice (including the physical office) in a natural disaster. And, yet another sent \$20 with a note expressing a sincere willingness and desire to do more, but candidly admitted circumstances simply made a larger gift impossible at the time. Each of these responses was thrilling, and for several weeks, each day's mail was encouraging. Recently, there have been fewer and fewer pledges.

In the beginning, we determined to try and raise these funds by appealing to the members of the bar — as lawyers and judges — who have benefited from our profession and continue to do so.

Our bar association, on any scale, can measure up to any in the other 50 jurisdictions. This is a direct result of the wisdom of those who founded this association in 1879 and those who have nurtured it in the last 112 years. We would never have achieved the success we enjoy today if those who came before us had not cared deeply for this profession. It is our time to care.

Please use the enclosed pledge card and give something to this effort. If you cannot give, or choose not to give, please indicate on the card and return it to bar headquarters.

Volunteers are attempting to contact every member of the bar from whom no response is received. Please save a fellow lawyer a phone call, visit or letter in behalf of your needed response.

Your bar needs your help — please do not make it grovel. The new building can serve this profession well into the next century. Let those who follow us see that we cared enough to "put in a little bit" when the plate was passed. ■



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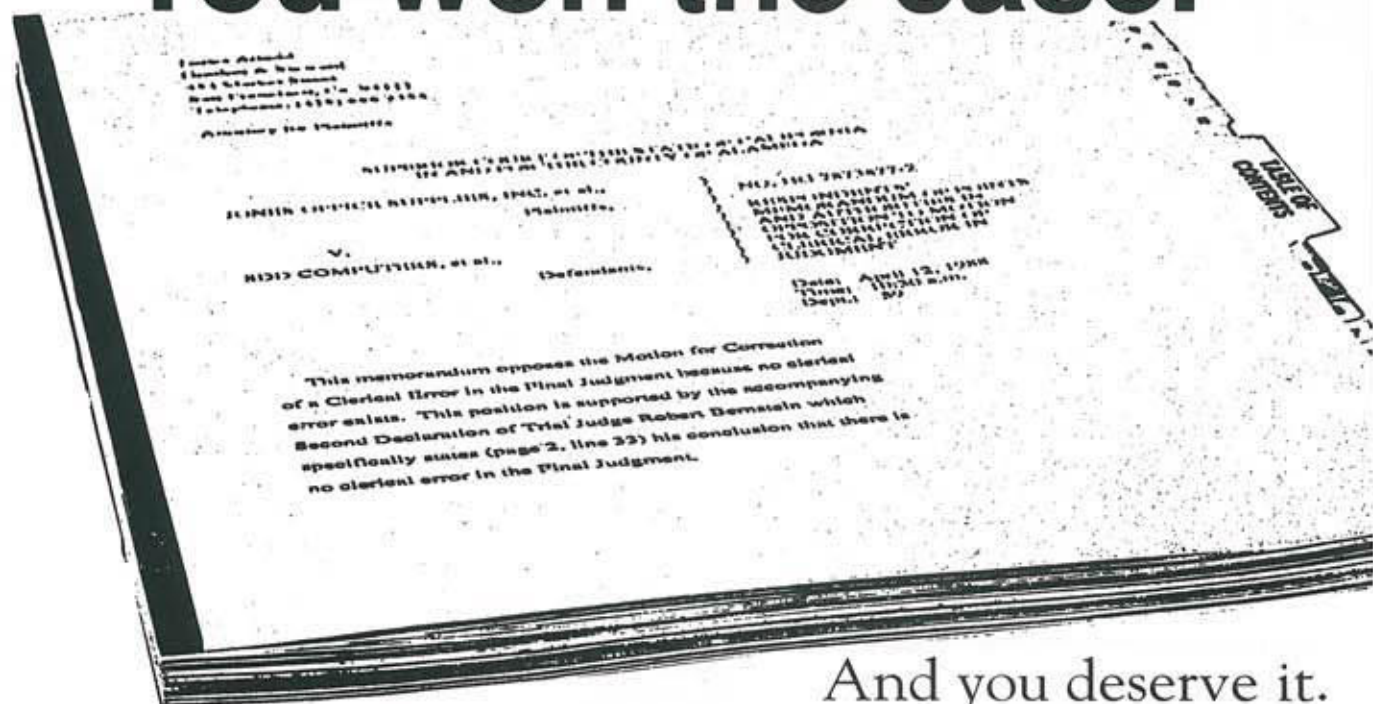
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# BAR BRIEFS



Huntley

## Mobile attorneys to teach

Mobile attorneys Willie J. Huntley, Jr. and E.T. Rolison, Jr. were selected to teach trial advocacy at Emory University Law

School in Atlanta. They were lecturers in the National Institute for Trial Advoc-



Rolison

cacy during the May 1991 term. The Institute allows Emory to invite distinguished litigators to spend time in residence and interact with law students and faculty.

Huntley practices with the firm of Crosby, Saad & Beebe, P.C. Rolison is

an assistant United States attorney for the Southern District of Alabama and is chief of the Organized Crime Drug Enforcement Task Force and the Financial Litigation Unit.

## House joins Washington firm

Hogan & Hartson, Washington, D.C.'s oldest major law firm, announced recently that W. Mike House joined the firm as a partner, in the firm's Washington office. House came to Hogan & Hartson from the Washington firm of Shaw, Pittman, Potts & Trowbridge.

Prior to moving to Washington in 1980, House was a member of the Montgomery firm of Odom, Argo & Enslin from 1976-79. He also served as president of the Alabama State Bar's Young Lawyers' Section, chairperson of the Alabama Citizens Conference for a New Constitution and director of the Citizens Conference on Alabama State Courts.

He is a 1971 graduate of the University of Alabama's School of Law and a 1968 graduate of Auburn University.

## Feld receives Meador Award

L.B. Feld, of the Birmingham firm of McCord, Feld & Hoffman, P.C., was the 1991 recipient of the University of Alabama School of Law's Bench and Bar Outstanding Alumnus Daniel Meador Award. Feld was recognized at the law school's annual Law Week Awards Ceremony for his outstanding service to the law school.

For the past 15 years, he has served as a lecturer in taxation (1976-81) and a visiting associate professor of law (1981-83), and currently serves as an adjunct professor of law (1983-91). Feld is a 1972 graduate of the University's School of Law and received his master's of law degree in taxation from New York University in 1973.

He teaches in the juris doctor and master's of laws in taxation programs. ■

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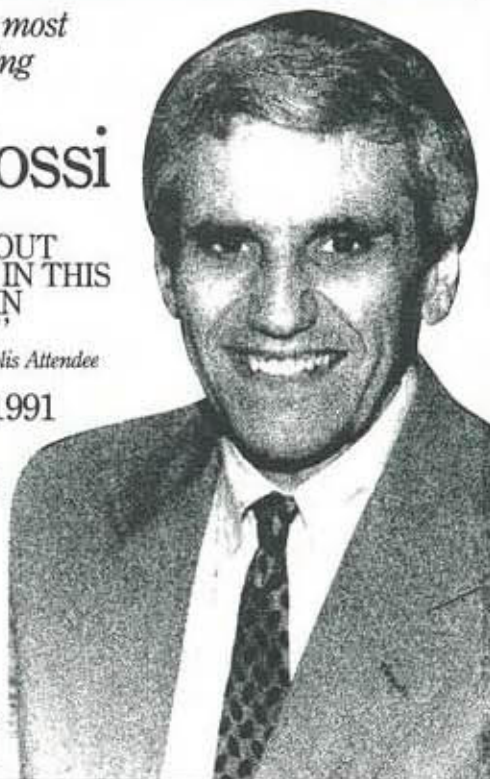
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## ABA ANNUAL MEETING: AUG. 8-15, 1991

Swan Coach House. Photo courtesy of the Atlanta Convention & Visitors Bureau.



# LEGISLATIVE WRAP-UP

By ROBERT L. McCURLEY, JR.

## Greene retires

Louis G. Greene, director of the Legislative Reference Service since 1970, retired April 1, 1991 after over 20 years of service. Greene was responsible for seeing that between 2,000 and 3,000 bills and resolutions were prepared for Legislators each year. A 1950 graduate of the University of Alabama School of Law, Greene will be honored this month at the Alabama State Bar Annual Meeting in Gulf Shores.

## Regular Session—1991

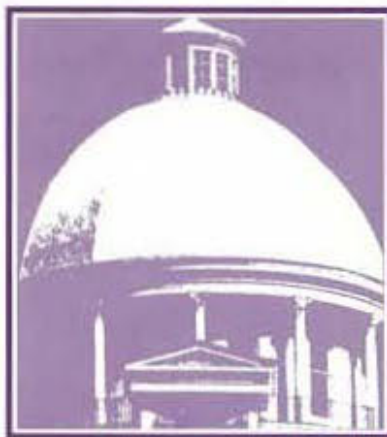
With the Legislature half over, 1,400 bills had been introduced but only 11 of them have passed both houses of the Legislature and been signed into law. Major legislation still waiting to be acted on at the halfway point were the appropriation bills for education and the general fund, restriction of abortions, revision of the worker's compensation law (H-587), prison reform, and education reform.



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

## Tax reform

The Alabama Commission on Tax and Fiscal Policy Reform has drafted seven bills and a package of constitutional amendments to carry out the commission's recommendations. Professor Jim Bryce, University of Alabama School of Law, coordinated the drafting of legislation for the commission. These bills will substantially amend or totally rewrite



the existing statutes on: ad valorem tax; corporate franchise tax; individual and corporate income tax; insurance premium tax; sales, use and leasing taxes; and tax incentives for industrial development. A bill was also drafted to impose a tax on intangible property. The constitutional amendments concern the income tax, ad valorem tax, corporate franchise tax, earmarking of revenues, and fiscal policy.

## Reapportionment

The permanent Legislative Committee on Reapportionment held eight public hearings around the state, ending on congressional reapportionment. Since Congress must be reapportioned before the 1992 elections, many legislators are urging quick passage of a congressional reapportionment plan either in the last days of the regular session or for the Governor to call a special session for reapportionment. The Legislature also must reapportion itself, but it is not required to do so before its next election in 1991.

## Bar legislation

The Alabama State Bar is vitally interested in a bill to increase the bar examination fee \$25 per year, up to a maximum of \$400 (H-492, S-314). Another bar-endorsed proposal would provide for nonpartisan election of judges (see May 1991 *Alabama Lawyer*).

## Personal representative powers and fees

The Alabama Law Institute, as a part of its probate procedure revision, has drafted statutory powers for personal representatives. These powers are in keeping with the policy of proscribed powers of conservators in Ala. Code § 26-2A-152. In determining personal representatives' fees, the court may consider factors similar to those proscribed by court rule in the deeming of attorney's fees. The Legislature must adjourn by July 31, 1991. With so many potentially unresolved issues, it is likely that the Legislature will be called into one or two special sessions during 1991. Pocket parts for the 1991 Regular Session should be available from the Michie Company in early December.

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

## ASB Section of Labor and Employment Law's SEMINAR

The state bar's Section of Labor and Employment Law will hold its annual Gulf Shores Seminar September 27 and 28 at the Summerchase Condominiums in Gulf Shores. Room reservations should be made directly with Summerchase at (800) 722-GULF or (205) 981-9731.

For more information, contact Joseph W. Spransy at P.O. Box 10406, Birmingham, Alabama 35202, or phone (205) 254-7252.



# THE NEED FOR TAX REFORM IN ALABAMA

By C.C. TORBERT, JR.

**I** have had the pleasure of serving as chairperson of the Alabama Commission on Tax and Fiscal Policy Reform, which was created by the Alabama Legislature last year and directed to study the state's tax and fiscal policy structure.<sup>1</sup> Members of the commission served without compensation. We met often, almost weekly, and held public hearings across the state. Each member came to the table with varied and extensive experience in government, law, education, labor, agribusiness, large and small business, forestry, and academia. The commission did not reach its conclusion without debate or discussion. But beyond all other considerations, far removed from politics or conservative or liberal philosophies, we recognized that Alabama has a tax system that is simply and fundamentally unfair.

Describing Alabama's current scheme of taxation as a "system" is almost a contradiction in terms, because a "system" implies that there is order, consistency and harmony. Taxation in Alabama does not currently possess any of these qualities. Our overall system of taxation lacks coordination. It is regressive, complex, difficult to comply with, and hard to administer and enforce. Our sales tax imposes a tax on food for babies but does not tax food for cows. Business corpora-

tions who file their corporate charters in Alabama are taxed differently from those who file their organizational papers in other states. People who own real estate are taxed differently from those who own stocks and bonds. Our tax base is too narrow, which results in high tax rates. This article is meant to educate Alabama practitioners on the proposals set forth in the report of the commission, to explain their underlying rationale and, it is hoped, to engender support for the changes outlined in our report.

## RATIONALES FOR CHANGE

At the outset, the commission decided on a framework for its approach to fundamental change of Alabama's tax policy. First, the commission decided to make its decisions and recommendations without regard to the ease or difficulty of enacting them into law. Second, the commission decided to make recommendations that would be revenue-neutral, thereby leaving decisions about increasing or decreasing revenue to those elected to make such decisions. Third, the commission adopted several basic principles on which to base its recommendations: fairness, simplicity, neutrality and effectiveness.

Fairness requires that taxpayers in similar situations be treated similarly and that taxpayers who are less fortunate bear less of the tax burden than those who are more fortunate. Simplicity makes it easy for taxpayers to understand and comply with the tax law. Simplicity also makes it easier for businesses to incorporate the tax system into their long-term business plan and makes it easier for the state to administer. A system that is neutral allows taxpayers to decide how to conduct business, what to invest in, what to consume and where to

locate without tax considerations being the dominant factor. Finally, a system that is effective will raise sufficient revenue to provide essential public services.

The commission discovered and adopted a central theme which underlies all of our recommendations: broaden the tax base and lower the tax rate.

## PERSONAL AND CORPORATE A. Income tax

The Alabama tax on individual and corporate income should parallel as closely as possible the federal income tax law using federal adjusted gross income and the standard federal deductions and personal exemptions. There would be no deduction for federal income taxes paid. While taxpayers no longer will be able to itemize their deductions on the state level or deduct the federal income tax as is currently done, the new system is substantially more simplified than the old. The tax would be at a flat rate whereby the present marginal rate of 5 percent would be lowered to a flat rate between 3.8 percent to 4.2 percent to be revenue-neutral. The state return would be simplified and could be filed on a single sheet. In computing both the individual and corporate income taxes, it would be necessary to subtract interest on federal obligations (because Alabama is prohibited from taxing such interest) and to subtract refunds of Alabama income taxes (which are currently included in federal adjusted gross income). Likewise, interest on obligations from other state and local governments would be added to the federal adjusted gross income.

Currently, a family of four is subject to Alabama income tax if it makes over \$4,400 a year. A family of four owes no federal income tax until it earns over \$15,000 a year. The commission would



**C.C. Torbert, Jr.**  
C.C. Torbert, Jr., a former chief justice of the Alabama Supreme Court, is a partner in the firm of Maynard, Cooper, Frierson & Gale in its Montgomery office.



rectify this disparity. Under our recommendations, approximately 115,000 low-income families will be removed from the tax rolls, thereby increasing the progressivity of income taxes. With the greater simplicity comes a general lowering of administrative costs by the state and a decrease in taxpayers' cost of understanding and complying with the tax code (taxpayers currently must understand and adhere to two separate systems).

### **B. Transaction taxes**

Although they account for 27 percent of state revenues, sales taxes, use taxes and lodging and lease taxes are regressive, unfair and complex under the current system. Today, those families who necessarily spend a large part of their incomes for food and other necessities are hit particularly hard. Because the present income tax base is so narrow, all consumers must pay a high rate. Because of the number of exemptions in Alabama, an increase in revenue requires an even greater increase in the tax rate than would occur if the tax base were more broadly defined. As revenue needs increase, an even greater increase in tax rates will be needed under the current system to achieve the revenue required; this aggravates an already inequitable system.

We recommend that the sales tax base be broadened to include services, in addition to the sale of tangible goods, and that the sales tax rate be reduced from 4 to 3 percent. The new system would subject all services to the sales tax. This would include repair services, personal care services, construction, computer programming, and profession-

al services. Exemptions now allowed on an *ad hoc* basis for certain entities and types of property would be restated in terms of objective categories. Excluded from the transactions taxes would be purchases by federal, state and local governments, and items that ultimately will be subject to the sales tax. Machinery purchased for productive use in industry would be exempt from the taxes.

As with the individual and corporate income tax revisions, this reform of the sales tax broadens the tax base and avoids the regressivity present in the current system. Furthermore, the reform would simplify the tax system, thereby increasing compliance by taxpayers and reducing administrative costs since it would be clear what entities and properties are subject to the tax. While the political debate promises to be heightened, it is necessary for Alabama to implement these changes if it wishes to have a truly fair and simple tax system.

### **C. Property taxes**

In 1988, the average property tax paid per person in the United States was \$538. In Florida, it was \$537. In Georgia, it was \$396. In Tennessee, it was \$272. In Mississippi, it was \$266. In Alabama, it was \$132. Alabama's property tax is the lowest in the nation and is complex in its structure and its administration. There is a lower tax rate for homes, farms and forest lands, and a higher rate for utilities and commercial property, but there is no rational justification for the disparity.

Utility property is assessed at 30 percent, but the higher taxes are simply passed on to the consumers in the form of higher utility bills. The classification system makes the property tax base exceedingly narrow. Homes make up 50 percent of the total value, farms another 10 percent and timberland 6 percent. Therefore, 66 percent of the value is in the lowest assessment classification.

We recommend that all property be assessed at 100 percent of its value. All value should be treated alike. That is fair and simple. Because the assessment ratios will be changed, the millage rate will be rolled back to be revenue neutral. For the state property tax, this would mean a new millage rate of only 1.1 mills rather than 6.5 mills. Local rates

would also be adjusted to maintain revenue neutrality and the current homestead exemption would be raised to \$40,000 to provide an equivalent tax exemption as before the change.

"Current use" valuation of property also needs changing. The commission recommends a system of "actual use" valuation for all property, including homes, farms and timberlands. In each case the "actual use" value would be determined not by a formula, but by evaluating market sales of similar property used for those purposes. We also recommend that any property using the actual use valuation be subject to recapture of taxes for the previous five years when the use changes.

Under the current system, landowners are taxed on land, but property such as stocks and bonds goes virtually untaxed. The commission recommends a property tax on such intangibles held by individuals. This would be taxed at a low rate, with perhaps a \$100,000 exemption to allow average persons reasonable savings. With the assessment at 100 percent of the value of the property, and its application to all property, regardless of whether it is owned or rented, business or residential, farm land or land used in business, the property tax system would achieve equal status among all property owners and simplicity for the system as a whole. Homes, farms and forest land would be subject to an increase in the property tax while the taxes on commercial property will remain substantially unchanged. Any decrease in taxes on utility property could be translated into lower utility rates.

### **D. Business taxes**

Our current tax system does not treat similar businesses alike and is far too complex. The state should rely more heavily on corporate earnings and profits, rather than the franchise tax, the shares tax, the financial institution excise tax, or the insurance premium tax, to generate revenue from corporations and other business entities.

We recommend that the corporate franchise tax remain in place, but with a dramatically different structure and a much lower rate. All corporations and limited partnerships would pay on the basis of capital employed in the state, which includes the par value of stock,

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capital and earned surplus and corporate debt (with appropriate provisions for financial institution deposits). A corporate taxpayer would be able to combine the corporate franchise tax return with the income tax return, and the minimum franchise tax would be increased to \$250 for all corporations and limited partnerships.

Aside from the restructuring of the corporate franchise tax, both the annual permit fee and the shares tax would be eliminated. The shares tax would no longer be needed with the restructuring of the franchise tax and the proposed tax on intangibles that would include a tax of such shares.

Since financial institutions are currently paying excise tax rather than corporate income tax, the commission proposes to repeal such excise tax and tax financial institutions under the corporate income tax structure. They require exclusion of interest on federal obligations from the tax base, and the corporate income structure would be largely offset by the disallowance of interest and other expenses allocable to tax-exempt interest. Consistency and simplicity would be achieved by the integration of financial institutions into the corporate income tax base.

While insurance premium taxes are the best means for taxing insurance companies, uniformity among foreign and domestic companies can only be achieved by a uniform rate structure among these companies. Rates of taxation would vary depending on the type of insurer, but the premium tax rate will be reduced as the percentage of the company's assets invested in the state increases and the percentage of its operations located in the state also increases. This is necessary to end the same geographic disparity that currently exists among corporations in the franchise tax area.

#### **E. Earmarking and education**

Alabama earmarks nearly 90 percent of its tax revenue. This unduly restricts the Legislature in deciding how to meet the changing needs of the state. Providing adequate revenue for education is clearly related to the issue of earmarking. The commission recommends the following interdependent actions: (1) amend the constitution to declare that education is an essential function of gov-

ernment; (2) repeal all earmarking; and (3) require that all appropriations for state functions be equally subject to proration.

The constitutional amendment providing for budget isolation simply has not worked. We recommend its repeal and the implementation of a provision requiring the governor to submit his budget recommendations to the Legislature 30 days before the beginning of the regular session of the Legislature.

#### **F. Local government issues**

Finally, the commission states that all local governments should be allowed to impose sales taxes. To retain simplicity and reduce compliance problems, however, the commission recommends that local governments not be allowed to vary from the state tax base. The broader tax base proposed in the commission's recommendations would allow local governments to derive greater revenue, but local governments would also be required to share sales tax information with the state.

Counties and municipalities also would be able to call referenda to adjust property millage rates. This will allow the citizens to approve or disapprove of the particular referendum. Further, local governments would be limited to proposing additional millage only once every three years.

#### **G. The current hodgepodge**

Today we have a hodgepodge system of taxation. There are too many irrational exemptions; the tax base is excessively narrow and tax rates are too regressive. In short, Alabama's tax system has become obsolete and unfair. The system that we recommend will make a tremendous difference in improving our system of taxation in Alabama. ■

#### **Footnotes**

1. 1990 Ala. Acts 734 (approved May 3, 1990).
2. The Commission made its report to a joint session of the Alabama Legislature on January 9, 1991.
3. Commissioners were: C.C. Torbert, Jr.; James C. White, Sr.; Charles Allison; Albert P. Brewer; Roy J. Crawford; Dr. William D. Gunter; Rick Manley; Mack J. Ogren; James H. Sanford; William M. Slaughter; Dr. Keith J. Ward; Dan Waters; Dr. Levi Watkins; Joe Williamson; and Louis J. Willie.

### **Phoenix Preschool Education Centers, Inc.**

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# ABOUT MEMBERS, AMONG FIRMS

## ABOUT MEMBERS

After more than 56 years, **Joseph J. Levin** has retired from the active practice of law. Beginning in October 1934, he practiced law continuously in Montgomery until retiring April 30, 1991. His mailing address is P.O. Box 1492, Montgomery, Alabama 36102.

**Mary Lynn Clark** has relocated her office to Park Central Executive Center, 610 Thimble Shoals Boulevard, Suite 303-B, Newport News, Virginia 23606. Phone (804) 873-3201.

**L. Scott Johnson** announces the relocation of his Montgomery office to 25 Washington Avenue, Montgomery, Alabama. The mailing address is P.O. Box 1547, Montgomery 36102. Phone (205) 834-1100.

**Michael S. McNair** announces the relocation of his office to 2152 Airport Boulevard, Suite 105, Mobile, Alabama 36606. Phone (205) 450-0111.

**Scott L. Speake** announces the removal of his office to 700 Camp Street, New Orleans, Louisiana 70130. Phone (504) 528-9500.

**William I. Grubb, II** announces the relocation of his office to 120 North Randolph Avenue, Eufaula, Alabama 36027. Phone (205) 687-9007.

**Robert P. Barclift**, assistant United States attorney, announces his transfer within the **Department of Justice**, from the Northern District of Alabama to the Middle District of Florida, in the criminal division in Fort Myers. His new address is the United States Attorney's Office, The Barnett Centre, Suite 701, 2000 Main Street, Fort Myers, Florida 33901. Phone (205) 337-7700.

**Gregory J. McKay** announces a change of address to 350 Park Place Tower, Birmingham, Alabama 35203. Phone (205) 324-1400.

**Richard D. Horne**, formerly a partner in Hess, Atchison & Horne, is now practicing as **Richard D. Horne, Attorney-at-Law**, One South Royal

Street, P.O. Box 916, Mobile, Alabama 36601. Phone (205) 432-4421.

**Robert K. Long**, formerly assistant district attorney for Morgan County, announces the opening of his office at the Old Bank Building, 616 Lawrence Street, P.O. Box 356, Moulton, Alabama 35650-0356. Phone (205) 974-5800.

**J. Edmund Odum, Jr.** announces the relocation of his offices to 2911 Cahaba Road, Birmingham, Alabama 35223. Phone (205) 879-1324.

**Dennis Abbott**, formerly with the firm of Brodowski & Abbott, announces the relocation of his offices to 908 Merchants Walk, Suite A, Huntsville, Alabama 35801. Phone (205) 534-4585.

## AMONG FIRMS

**Vowell & Meelheim, P.C.** announces that **D. Bruce Petway**, formerly with Emond & Vines, became associated with the firm May 1. Offices are located at 1900 SouthTrust Tower, Birmingham, Alabama 35203-3200. Phone (205) 252-2500.

**Burns & Mackey** announces that **William M. Cunningham, Jr.**, formerly of Sintz, Campbell, Duke, Taylor & Cunningham, has joined the firm, and the name of the firm will be **Burns, Cunningham & Mackey**. Offices are located at 50 St. Emanuel Street, P.O. Box 1583, Mobile, Alabama 36633. Phone (205) 432-0612.

**Robert Hugh Kirksey** and **John Earl Paluzzi** announce the formation of **Kirksey & Paluzzi**, with offices at P.O. Box 166, 222 Tuscaloosa Avenue, Carrollton, Alabama 35447. Phone (205) 367-2126.

**Harris & Harris, P.C.** announces the relocation of its offices to 507 Columbus Street, Montgomery, Alabama 36104. Phone (205) 265-0251.

**Barker & Janecky** announces that **Charles J. Potts** and **Lynn Etheridge Hare** have become members of the firm.

Offices are located in Mobile and Birmingham, Alabama and Pensacola, Florida.

The firm of **Rushton, Stakely, Johnston & Garrett, P.A.** announces that **Jeffrey W. Blitz** has joined as a member. Offices are located at 184 Commerce Street, Montgomery, Alabama 36104. Phone (205) 834-8480.

The firm of **Lee & Sullivan** announces the relocation of its office to 500 Park Place Tower, 2001 Park Place North, Birmingham, Alabama 35203, and the change of its name to **Lee, Sullivan & Mathis**. Phone (205) 323-1061.

The firm of **Longshore, Nakamura & Quinn** announces the relocation of its offices to New South Federal Building, 2100 First Avenue, North, Suite 300, Birmingham, Alabama 35203. Phone (205) 323-8504. The firm also announces that **George N. Davies**, formerly counsel to the United Mine Workers of America, has become associated with the firm.

**Pittman, Hooks, Marsh, Dutton & Hollis, P.C.** announces that **Jeffrey C. Kirby** has been made a partner in the firm, with offices located at 800 Park Place Tower, 2001 Park Place North, Birmingham, Alabama 35203. Phone (205) 322-8880.

**Thomas A. Woodall** and **Michael B. Maddox** announce the opening of **Woodall & Maddox, P.C.**, with offices located at Chase Commerce Park, 3821 Lorna Road, Suite 101, Birmingham, Alabama 35244. Phone (205) 733-9455.

**Veigas & Cox** announces that **L. Sharon Egbert** has become associated with the firm, with offices located at 125 West Main Street, Suite 300, Dothan, Alabama 36301. Phone (205) 671-0289.

The firm of **Johnston, Johnston & Moore** announces that **David Vance Lucas** has become a partner in the firm and **Cynthia K. Thompson** has become an associate of the firm.

The firm of **Carpenter & Gidiere** announces that **H. Al Scott** has become an associate of the firm, with offices located at 555 S. Perry Street, Suite 320, Montgomery, Alabama 36104.



The firm of **Miller, Hamilton, Snider & Odom** announces that **M. Kathryn Knight** has become a member of the firm and **Mark J. Tenhundfeld** and **Christopher Kern** have become associated with the firm. The firm also announces that **James B. Newell, Jr.** and **Hugh H. Smith** have become of counsel to the firm. Offices are located in Mobile and Montgomery, Alabama and Washington, D.C.

**Donna Wesson Smalley** announces that **Mark D. Morrow** has relocated his practice to her office at Courthouse Plaza, 600 Lurleen Wallace Boulevard, South, Suite 180, Tuscaloosa, Alabama 35401. Phone (205) 758-5576.

**Morris, Smith, Siniard, Cloud & Fees, P.C.** announces the change of the firm name to **Morris, Smith, Siniard, Cloud, Fees & Conchin, P.C.** and that **Gary V. Conchin** has relocated his office and become a partner of the firm. Offices are located at 521 Madison Street, Second Floor, Huntsville, Alabama. Phone (205) 534-0065.

The firm of **Bradley, Arant, Rose & White** announces that **John D. Watson, III, Jay D. St. Clair, Patricia Trott Mandt,** and **Ralph H. Yeilding** have become partners in the firm. Offices are located in Birmingham and Huntsville, Alabama.

**Berkowitz, Lefkovits, Isom & Kushner** announces the relocation of its offices to 1600 SouthTrust Tower, Birmingham, Alabama 35203. Phone (205) 328-0480.

The firm of **Sherwinter & Tokars, P.C.** announces that **J. Glenn McElroy** has become a partner in the firm. Offices are located in Atlanta and Dunwoody, Georgia.

**Redstone Federal Credit Union** announces that **Elena A. Lovoy** has become associated with the credit union as a compliance specialist at the main office located at 220 Wynn Drive, Huntsville, Alabama 35893. Phone (205) 837-6110 or 722-3748.

The firm of **Emond & Vines** announces that **Archie C. Lamb, Jr., Gary D. Hooper** and **Stewart G. Springer** have become associates of the

firm. Offices are located at 1900 Daniel Building, P.O. Box 10008, Birmingham, Alabama 35202-0008. Phone (205) 324-4000.

**Smith, Spires & Peddy** announces the removal of their offices to 505 North 20th Street, Suite 650 Financial Center, Birmingham, Alabama 35203-2662. Phone (205) 251-5885.

The firm of **Cherry, Givens, Tarver, Peters, Lockett & Diaz, P.C.** announces that **Joseph D. Lane, J. Farrest Taylor** and **Terry G. Key** have joined the firm as associates in the firm's Dothan office, located at 125 West Main Street, 36301. Phone (205) 793-1555.

**John J. Smith** and **John Joseph Smith, Jr.** of the Birmingham firm of **Smith & Smith** announce the relocation of their offices to 618 South 38th Street, Birmingham, Alabama 35222. Phone (205) 251-0818.

The firm of **Richardson, Daniell, Spear & Upton, P.C.** announces that **J. Flint Liddon, III** has become associated with the firm. Offices are located at 1110 Montlimar Drive, Suite 400,

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**Blanchard, Calloway & Campbell, P.C.** announces that **Alex W. Jackson,** former assistant general counsel for the Alabama State Bar, has become a member of the firm, and that the firm name has been changed to **Blanchard, Calloway, Campbell & Jackson, P.C.** Offices are located at 505 South Perry Street, P.O. Box 746, Montgomery, Alabama 36101-0746. Phone (205) 269-9691, 265-8671.

**Robison & Belser, P.A.** announces that **Robert F. Northcutt** has joined the firm. Offices are located at 210 Commerce Street, Montgomery, Alabama 36104. Phone (205) 834-7000.

**Manley & Traeger** announces that **Taylor T. Perry, Jr.,** formerly an associate of the firm, has become a member of the firm, and that the firm name has been changed to **Manley, Traeger & Perry.** Offices are located at 111 South Walnut Avenue, Demopolis, Alabama. The mailing address is P.O. Box 590, Demopolis, 36732-0590. Phone (205) 289-1384. ■

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# SEXUAL HARASSMENT IN THE WORKPLACE

By E. WRAY SMITH and SHIRLEY DARBY HOWELL

**S**exual harassment is driving Miss Daisy crazy, and she wants your help. Miss Daisy is one of an increasing number of American women in the marketplace who find that they are indeed dancing with wolves. She is as mad as Dolly in "9 to 5", and she is not going to take it anymore. You wonder, could it be that her boss is just moonstruck? This is not a movie. It is real life. What do you do?

For plaintiff's counsel, a sexual harassment case often poses a daunting difficulty not generally present in more traditional causes of action. Many courts wrestle on an unconscious level with the feeling that sexual harassment is a relatively innocuous manifestation of "natural sexual attraction . . ." *Tomkins v. PSE & G Co.*, 568 F.2d 1044 (3rd Cir. 1977).

Thus, the conscientious plaintiff's counsel will bear the burden of educating the court as to the true nature of sexual harassment and its debilitating effect upon its victims, as well as the burden of overcoming any initial intellectual reluctance of the court to grant relief. *Henson v. City of Dundee*, 682 F.2d 897, (11th Cir. 1982).

## Who has standing under Title VII?

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e) *et seq.*, stands ready to afford relief, but only to certain victims of sexual harassment in the workplace. For Title VII to be applicable, the plaintiff must allege and prove that the employer is an organization employing 15 or more employees for each working day for a minimum of 20 calendar weeks of the year. (42 U.S.C. 2000[e] §701.) The common law definition of *employee* is retained by the act; thus, non-working directors of a corporation and independent contractors may not be counted when determining the number of persons employed by the defendant employer. The act defines *employer* as any person in an "industry affecting commerce". The act *exempts* the following employers from its provisions:

1. the United States;
2. a corporation wholly owned by the Government of the United States;
3. an Indian tribe;
4. any department or agency of the District of Columbia subject to the

procedures of the competitive service;

5. any bona fide private membership club (other than a labor organization) which is exempt from taxation;
6. an employer with respect to the employment of aliens outside any state;
7. a religious institute or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of its activities.

Assuming that the plaintiff was employed by an employer that comes within the purview of Title VII, section 703(a) of the act will regulate the employer's conduct, making it unlawful:

1. to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his *compensation, terms, conditions, or privileges* of employment because of such individual's race, color, religion, sex, or national origin, or
2. limit, segregate, or classify his employees or applicants for



employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employer, because of such individual's race, color, religion, sex or national origin. (emphasis supplied.)

### Who is the successful plaintiff likely to be?

Is there a profile of the successful plaintiff in Title VII actions? Sexual harassment is a long-standing sociological phenomenon, and its victims are everywhere. Most often, however, the victim is a woman. The woman may be young or old, beautiful or not, highly educated or illiterate, married or unmarried. The successful plaintiff may have gratified the desires of her tormentor, or she may have refused. Research of Title VII cases does reveal, however, that it is a recent divorcee or a woman who is in the process of divorce who is the recipient of such sexual harassment, and plaintiff's counsel would be well-advised to take seriously complaints from a client so situated.

While such complaints have been comparatively rare among men, the plaintiff may, in fact, be a man who has been sexually inopportuned by a female supervisor. (See *Huebschen v. Department of Health and Social Services*, 547 F. Supp. 1168 [D.C. Wis. 1982].) The plaintiff may also be a man who was

subjected to unwelcomed homosexual advances by a male supervisor. District Judge Hobbs of the Middle District of Alabama held unequivocally that homosexual harassment states a violation of Title VII. *Joyner v. AAA Cooper Transportation*, 597 F. Supp. 537 (N.D. Ala., 1983) aff'd 749 F.2d 732 (1984).

### Does the plaintiff really have a case?

Title VII now recognizes two distinct forms of sexual harassment: *Quid Pro Quo* and *Hostile Environment*.

#### a. *Quid Pro Quo* discrimination

In this form of sexual harassment, an employer or a supervising employee predicates job benefits or continued employment upon acquiescence by the employee to his sexual demands. When termination, either actual or constructive, follows, the EEOC guidelines (29 CFR §1604.11) state the employer is strictly liable "whether the specific acts complained of were authorized or even forbidden by the employer and whether the employer knew or should have known of their occurrence."

To establish *Quid Pro Quo* discrimination, the successful plaintiff must show that:

1. the plaintiff belongs to a protected group;
2. the plaintiff was subjected to unwelcomed sexual harassment;
3. the harassment was because of sex;
4. the harassment affected *tangible aspects* of plaintiff's compensation or other terms, conditions or privileges of employment; and
5. *Respondeat Superior*: the employer is *strictly liable* for its supervisor's sexually discriminating or harassing conduct which results in the loss of a *tangible job* benefit. (emphasis supplied.) *Cummings v. Walsh Construction Co.*, 561 F. Supp. 872 (S.D. Georgia, 1983); and
6. jurisdictional requirements have been met.

*Quid Pro Quo* is the most easily recognizable manifestation of sexual harassment. Most of the successful sexual harassment cases involve this form of harassment. Sexual harassment of this sort is discrimination because of sex, not necessarily because the demands are

sexual, but because the demands are made of only one sex, and continued employment or advancement is predicated upon the employee's acquiescence.

Plaintiff's counsel will prefer the client to have a *Quid Pro Quo* scenario because the lines of demarcation are more demonstrable and exact. For example, an otherwise qualified employee was demoted, or was not promoted as expected, or was discharged because of sex. The benchmark of the *Quid Pro Quo* is the loss of a *tangible* benefit.

In *Huebschen*, supra, the plaintiff, a male, had a consensual sexual relationship with his female supervisor. The plaintiff terminated the relationship over the objection of the female supervisor. Shortly thereafter, the ex-paramour supervisor demoted Huebschen. The court held that Huebschen had borne his burden of proving that his refusal to continue the sexual relationship motivated the decision to demote him. *Huebschen* is a classic *Quid Pro Quo*. (*Huebschen* was reversed based upon a claim predicated upon 42 U.S.C. 1983. Considerations with regard to §1983 are beyond the scope of this article.)

An interesting case that departs from the *Quid Pro Quo* norm is *Toscano v. Himmo*, 570 F. Supp. 1197 (D.C. Del. 1983). *Toscano* maintained that she was not considered for a promotion because that position had been wrongfully awarded to a woman who was having an affair with the supervisor of that department. *Toscano* never claimed to have been troubled by sexual demands by the supervisor. The court found a violation of Title VII, citing 29 C.F.R. §1604.11(g):

Where employment opportunities or benefits are granted because of any individual's submission to the employer's advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that opportunity or benefit. For other traditional *Quid Pro Quo* cases, see *Horn v. Duke Homes, Division of Windsor Mobile Homes, Inc.*, 755 F.2d 604 (1985), and *Craig v. Y&Y Snacks, Inc.*, 721 F.2d 77(1983).

#### b. *Hostile Environment* Discrimination

Women's political groups claim that the adoption by the court of the hostile



#### E. Wray Smith

E. Wray Smith is an associate with the Montgomery firm of Webb, Crumpton, McGregor, Davis & Alley.



#### Shirley Darby Howell

Shirley Darby Howell has been a professor of family law at Jones School of Law at Faulkner University since 1983. She also is of counsel to the Montgomery firm of Elizabeth Addison. She was admitted to practice in 1981.



environment theory of sex discrimination constituted the first time that women have identified, established and defined a legal wrong. MacKinnon, *Introduction, Symposium: Sexual Harassment*, 10 Cap. U.L. Rev. i (1981). In *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 91 L.Ed 2d 49, 106 S.Ct. 239 (1986), the first hostile environment case to reach the United States Supreme Court, the plaintiff, a bank teller, testified in an 11-day bench trial that her branch manager invited her to dinner, then suggested that they go to a motel to have sexual relations. She maintained that she at first refused, but out of what she described as fear of losing her job, later acquiesced to his demands. The branch manager thereafter made repeated demands for sexual favors, usually at the branch. She estimated that she had intercourse with him on 40 or 50 occasions over the next several years. The manager allegedly fondled her in the presence of other employees, followed her into the women's restroom and exposed himself, and forcibly raped her

more than once. The branch manager, however, did not condition her continued employment or advancement upon her acquiescence to his demands.

Justice Rehnquist, in delivering the opinion of the Court, opined:

"Title VII is violated where sexual advances, remarks, and other verbal and non-verbal conduct created a substantially discriminatory work environment, regardless of whether the complaining employee lost any *tangible* job benefits as a result."

To establish a prima facie case, the plaintiff must allege and prove:

1. the plaintiff is a member of a protected class;
2. the plaintiff was subjected to unwelcomed sexual harassment, which she (or he) did not solicit or incite;
3. the harassment was "because of sex";
4. the harassment affected a term, condition, or privilege of employment, creating an abusive working environment, which affected her psychological well-being;

5. the employer had actual or constructive notice, and failed to take prompt remedial action.

The offenses most often complained of by women in hostile environment cases include vulgar and sexually explicit language and unwelcomed touching of their breasts and buttocks by male employees. Proof of incidents of such behavior goes to the weight of the evidence, but is not conclusive of the issue. The plaintiff must prove that the harassment is so pervasive as to render the workplace discriminatory. In *Robson v. Eva's Supermarket, Inc.*, 538 F.Supp. 857 (N.D. Ohio, 1982), the plaintiff testified in deposition that her supervisor requested that she wear tight jeans to work so that he could "watch her walk." She further testified that he leered at her body, felt the back of her blouse to see if she wore a bra, squeezed her arm, and told her that he wanted her to be afraid of him. The Court denied the defendant's motion for summary judgment holding that such allegations were sufficient to state a hostile



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environment cause of action pursuant to Title VII.

In *Morgan v. Hertz Corporation*, 542 F. Supp. 123 (W.D. Tenn., 1981), District Judge McRae went so far as to enjoin the speech of the agents and employees of Hertz, restraining them from making further "sexually indecent" comments to female employees. Judge McRae opines, "By this the Court means remarks such as 'Did you get any this weekend?'" (But see contra *Scott v. Sears, Roebuck and Co.*, 605 F.Supp. 1047 (D.C. Ill., 1985) citing *Kantz v. Dole*, 709 F.2d 251, 254 (4th Cir. 1983) "...Title VII is not a clean language act and it does not require employers to extirpate all signs of centuries-old prejudices.")

It should be noted that strict liability for the employer is not mandated in hostile environment cases. The burden is placed upon the plaintiff to prove actual or constructive notice by the employer. For provocative perspectives on this issue, see *Between the Boss and a Hard Place: A Consideration of Meritor Savings Bank, FSB v. Vinson and the Law of Sexual Harassment*, 67 B.U.L. Rev. 445 (1987) and *The Supreme Court — Leading Cases*, 100 Harv. L. Rev. 1, 280 (1986).

### Jurisdictional requirements

In a Title VII case, a charge must be filed with the EEOC within 180 days of the alleged discriminatory conduct. In the case of an ongoing violation, an individual may file a charge at any time while the discriminatory conduct is continuing, but must file no later than 180 days after the last alleged act of discrimination—usually when a woman has been fired or has left the job as a result of the harassment.

A Right to Sue notice will be issued by EEOC at one of three junctures in the administrative process:

1. at the request of the charging party after 180 days have elapsed but before the completion by EEOC of its administrative processes;

2. after a finding of no probable cause; or

3. after a finding of probable cause, failure of conciliation and a determination that the case will not be litigated by the EEOC as a party plaintiff.

A complaint must be filed in the

appropriate federal district court within 90 days after receipt of the Right to Sue notice.

### Burden of proof and defenses

In a prima facie case, if employment discrimination is proven, the burden shifts to the defendant to articulate some legitimate, non-discriminatory reason for the employee's rejection. Should the defendant carry this burden, the plaintiff then must prove by a preponderance of the evidence that the reason offered by the defendant was not the

true reason, but merely a pretext. *McDonald Douglas Corporation v. Green*, 411 U.S. 792, 36 L.Ed 2d 668, 93 S.Ct. 1817 (1973).

In a typical sexual harassment case, defense counsel is not without an arsenal of potential defenses, all of which should be considered. The following is a "laundry list" of common defenses:

1. the sexual demands or advances never happened;
2. the sexual advances or demands were without employment consequences;

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3. the employer lacked notice of discriminatory conduct (Hostile Environment);

4. the sexual advances or demands were not unwelcomed (The Woman Scorned defense);

5. the employer took prompt, remedial action;

6. the actions taken with respect to plaintiff were taken for legitimate purposes not related to sexual discrimination.

#### Available relief

Title VII is remedial as opposed to punitive. Relief is limited to injunctive relief, job reinstatement, promotion, back wages, and reasonable attorneys' fees. As one might quickly deduce, it is entirely plausible for plaintiff's counsel to recover more in attorney's fees than the plaintiff is awarded. Title VII is vigorously criticized for offering so little to the plaintiff who often subjects herself to legal proceedings as humiliating as those involved in a rape prosecution. (In *Vinson*, *supra*, the court held that the plaintiff's mode of dress, her lifestyle and "expressed sexual fantasies" were all

admissible evidence in a sexual harassment cause of action.)

#### State claims

The plaintiff enhances the opportunity to recover a more substantial sum for his or her litigation pains when also alleging a pendent state claim. Depending upon the nature of the harassment suffered, the plaintiff may also allege assault, battery, intentional infliction of emotional distress and/or invasion of privacy. Somewhat surprising is the fact that invasion of privacy has proven to be so strong a claim for relief nationwide for harassment victims. Invasion of privacy is discussed in detail in *Phillips v. Smalley Maintenance Services, Inc.*, 711 F.2d 1524 (11th Cir. 1983).

The court held that in Alabama, invasion of privacy consists of four distinct wrongs: (1) the intrusion upon the plaintiff's physical solitude or seclusion, (2) publicity which violates the ordinary decencies, (3) putting the plaintiff in a false, but not necessarily defamatory position in the public eye and (4) the appropriation of some element of a plaintiff's personality for commercial

use. Alabama essentially recognizes the definition of intrusion upon seclusion adopted by Restatement (Second) of Torts 652b (1987). The court recognizes "the right of a person to be free from unwarranted publicity" or "the unwarranted appropriation or exploitation of one's personality, the publicizing of one's private affairs with which the public has no legitimate concern, or the wrongful intrusion into one's private activities in such manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities." In *Phillips*, the court sustained an award of \$25,000 to a woman in Alabama who had been subjected to a series of questions by her employer regarding her sexual relationship with her husband. Plaintiff's counsel is urged in light of *Phillips* to search the client's case for invasions of privacy that may have accompanied other harassing behavior.

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erage provides a deep pocket for the plaintiff and a source to pay the defense expense for the defendant. The typical comprehensive liability policy specifically excludes discrimination. The inquiry is not over at this point. Most businesses with the resources to employ 15 or more employees will also obtain an excess liability policy or what the insurance industry sometimes refers to as an "umbrella" policy.

While it is true that the excess liability policy will often follow from the primary coverage and therefore exclude this coverage or will provide a specific exclusion for sexual harassment or discrimination, the coverage is available in the insurance industry and is often purchased. If it exists in the excess liability policy, the coverage will "drop down" and pick up this exposure on a primary basis with perhaps a small self-insured retention.

### Conclusion

How wide is the divergence between Everyman's view of appropriate sexual conduct and that of Everywoman? Probably it is greater than we like to think. That problem is one of factual interpretation. The law has provided remedies that have allowed relief in many cases. Whether an employee is sexually harassed is generally an objective determination focusing upon the conduct of the defendant rather than the plaintiff's reaction to it. Could it be that the "objective standard" is really a male standard, since most federal judges are males? (See the dissent, *Rabidue v. Osceola Refining Co.*, 805 F.2d 611 [6th Cir. 1986].)

But would a female standard be different, or if so, any more equitable? It is a problem with which the courts will continue to wrestle. ■

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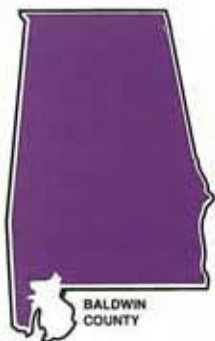
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# BUILDING ALABAMA'S COURTHOUSES

## BALDWIN COUNTY, BAY MINETTE, and DAPHNE COURTHOUSES

By SAMUEL A. RUMORE, JR.

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

**B**aldwin County is the largest county in area in the State of Alabama. It is also one of the largest counties in the United States east of the Mississippi River. In fact, it is larger than the entire state of Rhode Island.

The county was established December 21, 1809 as a part of the Mississippi Territory. Only two other counties in present-day Alabama are older. These are Washington County, created in 1800, and Madison County, created in 1808.

Baldwin County was named for Abraham Baldwin (1754-1807), a native of Connecticut who graduated from Yale in 1772. Baldwin became a minister and served as a chaplain in the Continental Army with the rank of colonel. After the Revolutionary War, he moved to Savannah, Georgia and was admitted to the bar.

In 1785, Baldwin began an active and illustrious political career when he became a member of the Georgia Assembly, and also the Congress of the Confederation. He helped found the college that became the University of Georgia. In 1787, he was a member of the Constitutional Convention and a signer of the United States Constitution. He



**Baldwin County Courthouse**

served in Congress from 1789 to 1799, and in the Senate from 1799 until his death in 1807. Since many of the early settlers in Baldwin County came from Georgia, it was fitting that the county be named for the recently deceased Georgia senator and public servant.

Early records show that the first court in Baldwin County was held at McIntosh Bluff on March 4, 1811. This place on the Tombigbee River had served as the county seat of Washington County from 1800 to 1805. When the southern part of Washington County was included in the new Baldwin County, it became a county seat once again.

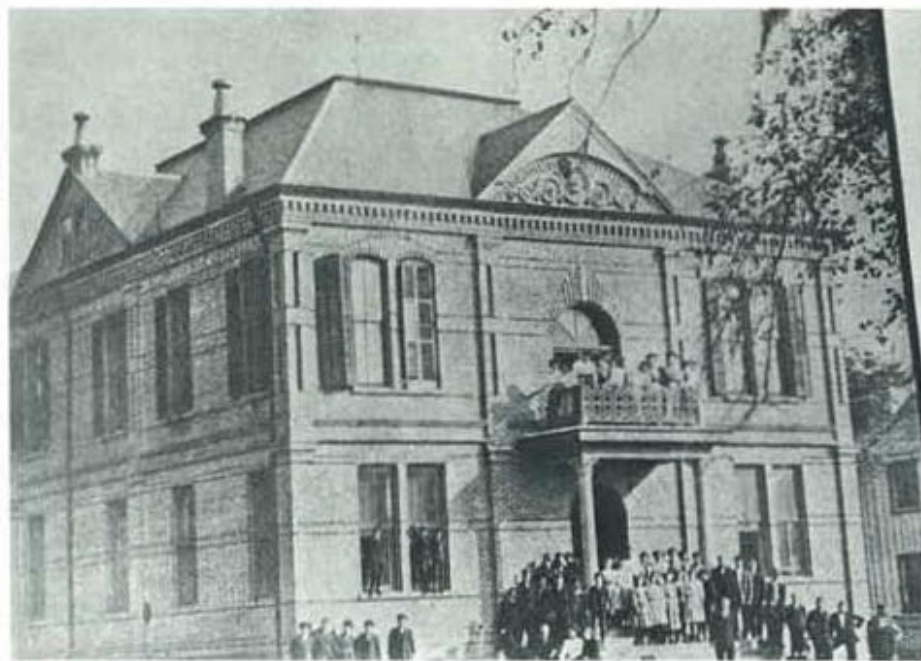
Alabama was admitted to the Union on December 14, 1819. The next year, on December 16, 1820, the boundary lines of Baldwin County were changed by the Alabama Legislature, and the town of Blakely was designated as the new county seat. This legislation established a commission which was authorized to secure land and erect a courthouse and jail. The total cost could not

exceed \$2,000. The legislation further provided that the courthouse and jail at McIntosh Bluff should be sold and that the proceeds derived from the sale should be equally divided among Mobile, Monroe and Baldwin counties to be applied to county purposes.

The town of Blakely was founded in 1813 by Josiah Blakely and other entrepreneurs from New England, and was a thriving port and trading center. It was located on the Tensaw River.

It is reported that the first trials in Blakely took place before a courthouse was ever constructed. Court was held outdoors under the trees. The presiding judge sat in the fork of a large live oak called the "Jury Oak". This setting was an interesting forum for a trial. However, a short distance away was another large live oak. It was called the "Hanging Tree". It is not known how many times sentences were carried out at the site, but both trees are prominently marked today at the Historic Blakely State Park. In its heyday, Blakely rivaled





**Daphne Courthouse**

Mobile as a significant city. At one time, over 5,000 people lived and worked there. However, yellow fever epidemics in 1822, 1826 and 1828 made Blakely a less than desirable location in which to live. By the mid-1830s, Blakely no longer posed a threat to Mobile's dominant place in the area.

The site of Blakely is still significant for another reason. It was here that the last great Civil War infantry battle took place on April 9, 1865. This battle is interesting because it is one that should never have been fought at all. General Lee had surrendered by 2 p.m. on April 9, but communication lines had been disrupted and word of the surrender could not immediately reach Alabama. The great assault at Blakely began about 5:45 p.m. Over 40,000 men took part in this battle. The action is not considered particularly noteworthy to historians as are other battles of similar size because it took place so late in the war. The site of the battle and the town were placed on the National Register of Historic Places on June 25, 1974. The county seat officially remained at Blakely until 1868. Today the trees and brick foundations are all that remain of the now dead town. The only remnants of the old courthouse in Blakely are an outline of bricks and a depression in the ground where the building once stood. However, the memory of Blakely is preserved through the Historic Blakely State Park.

The area around present-day Daphne

was settled as early as 1817. By 1838, the community had grown quite prosperous as a resort. Captain William Howard built a bayfront hotel that year which soon became the center for social life in the community. His wife decided that this beautiful area needed a name



**Bay Minette Courthouse**

befitting its natural beauty. Since the town was full of laurel trees, she suggested the name of Daphne. Daphne was the nymph who was transformed into a laurel tree by the Greek sun god, Apollo.

After the decline of Blakely, the legislature moved the county seat down the eastern shore of Mobile Bay to Daphne. A courthouse and jail were constructed in 1868. An early photo shows the building to have been a two-story brick structure with a portico topped by an observation balcony. Daphne began a steady growth as a timber and lumber town as

well as the new county seat. It served Baldwin County in that capacity for 33 years.

On February 5, 1901, the Alabama Legislature passed another bill, this time moving the county seat from Daphne to Bay Minette. It was felt that Bay Minette was more centrally located to the population centers in Baldwin County, and the new railroad that was built through Bay Minette would make this town more accessible. A cornerstone was laid July 4, 1901 for the new courthouse amid a great celebration in Bay Minette.

The information marker at the Baldwin County courthouse notes that F.M. Dobson was the contractor for the new building, and Lockwood & Smith were the architects. By October, the new courthouse was completed. Everything was ready for the transfer of the county seat to Bay Minette except the county records. The residents of Daphne refused to give up their courthouse and would not release the county records.

Several stories survive concerning how the records were moved to the new courthouse. In one story, a group of citizens from Bay Minette had fabricated a fictitious crime and this caused the sheriff and his deputy to leave town to pursue an imaginary killer. The records of the county were then taken.

Another story relates that the group from Bay Minette requested the sheriff to lock up certain prisoners. They were actually steel workers who were able to dismantle the bars of the jail from the inside, and then they carried out the county records to waiting wagons.

Another version states that the sheriff saw the delegation from Bay Minette, and he immediately left for Mobile to obtain an injunction to stop their action. He returned in the afternoon with a writ just as the last wagon loaded with records, furniture and the Great Seal of Baldwin County topped a hill headed for the new county seat. A mural on the wall of the Bay Minette post office, painted in 1939 by a WPA artist, depicted the removal scene.

Efforts were made by the citizens of Daphne to regain their courthouse, and a case even went to the Alabama Supreme Court. But Bay Minette won the legal battle and the county seat has remained there ever since.



## ABA commission gives association mixed rating on advancing women in leadership

While women's membership in the American Bar Association and its components is keeping pace with women as a proportion of the profession, women continue to lag in leadership positions.

Women have made gains in the highest levels of leadership of the association as a whole, though in association-wide levels the gains have not caught up with the relative population of women among lawyers.

When analysts focused on leadership at the level of ABA sections and divisions, membership by women again reflected the increased number of women lawyers, but there was no measurable increase of women in leadership slots. Sections and divisions are semi-autonomous membership components formed around areas of legal practice, age or occupational setting.

These assessments were distributed in March to association leaders by the ABA Commission on Women in the Profession in the commission's second *Goal IX Report Card*. It compares current statistics with those for August 1988.

Goal IX, adopted by the ABA in 1986, directs the ABA to "promote full and equal participation in the profession by minorities and women" and to "develop and encourage initiatives that will ensure full and equal participation for minorities and women in bar association activities."

The Daphne Courthouse later was used as an educational center. From 1910 to 1937, the Daphne Normal School operated in the abandoned courthouse and jail buildings. Following this service, the old courthouse was used as a dormitory facility for defense workers employed in Mobile during World War II. Finally, the 90-year-old structure was razed in 1958.

The courthouse at Bay Minette constructed in 1901 was built in the Richardsonian Romanesque style. It was a two-story brick structure dominated by a soaring central clock tower. This basic building has served as the Baldwin County Courthouse in Bay Minette since the time of its construction.

In 1955, the building was substantially remodeled and expanded. The roof line was lowered, and the outer walls were enlarged to form a modern rectangular structure. Martin J. Lide was the architect for the 1955 conversion and G.W. Hallmark & Sons were contractors.

In 1988, another significant restoration and addition was completed for the Baldwin County Courthouse. The interior was substantially altered and additions were made on both sides. Fridge Construction Company, Inc. of Ocean Springs, Mississippi was the contractor for this latest renovation of the 1901 courthouse. Renis O. Jones, Jr. of Pearson, Humphries, Jones Architects, Inc. of Montgomery was the architect. The final contract price was \$1,825,000. ■

*The author thanks Probate Judge Harry D'Olive, Circuit Judge Thomas B. Norton, Jr. and Baldwin County attorney Samuel N. Crosby, author of The Baldwin County Bench and Bar, for their assistance.*

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**Samuel A. Rumore, Jr.**

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

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





ALABAMA STATE BAR

**HONOR ROLL**

BUILDING FUND

*Between April 16 and May 28, 1991, the following attorneys made pledges to the Alabama State Bar Building Fund. Their names will be included on a wall in the portion of the building listing all contributions. Their pledges are acknowledged with grateful appreciation. (For a list of those making pledges prior to April 16, please see previous issues of The Alabama Lawyer.)*

Patricia Arthur Anderson  
 Jerry Dewitt Baker  
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 Michael E. Brodowski  
 Russell L. Burdett  
 Fitzhugh A. Burttram  
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 James Blair Newman  
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Copeland & Copeland  
 Eyster, Key, Tubb, Weaver & Roth  
 Parsons & Eberhart  
 Schmitt & Harper



The following programs have been approved by the Alabama Mandatory Continuing Legal Education Commission for CLE credit. For information regarding other available approved programs, contact Diane Weldon, administrative assistant for programs, at (205) 269-1515, and a complete CLE calendar will be mailed to you.

**JULY****16 TUESDAY****Advanced Real Estate Law  
in Alabama**

Birmingham  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**17 WEDNESDAY****Advanced Real Estate Law  
in Alabama**

Huntsville  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**18-21****Annual Convention**

Alabama State Bar  
Orange Beach, Perdido Beach Hilton  
(205) 269-1515

**22 MONDAY****Alabama Sales and Use Tax**

Birmingham  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**23 TUESDAY****Alabama Sales and Use Tax**

Huntsville  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**UCC Review: Representing Banks  
in Commercial Law Cases**

Cumberland School of Law  
Birmingham  
Cumberland Institute for CLE  
(205) 870-2391

**JULY 31—AUGUST 3****Civil Procedure Workshop**

Orlando, Walt Disney Village  
Resort Villas  
Tennessee Bar Association  
Credits: 9.0 / Cost: \$195  
(800) 643-6993

**AUGUST****1-3****Northeast Bankruptcy  
Law Institute**

Boston, Marriott Hotel  
Institutes on Bankruptcy Law  
Credits: 16.4 / Cost: \$595  
(404) 535-7722

**8 THURSDAY****Elder Law**

Mobile  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**9 FRIDAY****Elder Law**

Montgomery  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**13 TUESDAY****Elder Law**

Birmingham  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**14 WEDNESDAY****Elder Law**

Huntsville  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**15 THURSDAY****Boundary Law in Alabama**

Montgomery  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**16 FRIDAY****Boundary Law in Alabama**

Mobile  
National Business Institute, Inc.  
Credits: 6.0 / Cost: \$108  
(715) 835-8525

**SEPTEMBER****5-6****Annual Review Seminar**

Memphis, Convention Center  
Tennessee Law Institute  
Credits: 12.0 / Cost: \$275  
(615) 544-3000

**6 FRIDAY****Motion Practice**

Birmingham  
Alabama Bar Institute for CLE  
Credits: 6.0  
(205) 348-6230

**Experts & Hearsay:****What Every Trial Lawyer  
Must Know**

Birmingham, Radisson Hotel  
Cumberland Institute for CLE  
(205) 870-2391

**11-13****Bond Attorneys Workshop**

Chicago, Marriott Hotel  
National Association of  
Bond Lawyers  
Credits: 12.0 / Cost: \$235  
(312) 920-0160



**13 FRIDAY**

**Collections**

Birmingham  
Alabama Bar Institute for CLE  
Credits: 6.0  
(205) 348-6230

**Partnerships**

Wynfrey Hotel, Birmingham  
Cumberland Institute for CLE  
(205) 870-2391

**19 THURSDAY**

**Real Estate Law**

Montgomery  
Alabama Bar Institute for CLE  
Credits: 6.0  
(205) 348-6230

**20 FRIDAY**

**Real Estate Law**

Birmingham  
Alabama Bar Institute for CLE  
Credits: 6.0  
(205) 348-6230

**Basic Practice in Probate Court**

Edna Merle Carraway Center,  
Birmingham  
Cumberland Institute for CLE  
(205) 870-2391

**20-21**

**Advanced Family Law**

Guntersville, Guntersville State Park  
Alabama Bar Institute for CLE  
Credits: 6.0  
(205) 348-6230

**24 TUESDAY**

**Counseling Small Business  
Owners on Death, Disability,  
Divorce and Disagreement**

Cumberland School of Law,  
Birmingham  
Cumberland Institute for CLE  
(205) 870-2391

**27 FRIDAY**

**Will Drafting**

Birmingham  
Alabama Bar Institute for CLE  
Credits: 6.0  
(205) 348-6230

**Americans with Disabilities Act**

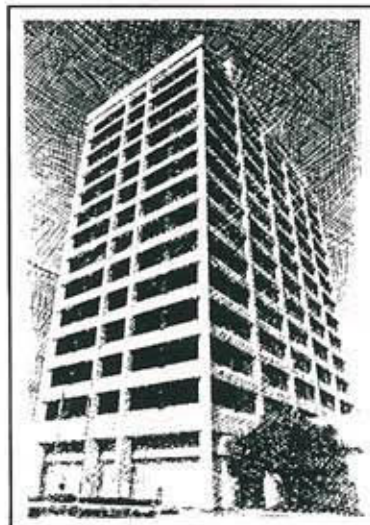
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Alabama State Bar  
**1991 AWARD OF MERIT**

*The Board of Commissioners of the Alabama State Bar  
voted unanimously to name*

**Joe C. Cassady**  
of Enterprise

*and*

**Lewis W. Page, Jr.**  
of Birmingham

*the recipients of its 1991 Award of Merit.*

*The award is given to those individuals  
who render Outstanding and Constructive Service  
to the legal profession in Alabama*

Cassady was recognized for 12 years of service as a bar commissioner  
from the 12th Judicial Circuit (1979-91),  
vice-president of the Alabama State Bar (1984-85),  
chairperson of the Disciplinary Commission (1982-94)  
and a charter trustee of the Alabama Law Foundation (1987-91).

Page was originally appointed a member of the Permanent Code Commission in 1984  
and served as vice-chairperson during the term of Wilbur Silberman as chairperson.

Page was named chairperson of the commission in 1988 and has served in that capacity ever since.

He is recognized for his diligence in sheparding the Rules of Professional Conduct  
that were adopted January 1, 1991 by the Supreme Court of Alabama.



# Alabama State Bar

## AWARD OF MERIT RECIPIENTS

### 1973

Camille W. Cook  
University, Alabama

Timothy M. Conway  
Birmingham, Alabama (deceased)

### 1974

Howell T. Heflin  
Tuscumbia, Alabama

A. Stewart O'Bannon  
Florence, Alabama

Robert M. Hill, Jr.  
Florence, Alabama

Joseph F. Johnston  
Birmingham, Alabama

Conrad M. Fowler  
Columbiana, Alabama

M. Leigh Harrison  
University, Alabama

Carl Bear  
Montgomery, Alabama

Ronnie G. Flippo  
Florence, Alabama

M. Roland Nachman, Jr.  
Montgomery, Alabama

Wm. Michael House  
Montgomery, Alabama

### 1975

David Ellwanger  
California

Charles Y. Cameron  
Texas (deceased)

### 1976

J. O. Sentell  
Montgomery, Alabama (deceased)

Dr. David Mathews

George P. Howard  
Wetumpka, Alabama

N. Lee Cooper  
Birmingham, Alabama

Prime Osborn, III  
Jacksonville, Florida (deceased)

### 1977

James L. North  
Birmingham, Alabama

William B. Hairston, Jr.  
Birmingham, Alabama

Walter Knabe  
Montgomery, Alabama (deceased)

Robert P. Denniston  
Mobile, Alabama

### 1978

William F. McDonnell  
Sheffield, Alabama

### 1979

M. Leigh Harrison  
University, Alabama

### 1980

J. Mark White  
Birmingham, Alabama

Edward M. Patterson  
Montgomery, Alabama

Joseph D. Phelps  
Montgomery, Alabama

Norborne C. Stone, Jr.  
Bay Minette, Alabama

### 1981

Alabama Public Television Network

William N. Clark  
Birmingham, Alabama

Robert P. Bradley  
Montgomery, Alabama

### 1982

William D. Scruggs, Jr.  
Fort Payne, Alabama

### 1983

Edwin C. Page, Jr.  
Evergreen, Alabama

L. Tennent Lee, III  
Huntsville, Alabama

### 1984

Harold F. Herring  
Huntsville, Alabama

Robert A. Huffaker  
Montgomery, Alabama

### 1985

David Boyd  
Montgomery, Alabama

### 1986

Henry T. Henzel  
Birmingham, Alabama

Robert Potts  
University, Alabama

Gary C. Huckaby  
Huntsville, Alabama

### 1987

Rowena Crocker Teague  
Birmingham, Alabama

James S. Ward  
Birmingham, Alabama

### 1988

Roy Crawford  
Birmingham, Alabama

John B. Scott, Jr.  
Montgomery, Alabama

Wilbur G. Silberman  
Birmingham, Alabama

Mary Lyn Pike  
Washington, D. C.  
(Montgomery & Tuscaloosa,  
Alabama)

Richard S. Manley  
Demopolis, Alabama

### 1989

Albert P. Brewer  
Birmingham, Alabama

Dennis N. Balske  
Montgomery, Alabama



# Slovak Lawyers Hit Alabama

## JANA & JANA

By MARTHA HARRIS

Since the fall of 1990, several Alabama lawyers have assisted in a task force to bring lawyers from Czechoslovakia to this state for an internship program. Immigration restrictions made obtaining work visas impossible and served only to slow down the project. However, after months of negotiations, the first Slovak lawyer, Jana Janovicova, arrived in Mobile in March.

Efforts to make her internship a reality resulted in a second project, which brought another Slovak lawyer to Mobile in June.

From March to June, Jana, a 26-year-old lawyer from Bratislava, Czechoslovakia, was in Mobile observing American legal practice. She is a graduate of Comenius University School of Law in Bratislava, and hopes to concentrate her practice in the field of child advocacy and criminal law. Jana visited in Canada when her father was serving as a diplomat there. Her sister, Eva, is a lawyer in Bratislava, and Jana returned to practice with her. Her trip to America came about after she participated in English conversation classes with American teachers in the Education for Democracy program.

Her daily routine included depositions, trials and research, and many, many hours with a Slovak-English dictionary! Weekends at the gulf or on the bay rated highest in her leisure time



Left: Jana Janovicova; right: Jana Javorcikova

preferences, but she also hoped to take in some movies and a weekend at the New Orleans Jazz Festival. Seafood (any kind) and ice cream (all flavors) were irresistible, and she peeled from her first case of sunburn.

For the month of May, Jana was hosted by the Birmingham Bar Association and the Maynard, Cooper firm. Tim Smith of the Birmingham firm of Thompson & Griffis was in charge of this part of her trip. Plans included one weekend with the Birmingham Young Lawyers at Destin.

In June, the "second" Jana arrived. She, too, is a lawyer from Bratislava, under the sponsorship of the Mobile Bar Association, through the American Bar Association - Eastern European Lawyer Internship Program. Her name is Jana Javorcikova and she will intern in Mobile until December 1.

In May, she arrived with the other

interns in Washington, D.C. to undergo a four-week legal and cultural orientation session. Mobile law firms have divided the responsibility of hosting and teaching Jana during her stay. She will attend the annual meeting of the Alabama State Bar at Perdido this month and will live with a Mobile family during her stay.

Only eight lawyers from Russia and Eastern Europe have been chosen for this ABA internship because host-sponsors were difficult to locate. Alabama can be proud of its leadership in providing such a wonderful opportunity and promoting international goodwill. ■

*Following is a partial agenda of Jana Javorcikova's activities during her stay in Alabama. (courtesy of the Mobile Bar Association)*

### WEEK OF:

<b>June 3</b>	Johnstone, Adams, Bailey, Gordon & Harris
<b>June 24</b>	Sirote, Permutt
<b>July 1</b>	City of Mobile
<b>July 8</b>	County of Mobile
<b>July 22</b>	Alabama State Bar Annual Meeting Orange Beach
<b>July 29</b>	Criminal Law Firms
<b>August 5-19</b>	Federal Court
<b>Sept. 23</b>	District Attorney/ Probate Court
<b>Oct. 7</b>	Supreme Court
<b>Oct. 14</b>	University of Alabama School of Law
<b>Oct. 28</b>	Birmingham Bar Association
<b>Nov. 18</b>	Lyons, Pipes & Cook

### Martha Harris

Martha Harris, of Mobile, participated in the Education for Democracy Program teaching English in Bratislava, Czechoslovakia. She is the wife of Ben H. Harris, Jr., former bar president, and the mother of Ben H. Harris, III, both members of the state bar.



# YOUNG LAWYERS' SECTION

By PERCY BADHAM

## Alabama young lawyers are on the move!

*This article is dedicated to the local young lawyer organizations throughout Alabama that are making a difference in their communities.*

It is hard to believe that this bar year has come to a close. It certainly has been an honor and a privilege to serve as president of the Alabama State Bar Young Lawyers' Section. I think we have had a great year and have taken some important strides for the YLS. I thank the offi-

cers and members of the Executive Committee for all their hard work and dedication this year. In addition, I thank the families, law firms and employers who have offered support for the YLS and made it possible for us to do what needed to be done this year.

Below are a few of the accomplishments and specific individuals who made them possible:

### Youth Judicial Program

Charlie Anderson did another outstanding job organizing and running our Youth Judicial Program this year. This program, which we co-sponsor with the YMCA, consists of local high school students participating in a mock trial program culminating in a statewide competition in Montgomery. We had some new schools involved this year, and the exciting final rounds were a tremendous success.

### Sandestin seminar

Hal West and Frank Woodson truly outdid themselves this year! The seminar at the beach was one of the best ever. From the speakers to the golf tournament to the social events, everything was perfect. I also thank the following sponsors who made our seminar possible:

- Beasley, Wilson, Allen, Mendelsohn & Jemison, P.C., who sponsored refreshments during Saturday morning breaks;

- First American Title Insurance Company, who sponsored the Friday afternoon beach party;

- Pittman, Hooks, Marsh, Dutton & Hollis, P.C., who sponsored the Saturday night cocktail party and band party;

- Foshee & Turner, who sponsored the Saturday afternoon beach party at the Elephant Walk;

- Cunningham, Bounds, Yance, Crowder & Brown, who sponsored the Friday night cocktail party; and

- Title Insurance Company and First Alabama Bank, who sponsored the golf tournament.

*The following are the officers and members of the Executive Committee and their employers or firms:*

JAMES H. ANDERSON  
*Immediate past president*  
Beers, Anderson, Jackson  
& Smith

KEITH B. NORMAN  
*President-elect*  
Alabama State Bar

SIDNEY W. JACKSON, III  
*Secretary*  
Jackson & Taylor

LES HAYES, III  
*Treasurer*  
Melton, Espy, Williams & Hayes

CHARLES L. ANDERSON  
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GEORGE WARREN LAIRD, III  
Stephens & Laird

FRANK B. POTTS  
Potts & Young

BARRY A. RAGSDALE  
Sirote, Permutt

ROBERT J. RUSSELL, JR.  
Sole practitioner

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Simmons, Brunson  
& McCain

STEPHEN W. SHAW  
Reddin, Mills & Clark

AMY A. SLAYDEN  
Sole practitioner

JAY SMITH  
Cooper, Mitch, Crawford,  
Kuykendall & Whatley

ALFRED F. SMITH, JR.  
Maynard, Cooper, Frierson  
& Gale, P.C.

WILLIAM O. WALTON, III  
Walker, Hill, Adams,  
Umbach & Meadows

HAL WEST  
Cabaniss, Johnston, Gardner,  
Dumas & O'Neal

DUANE A. WILSON  
Tanner & Guin, P.C.

ERNEST F. WOODSON  
Turner, Onderdonk  
& Kimbrough

ALYCE SPRUELL  
University of Alabama Law  
School Development



### Spring admissions ceremony

Many thanks are in order for Alyce Spruell who planned her first admissions ceremony this spring. The ceremony went smoothly, and the luncheon was superb. We welcome our newest young lawyers into the practice.

### Statewide meeting of local affiliates

As I reported in the last issue, we held, for the first time this year, a statewide meeting of the state officers and Executive Committee and the officers of each of the local affiliates throughout the state. This meeting provided an excellent forum for exchanging ideas and discussing young lawyer needs. It is hoped this cooperation and communication will continue and be beneficial to all.

### Involvement in the Young Lawyers' Division of the American Bar Association

The Alabama YLS has been very involved in the YLD of the ABA. We have a number of members on various ABA YLD committees and have attended several of their meetings. We were fortunate to have their president-elect, Pam Roberts, accept our invitation to the Sandestin seminar. She addressed the attendees and met with the YLS Executive Committee. We hope to continue our involvement with the ABA YLD.

### Pre-law programs

Thanks to Alyce Spruell, we sent a letter to all of the graduating law students at the various law schools welcoming them to the practice of law and the YLS.

We also implemented a new program which will start next fall involving a panel of young lawyers to speak at the various law schools to discuss the practical aspects and demands of the practice of law. It is hoped this traveling road show will better educate law students about what to expect when they graduate and begin their practice of law.



**Percy Badham**

All in all, it has been a fun and exciting year. I appreciate the opportunity to serve as president and all the support I have received. Let's keep up the good work! ■

## LAWYERS IN THE FAMILY



*Virginia B. Lockhart (1991) and Danny C. Lockhart (1976) admittee and husband*



*Aaron Scott Roebuck (1991) and Sidney O. Roebuck, Jr. (1986) admittee and brother*



*Walter Calton (1991) and Jimmy S. Calton (1968) admittee and brother*



*John Michael Jared (1991) and Debbie Lindsey Jared (1983) admittee and wife*



*Glenn Parker (1991) and James Allan Parker (1934) admittee and father*



*Alex F. Lankford (1991) and Alex F. Lankford, III (1952) admittee and father*



*Jeffrey Trainham Brock (1991) and Joseph Bethune Nix, Jr. (1950) admittee and uncle*



*Christopher G. Speaks (1991), Francis W. Speaks (1950) and Francis W. Speaks, Jr. (1985) admittee, brother and father*



*Cheryle Delane Motley (1991) and Thomas Daniel Motley (1984) admittee and husband*



*Anita Lee Kelly (1991) and H. Lewis Gillis (1976) admittee and uncle*



## SPRING • 1991 • ADMITTEES

Alexander Nnanna Agiliga  
*Dothan, Alabama*

Stanley Carter Allen  
*Anniston, Alabama*

Michael Kirk Alston  
*Chattanooga, Tennessee*

Keith Ausborn  
*Montgomery, Alabama*

Harmahinder Singh Bagga  
*Birmingham, Alabama*

Philippa McClellan Bainbridge  
*New York City, New York*

Joseph Alan Bannister  
*New York City, New York*

Hillyard Jefferson Beans, III  
*Marion, Alabama*

Vicki Ann Bell  
*Huntsville, Alabama*

William Gregory Biddle  
*Knoxville, Tennessee*

James Jefferson Bradford  
*Montgomery, Alabama*

Michele Graham Bradford  
*Gadsden, Alabama*

Phyllis Lowery Brantley  
*Montgomery, Alabama*

William Leon Brantley  
*Bay Minette, Alabama*

Jeffrey Trainham Brock  
*Montgomery, Alabama*

Bowdy Jerome Brown  
*Montgomery, Alabama*

Samuel Mark Burr  
*Birmingham, Alabama*

Rickey Darryl Byrd  
*Birmingham, Alabama*

Alisa Jean Caldwell  
*Tallahassee, Alabama*

Walter Britt Calton  
*Eufaula, Alabama*

J. Suzanne Walton Carlson  
*Birmingham, Alabama*

Randall McAndrew Cheshire  
*Northport, Alabama*

Caroline Louise Clark  
*Decatur, Georgia*

Cynthia Williams Clinton  
*Montgomery, Alabama*

Jane Addaline Cobb  
*Chattanooga, Tennessee*

James Winfield-Scott Couch  
*Nashville, Tennessee*

David Newton Cutchen  
*Birmingham, Alabama*

James John Dailey  
*Mobile, Alabama*

Sherrie Woodcock Dewease  
*Mobile, Alabama*

Annette Elizabeth Dooley  
*Birmingham, Alabama*

Virginia Lyn Durham  
*Birmingham, Alabama*

Linda Wheat Field  
*Wichita, Kansas*

Stanley Edward Field  
*Wichita, Kansas*

Mark Bruce Flake  
*Huntsville, Alabama*

Randal Simpson Ford  
*Tuscaloosa, Alabama*

James Paul Frey, Jr.  
*Vestavia, Alabama*

Cara Melenzyer Gallagher  
*Atlanta, Georgia*

Theodore Aleck Gulas  
*Fairfield, Alabama*

Bernard Edouard Harcourt  
*Montgomery, Alabama*

David Jerome Harrison  
*Montgomery, Alabama*

Jeffrey Joseph Hartley  
*Washington, D.C.*

Lamar Travis Hawkins  
*Birmingham, Alabama*

Susan Scott Hayes  
*Birmingham, Alabama*

Thomas Christian Herren, Jr.  
*Homewood, Alabama*

John Byron Hollis  
*Phenix City, Alabama*

William Chipman Honey  
*Montgomery, Alabama*

Darryl Wayne Hunt  
*Birmingham, Alabama*

Lisa Maria Iulianelli  
*Vestavia, Alabama*

Donald Maurice Jackson  
*Coosada, Alabama*

Michael Wayne Jackson  
*Marion, Alabama*

John Michael Jared, Sr.  
*Elba, Alabama*

Frank Steele Jones  
*Tallahassee, Florida*

Anita Lee Kelly  
*Troy, Alabama*

Terry Glen Key  
*Dothan, Alabama*

Leigh Ann King  
*Birmingham, Alabama*

Joseph David Lane  
*Ashford, Alabama*

Alexander Fillmore Lankford, IV  
*Mobile, Alabama*

Theodore Alfred Lawson, II  
*Birmingham, Alabama*

Virginia Barbara Lockhart  
*Birmingham, Alabama*

Thomas Christopher Logan  
*Jackson, Mississippi*

Darlett Lucy  
*Mobile, Alabama*

John Elgin McCulley  
*Montevallo, Alabama*

Gerald Allen McGill  
*Pensacola, Florida*

Julia Sams McIntyre  
*Birmingham, Alabama*

Sara Katherine McKenzie  
*Birmingham, Alabama*

Jeffrey Rex McLaughlin  
*Birmingham, Alabama*

Margaret Morrow McLeod  
*Mobile, Alabama*

Kent Dyer McPhail  
*Mobile, Alabama*

Cameron Anthony Metcalf  
*Dothan, Alabama*

Suzanne Hughes Mills  
*Tuscaloosa, Alabama*

Charles Gary Morrow, Jr.  
*Union, Mississippi*

Cheryle Delane Motley  
*Dothan, Alabama*



SPRING • 1991 • ADMITTEES

Lisa Ann Narrell  
*New Orleans, Louisiana*  
Charlotta Norby  
*Atlanta, Georgia*  
John Lawrence Olszewski  
*Tuscaloosa, Alabama*  
Glenn Allan Parker  
*Montgomery, Alabama*  
Thomas Brown Paulk, Jr.  
*Montgomery, Alabama*  
Christopher Matthew Petras  
*Montgomery, Alabama*  
Bruce Andrew Pickens, Jr.  
*New York City, New York*  
Thomas Eric Ponder  
*Montgomery, Alabama*  
David Gerald Poston  
*Anniston, Alabama*  
Katherine Anne Quinby  
*Birmingham, Alabama*  
David Lee Rawls  
*Birmingham, Alabama*  
Laurence Byron Reid  
*Birmingham, Alabama*  
Thurston Howard Reynolds, II  
*Montgomery, Alabama*  
Robert Ernest Rigrish  
*Atlanta, Georgia*  
Aaron Scott Roebuck  
*Bessemer, Alabama*  
Patricia Hart Rogers  
*Selma, Alabama*  
John McKain Rolfe, Jr.  
*Birmingham, Alabama*  
David William Rooks  
*Birmingham, Alabama*  
Pauline Thompson Ruggles  
*Birmingham, Alabama*

Robert Wayne Ruth  
*Huntsville, Alabama*  
Dennis Richard Sandlin  
*Montgomery, Alabama*  
Kyle David Sawyer  
*Montgomery, Alabama*  
Jean McElvaine Seay  
*Equality, Alabama*  
David Lewis Selby, II  
*Birmingham, Alabama*  
Sybil Denise Sharpley  
*Pelham, Alabama*  
Michael Morris Shipper  
*Birmingham, Alabama*  
Perry Glenn Shuttlesworth, Jr.  
*Birmingham, Alabama*  
Roland Lewis Sledge  
*Valley, Alabama*  
Donna Sue Smith  
*Columbus, Mississippi*  
Christopher Gowan Speaks  
*Clanton, Alabama*  
Thomas Ezra Sport  
*Montgomery, Alabama*  
William Hylton Starnes  
*Huntsville, Alabama*  
Ronald Chester Sykstus  
*Moody, Alabama*  
James Marcus Taylor  
*Tuscaloosa, Alabama*  
John Farrest Taylor  
*Midland City, Alabama*  
Gerald Alan Templeton  
*Birmingham, Alabama*  
Lynnae Francine Thandiwe  
*Atlanta, Georgia*  
Elizabeth Cobb Thomas  
*Loxley, Alabama*

H. Marie Hall Thornton  
*Huntsville, Alabama*  
Chalice Tucker Travis  
*Birmingham, Alabama*  
Albert Johnson Trousdale, II  
*Huntsville, Alabama*  
Sharel Lynn Vansandt  
*Chattanooga, Tennessee*  
Vangeline Ione Volpel  
*Greensboro, Alabama*  
William Clayton Wallace  
*Gulf Shores, Alabama*  
Robert Charles Ward, Jr.  
*Montgomery, Alabama*  
Kenneth Alan Watson  
*Mobile, Alabama*  
Jeffrey Taylor Webb  
*Jackson, Mississippi*  
Gay Morris Weber  
*Kenilworth, Illinois*  
Milton James Westry  
*Mobile, Alabama*  
Marvin Wayne Wiggins  
*Montgomery, Alabama*  
Dwight Hughett Williams, Jr.  
*Montgomery, Alabama*  
Julie Melissa Wilson  
*Montgomery, Alabama*  
Sidney Harper Wright, III  
*Dothan, Alabama*  
Alex Andrew Yarbrough  
*Birmingham, Alabama*  
Habib Ollah Yazdtchi  
*Montgomery, Alabama*

Statistics of Interest — February 1991 Bar Exam

Number sitting for exam .....79  
Number certified to supreme court .....104  
Certification rate .....58 percent

Certification percentages:

- University of Alabama.....73 percent
- Cumberland School of Law.....63 percent
- Birmingham School of Law .....18 percent
- Jones Law Institute .....58 percent
- Miles College of Law .....0- percent



ALABAMA STATE BAR

SPRING • 1991 • ADMITTEES





# LEGAL ASSISTANTS:

## A Growing Role in the Practice of Law in Alabama

By KATHLEEN A. RASMUSSEN

*As the practice of law approaches the 21st century, lawyers are faced with complex legal issues not only in court but in their own law offices. Increased caseloads, technical office innovations ranging from computerized litigation support packages to WESTLAW and LEXIS® legal research tools, and needs of clients for quality legal services at competitive prices all combine to pressure lawyers into operating more effective, efficient and profitable law practices.*

*To help accomplish these goals, lawyers are increasing the use of legal assistants to perform not only routine case assignments but also specialized tasks.*

**I**n acknowledging the importance of a legal assistant's role, the American Bar Association has produced a formal definition for this profession: "A legal assistant is a person . . . who is employed by a law office . . . in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistance, the attorney would perform the task."<sup>1</sup>

Legal assistants have also been defined as "a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which qualify them to do work of a legal nature under the supervision of an attorney."<sup>2</sup>

Legal assistants initiate and complete a variety of assignments. In many litigation firms in both civil and criminal cases, legal assistants are utilized extensively. They conduct the initial client interviews, gather necessary evidentiary documents (police reports, medical records, birth and death certificates, income tax and bank statements, etc.) to build the case file, stamp and index these documents, interview witnesses, and photograph and videotape scenes. They also attend depositions and summarize transcripts, attend court sessions to assist with evidence and witnesses and to take notes, prepare exhibits and trial notebooks, research statutory and case law, draft pleadings, motions and orders, and relay questions and answers between the attorney and the clients.

In firms which do not primarily engage in litigation, legal assistants are utilized to draft wills, trusts and other estate planning and administration documents, track estate matters through probate, draft contracts and agreements, conduct title searches, gather abstracts of title and other real estate documents for closings, research and shepardize statutory and case law, and write legal memoranda. Some corporate legal departments employ legal assistants to perform specialized work solely for the respective corporation's business interests.

A few legal assistants perform law librarian-type duties in addition to their legal assistant work, such as updating pocket parts and looseleaf service updates, previewing, ordering and cataloging books, establishing and maintaining a working relationship with publishers, and maintaining information



retrieval systems for the law firm's collection of publications, briefs and previously completed research projects.

Attorneys can visualize the benefits that a law firm will reap when legal assistants are properly utilized. Legal assistants can relieve attorneys of many duties that only attorneys would otherwise perform. The results of this are that attorneys have more free time as they become the supervisor over mundane work performed by the legal assistant.

This additional free time will allow attorneys the opportunity to broaden their client base, devote more effort toward professional development, and manage the firm's business affairs in more detail. As for supervising the legal assistant's work, the attorney's delegation of case assignments to the legal assistant always should allow the attorney latitude to monitor routine case proceedings as needed while he or she works on the more technical and complicated issues involved in a particular case.

Some attorneys and clients might feel that work performed by a legal assistant renders work of a lesser quality. The work performed by competent legal assistants can render quality results to the client. Work should always be supervised by an attorney, with the attorney ultimately responsible for the entire work product regardless of who performs the tasks involved in a case.

Clients can benefit further by paying lower legal fees. The hours worked by legal assistants should bill out at a lower rate than an attorney. Also, clients can obtain information from the legal assistant when the attorney is not available. The legal assistant can relay questions and answers between the attorney and clients, which saves time and allows the attorney freedom from being tied to the telephone when other matters deserve attention.

In Alabama, quality work results are further assured by the fact that the work of a legal assistant is included under the governing umbrella of the Alabama State Bar's Rules of Professional Conduct. The ethical guidelines on confidentiality, conflicts of interest and the unauthorized practice of law apply to legal assistants via Rule 5.3. The need for clarity in employment positions as printed on business cards apply via Rule 7.6. These ensure that the legal assistant's conduct and work product are compatible with the attorney's professional obligations to the client, and ultimately become the attorney's work product.

## Education

Education standards for legal assistants were drafted by the National Association of Legal Assistants, Inc. in 1984. NALA is a national organization for legal assistants which was originally incorporated in 1975 to give professional recognition to the use of legal assistants in the delivery of legal services, and to promote the professional development and continuing legal education for legal assistants throughout the United States.<sup>3</sup>

The education standards adopted by NALA reflect the minimum educational qualifications and law-related work history needed to prepare a person seeking employment as a legal assistant. They are:

1. graduation from an ABA-approved program of study for legal assistants;
2. graduation from a course of study for legal assistants which is institutionally accredited but not ABA-approved, and which requires not less than the equivalent of 60 semester hours of classroom study;

3. graduation from a course of study for legal assistants, other than those previously set forth, plus not less than six months of in-house training as a legal assistant;

4. a baccalaureate degree in any field, plus not less than six months in-house training as a legal assistant;

5. a minimum of three years of law-related experience under the supervision of an attorney, including at least six months of in-house training as a legal assistant;

6. two years of in-house training as a legal assistant; or

7. successful completion of the Certified Legal Assistant examination of NALA.<sup>4</sup>

As of 1990, at least 16 colleges in Alabama provide legal assistant training programs. These vary in the type of training they provide to students, but each must meet general standards of admission, curriculum and facilities in order to maintain the academic accreditation requirements that the accrediting body bestows.<sup>5</sup> Two of the programs in Alabama are accredited by the ABA. They are located at Auburn University at Montgomery and Samford University.

The titles of courses offered in a legal assistant education program are much the same as those courses in a law school student studies. Several use the same textbooks, and many of the programs' adjunct faculty are practicing attorneys.

More and more, legal assistants either graduate from a formal college program or complete a certificate program in a formal education setting. Once hired, legal assistants generally are trained further by the employing attorney on the duties to be assigned and how supervisory details will be handled. In the alternative, a law firm employee can receive "legal assistant" type training from an employing attorney and then gain employment status as a legal assistant when such in-house training is complete, without attending a formalized program.

## Employment and salaries

Some law firms follow a procedure whereby their legal assistants are assigned to work for a group of attorneys on whatever cases the attorneys accept. Other law offices employ legal assistants in strictly specialized areas of law, such as in real estate, corporate or estate planning practices. Sole practitioners often use legal assistants to perform a variety of tasks involved in the operation of a one-attorney law office, such as not only legal assistant duties but general office duties and "go-for" work.

Kyle Barrentine, a legal assistant employed for six years at the Birmingham firm of Cabaniss, Johnston, Gardner, Dumas & O'Neal, mainly performs tasks for the firm's senior partner and four additional attorneys, all of whom specialize in labor law. Barrentine's work centers on federal cases concerning civil rights and Title VII, age discrimination, union arbitrations and wage-and-hour disputes.

His duties consist mainly of obtaining files from the various federal agen-



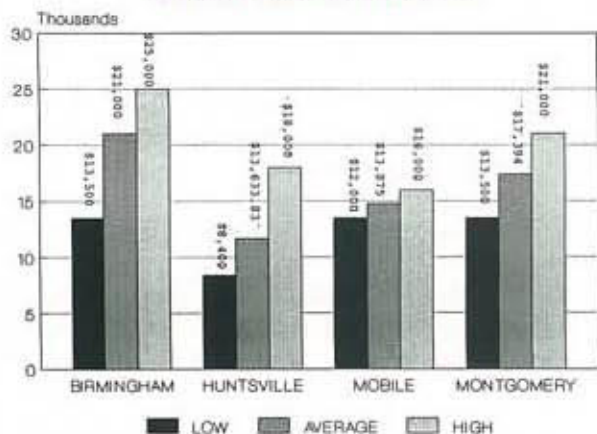
### Kathleen A. Rasmussen

Kathleen A. Rasmussen is a graduate of Auburn University at Montgomery and its legal assistant program. She has been a legal assistant for seven years. She is employed by the Alabama Department of Economic and

Community Affairs in the Legal Section.



## STARTING SALARIES



cies, summarizing documents into statistical charts and exhibits, and drafting documents concerning the removal of cases to federal court. At trial, Barrentine tracks witnesses' statements and testimony throughout the duration of a case, and he maintains the exhibits and notes on expert witnesses. Occasionally, he shepardizes, checks cites and performs legal research for case briefs.

Barrentine admits that he probably has more contact with the clients than do some of his supervising attorneys, but he also must be careful that clients and opposing counsel do not mistake him for an attorney, a common error with new clients.

Although Birmingham has more readily accepted the concept of the legal assistant as a productive member of the legal team than have other locales in Alabama, Barrentine envisions the legal assistant profession in general as an area for tremendous future growth. But he believes that many legal assistants are not currently utilized to their maximum potential. He observes, "Legal assistants need to be utilized more effectively. They should be allowed to do more than what is involved in the traditional role of a legal support staff member. I perform whatever work is necessary to free up the time of the lawyers to do what they are trained for, to do what they are paid for and to do what they want to do: practice law. I must also develop and maintain a good relationship with the clients, treating them as I would want to be treated by performing in the most efficient and economical manner."

Renee Chisholm, a legal assistant with Johnstone, Adams, Bailey, Gordon & Harris in Mobile, has been a legal assistant for ten years and is one of seven legal assistants employed by that firm. She works mainly on cases involving insurance and products liability from the defense standpoint. Her duties include drafting all types of litigation documents, conducting investigative interviews and photographing scenes. She summarizes deposition and medical records. At trial, she maintains the exhibits, trial notes and documents and keeps track of the witnesses so that they appear at the proper court at the proper time. She also teaches "hands-on" legal assistant courses at the University of South Alabama.

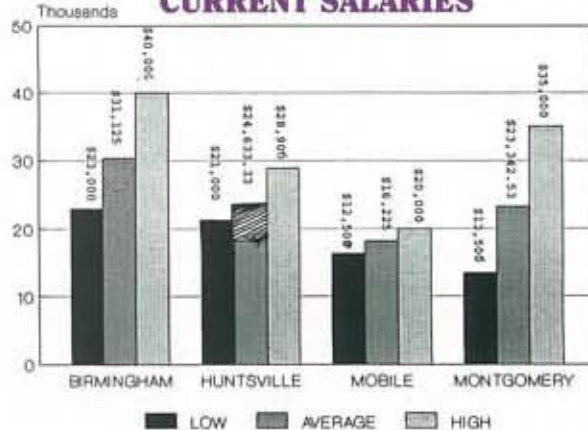
Chisholm points out that while employing legal assistants to perform case assignments at a lower hourly rate keeps down the cost of rendering legal services to the client, attorneys must pay

attention to the fact that the potential to grow both financially and professionally adds a lot to a legal assistant's long-term commitment to the firm and the legal profession.

Lea Ann Adams, a legal assistant with the Montgomery firm of Beers, Anderson, Jackson & Smith, conducted a statewide employment and salary survey in 1990. Her survey results exhibited that in four of Alabama's largest cities (Huntsville, Birmingham, Montgomery and Mobile), the starting salaries for legal assistants ranged from as low as \$8,400 in Huntsville to a high of \$25,000 in Birmingham. Experienced legal assistants polled are currently earning salaries as low as \$12,500 in Mobile and as high as \$40,000 in Birmingham. The average salaries currently paid to those surveyed are \$31,125 in Birmingham, \$24,633 in Huntsville, \$23,342 in Montgomery and \$16,225 in Mobile.<sup>6</sup>

Surveys indicated that the legal assistant profession has an extremely high turnover rate. The average tenure of a legal assistant at a law firm is three years. Many legal assistants complain about low pay coupled with the lack of proper utilization from their supervising attorneys, boring and unchallenging

## CURRENT SALARIES



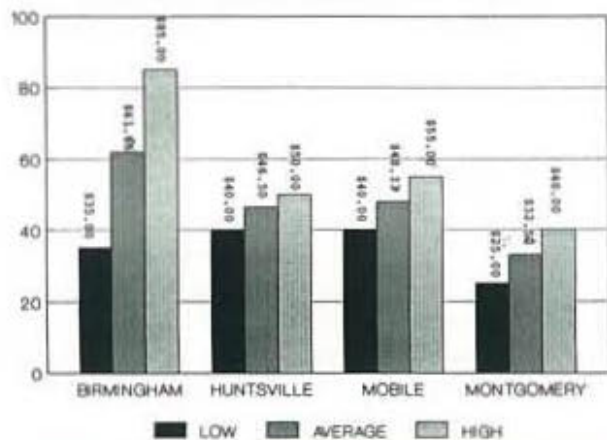
work and the lack of a developing career path in this profession. Such complaints often result in the legal assistant's actually leaving the legal field for another line of work. And, as of last year, very few legal assistants employed in large law firms planned to remain in their positions as a long-term occupational objective. This can be attributed to job burnout.<sup>7</sup>

## Professional associations

Professional legal assistant associations have formed in the past several years on the national, state and local levels. These include the National Association of Legal Assistants, Inc., which has 67 state and local affiliates nationwide; Professional Legal Assistants, Inc.; the Alabama Association of Legal Assistants; the Legal Assistant Society of Southern Institute (in Birmingham); the Montgomery County Bar Association's Legal Assistant Section; and the Mobile Association of Legal Assistants. There is even a National Federation of Paralegal Associations in Deerfield, Illinois, which acts as an umbrella organizations for other legal assistant organizations. The American Bar Association and the American Trial Lawyers Association also have membership categories for legal assistants.



## PARALEGAL BILLING RATES



Membership in these organizations helps define a legal assistant's job into a career. It teaches professionalism, ethics and responsibility within the field, and gives legal assistants a network of colleagues from which to gain knowledge and insight into the specialty areas of a law practice. Many legal assistants use association membership as an opportunity to gain continuing legal education via association-sponsored seminars, workshops, publications and videotapes.

At the state level, the Alabama Association of Legal Assistants was established in 1982. Lynn Reynolds, AALA's current president and a legal assistant with Sirote & Permutt in Birmingham, estimates that the statewide membership is presently 215 members and rapidly growing. Reynolds underscores organizational membership because, as she says, "A networking system is really important to a practicing legal assistant." AALA provides that for its members. Education in the form of quarterly seminars held on a wide variety of topics is another benefit. But, she adds, "In order to maintain a sense of professionalism, there should be a system of certification or licensing for legal assistants on a national scale. The profession is growing so fast, and this would be a way for attorneys to verify if a legal assistant is in fact a (properly trained) legal assistant."

In Montgomery, the Montgomery County Bar Association established its legal assistant section in the fall of 1987. This section currently has approximately 50 members, and has watched its membership double in the four years of its existence. Vicki Glassroth, the section's first president and a legal assistant with the Alabama State Bar, states, "The section's original purpose was to establish communications between the legal assistants and the attorneys to spread awareness of the legal assistant's function. Now it is not only a mechanism to inform attorneys of what we can and cannot do, but it also promotes social interaction between members of the Montgomery legal profession." The section works on continuing legal education programs for its members and on community projects, including the annual Montgomery County Bar Association's Law Day and Law Awareness activities and holiday projects.

In Mobile, Mary Beth Bradley, a legal assistant at Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves, is the current president of the Mobile Association of Legal Assistants. Bradley observes that since the association's inception in 1984, it has

grown to approximately 75 members. Their purpose in joining together was to encourage professionalism and ethics, to develop profession education among members in the legal assistant field, and to establish good fellowship between the association's members and the Mobile legal community. The members meet on a monthly basis to hear prominent speakers address legal matters and community issues. Says Bradley, "Lawyers should give paralegals progressive responsibilities and encourage development of initiative and new skills."

### Freelancing

Freelance legal assistants are emerging as an alternative to the hiring of a full-time permanent staff legal assistant. Freelancing allows legal assistants the flexibility to work for different law firms on a temporary basis, and lawyers the freedom to hire legal assistants only when the need arises. Freelance legal assistants often have advanced experience in the legal field which allows them to specialize in certain areas of the law while they are employed on a temporary basis, and which allows lawyers to operate a lucrative business on a full-time basis.

Some advantages of hiring freelance legal assistants include case efficiency, saving time and cost effectiveness. Freelance legal assistants can be utilized only when the caseload demands it. Hiring a temporary legal assistant to take the overflow work off of the full-time legal assistant on staff will allow the tasks to be accomplished in the same amount of time. Also, lawyers employing freelance legal assistants do not have to pay for their job benefits, Social Security, unemployment insurance or year-end bonuses.

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Of course, the downside of freelancing includes the potential for a conflict of interest and nonavailability to work on specific cases or tasks when a legal assistant takes case assignments from more than one attorney or law firm. In addition, there is potential for the attorney's lack of control and supervision over the assignment, which could lead to the appearance of the legal assistant's unauthorized practice of law since the work would be performed outside of the attorney's office.<sup>8</sup>

In Alabama, several freelance legal assistant businesses have opened. In Birmingham, Patricia Comer operates Comer & Associates, offering services in the areas of litigation support, bankruptcy and deposition summaries. Attorney Suzanne Willoughby opened LEGAL-EES two and a half years ago after observing how successful the freelance legal assistant business is in New York.

On the average, about eight legal assistants apply each day to freelance for LEGAL-EES. Willoughby gives each applicant a skills test by which they demonstrate to her their levels of legal knowledge and expertise. Though LEGAL-EES places temporary legal *secretaries* at a steady pace, she has yet to place her first legal *assistant* into a temporary position. Willoughby attributes this phenomenon to the need for employers to be educated on how legal assistants can be properly utilized.

Montgomery and Mobile have recently seen freelance legal assistants open up for business, too. One of the new entrepreneurs is Debbie Sellers, who was a legal secretary proficient in medical and business litigation. After graduating from her legal assistant program, she found her new talents unwelcomed in the job market. So she opened her business in Montgomery, specializing in the areas of family practice and litigation. She says, "Attorneys in Montgomery are scared of legal assistants. But don't be threatened by the fact that we are trained to do what we do. Let us do our job, and let us help you."

### Government legal offices

Until recently, legal assistants have been employed mostly in private sector law firms and corporate in-house legal departments. Public sector utilization of legal assistants was, for the most part, slow to gain acceptance. Now that it has caught the attention of government law offices, momentum is gaining. The federal government's Civil Service Register contains a "Paralegal Specialist" classification, and employment is available in district offices of the United States Attorney, as well as other federal agencies. The armed forces utilize active duty legal assistants in their on-base Judge Advocate General's offices.

The Alabama State Personnel Department established the legal assistant job classification in 1985. This open register has been growing with names of eligible legal assistants, but few state agencies are establishing the job classification within their in-house legal offices and hiring off of this register. A few which have done so include the Alabama College System, the State Department of Education and the Department of Economic and Community Affairs.

Legal assistants in state government perform many of the same duties of their counterparts in private sector law firms. However, state government legal assistants are called upon to research federal and state laws and monitor compliance with these laws, draft proposed legislation and track it through committees and debates, and process State Board of Adjustment claims against the agency, attend hearings before federal and state administrative boards, and draft the agency's policies and procedures manual.

### Educational programs

The Bureau of Labor Statistics cites the legal assistant field as one of the most rapidly growing job classifications, at the present rate of 104 percent each year.<sup>9</sup> Schools offering legal assistant programs appear to be sprouting up everywhere. In larger cities such as Atlanta, schools are saturating the market with legal assistant programs, which in turn saturate the market with graduates seeking employment and big paychecks. In Montgomery, a city of 200,000, there are currently six schools offering legal assistant programs. The supply of legal assistants is definitely exceeding the demand.

What are the ways an attorney can ascertain how well qualified an applicant is for the legal assistant position offered? First, verify that the legal assistant training program which the applicant attended actually exists. Call the school to see what courses are taught in the program and confirm that the applicant did graduate. Second, comparison shop. Legal assistant programs accredited by the ABA meet strict standards and put forth a quality program good enough to carry the ABA's seal of approval. Other programs not accredited by the ABA might not meet these standards. Third, determine whether you want the legal assistant you hire to be a "certified legal assistant".

### Certification

What exactly is certification for legal assistants? The National Association of Legal Assistants, Inc. has a recognized national voluntary certification program for legal assistants that has been proven to be statistically reliable. This exam recognizes a high level or standard of professional excellence in the legal field.

The two-day certified legal assistant exam covers the areas of communication skills, judgment and analytical abilities, ethics, human relations, legal terminology and research, and the American legal system. In addition, four sub-tests are given in the specialty areas of litigation, probate and estate planning, real estate, criminal law, bankruptcy, contracts, corporate law, and administrative law. NALA has been administering this exam since 1976.

Once a legal assistant passes this exam, the designation "CLA" may be used by that person, but the certification must be renewed every five years and a required number of continuing

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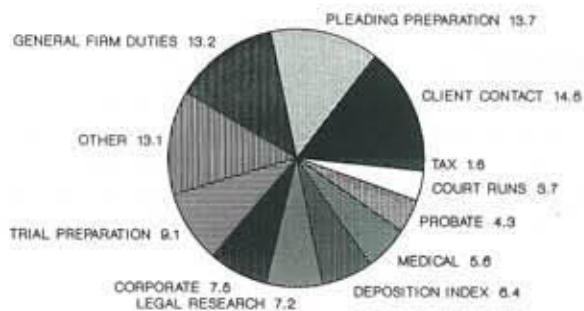
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## PARALEGAL TASK FREQUENCY COMBINATION



legal education hours must be accumulated each year for the "CLA" designation to remain in effect.

Certification or some other form of licensing appears to be the wave of the future for legal assistants. It serves several purposes. It is yet another way that legal assistants can demonstrate their knowledge and expertise in the legal field. It is another way that legal assistants can exhibit their commitment to professional development and gain an edge over their competitors for jobs in the legal field.<sup>10</sup> Says Suzanne Willoughby of LEGAL-EES, "Licensing is a necessity. It is as important to the legal assistant as the bar exam is to the attorney."

### Case law

As legal assistants have progressed in developing their profession, so, too, have issues arisen as a result of their widespread use. Nationwide, recent case law has emerged to further define and qualify the bounds within which legal assistants can work throughout the country.

The United States Supreme Court in *Missouri v. Jenkins by Agyei*, 109 S. Ct. (1989), recognized legal assistants' professionalism, work contributions and cost effectiveness in delivering legal services to clients. In this case, the court allowed the legal assistants' time to be recovered as separate compensation in the attorney fee award, at prevailing relevant market rates for their services.

This separate legal assistant fee issue was challenged under the Civil Rights Attorneys Fees Awards Act of 1976 (42 U.S.C. §1988). The Supreme Court upheld a federal district judgment to award the prevailing parties with attorney fees based on the attorney's work product. The court found that, "§1988 cannot have been meant to compensate only work performed personally by members of the bar," but must also take into account the work of legal assistants and the like.

In the Kansas City metropolitan area, attorneys follow the practice of billing the work of legal assistants separately. So the court allowed the attorney fee to include separate compensation for legal assistants, law clerks and recent law school graduates at prevailing market rates under the attorney fee award. This separate compensation is fully in accord with §1988. The court reasoned that these personnel, along with other law office per-

sonnel (secretaries, messengers, librarians, janitors, etc.) perform labor which contributes to the work product for which an attorney bills the client.

The attorney-client privilege and the work product rule are currently under review by an Arizona state appellate court as to how they apply to legal assistants. In the case of *Dawson v. Phoenix Children's Hospital*, No. 88-24894 (Maricopa County Superior Ct., Ariz. 1988), the trial court decided that a legal assistant's memorandum, which was based on interviews with the defendant employees and written to her supervising attorney, was discoverable by the plaintiff even though the court recognized that the memorandum was considered to be work product, and even though previous law would seem to dictate otherwise. Federal legal precedent set in, among other cases, *Zenith Radio Corporation v. Radio Corporation of America*, 121 F. Supp. 792 (D.C. Del. 1954), and *Admiral Insurance Company v. United States District Court*, 881 F.2d 1486 (9th Cir. 1989), argues the opposing viewpoint.<sup>11</sup>

In *Zenith*, the attorney-client privilege in a patent case was determined to extend to an attorney's subordinates "who habitually report to and are under the personal supervision of the attorney through whom the privilege passes." 121 F. Supp. at 794. Although the concept of legal assistants was not yet born in 1954 when *Zenith* was decided, this decision would certainly apply to the 1990 concept under which legal assistants operate.

In the *Admiral* case, the attorney-client privilege was determined to be a "privilege" which "protects communications between client and counsel to encourage the client to be forthcoming with his attorney so that appropriate legal advice can be offered." This was not to be confused with the work product rule which "is not a privilege but a qualified immunity protecting from discovery documents and tangible things prepared by a party or his representative in anticipation of litigation." 881 F.2d at 1494. Though *Dawson* is on appeal in the Arizona state court system, all litigation attorneys and legal assistants should be attuned to the final decision as it will potentially affect case discovery throughout the nation if a legal assistant's work product is sought by opposing counsel.

Conflicts of interest and the sanctity of confidential information as they pertain to non-lawyer personnel have been featured in *Kapco Manufacturing Company, Inc. v. C&O Enterprises, Inc.*, 637 F. Supp. 1231 (N.D. Ill. 1985) and *Williams v. Trans World Airlines, Inc.*, 588 F. Supp. 1037 (W.D. Mo. 1984). In these cases, non-lawyer personnel "switched sides" in the midst of contested litigation, raising the question of whether the new firm of employment should be disqualified from representing the clients involved in the litigation.

*Kapco* involved a non-lawyer leaving the employment of the plaintiff's counsel and going to work for the defendant's counsel. Here, the court ruled that no disqualification of the defendant's counsel was necessary, as the non-lawyer did not disclose confidential information pertaining to the plaintiff's case to her new employer.

*Williams* involved a non-lawyer who conducted personnel investigations and prepared various documents for the TWA legal department on discrimination charges brought against the airlines. When the non-lawyer was furloughed by TWA, she pursued her own discrimination claim against them and utilized the same attorneys with whom she had been adversaries on dis-



crimination cases while she was employed with TWA. The court ordered that the attorneys hired to pursue her discrimination claim must disqualify themselves because, "The fairness and integrity of the judicial process and TWA's legitimate interest in a trial free from the risk that confidential information has been unfairly used against it outweighs plaintiffs' interest in being represented by this particular law firm." 588 F. Supp. at 1046. Thus, legal assistants and their supervising attorneys must use the ultimate care on the disclosure of confidential information when a legal assistant changes places of employment within the legal profession.

The ABA has reasoned that normal law office operations expose employees to confidential information. This obligates attorneys to exercise care in the selection and proper training of their employees to preserve the sanctity of client confidences and secrets. Therefore, the legal assistant, the previous employing attorney and the present employing attorney are all responsible for protecting the clients' confidences and secrets. This may include establishing a screening process to separate legal assistants from cases they worked on in their previous employment.<sup>12</sup>

### The future

What does the future hold for legal assistants? The profession will undoubtedly see some new innovations, including:

1. The increasing use of legal assistant managers. This can take either the form of a legal assistant who has been promoted to the position of "managing paralegal" over the other law office legal assis-

tants, or in the form of an attorney whose main duty is to manage the work flowing to the legal assistants when several are employed by the law firm.

2. A billing procedure for legal assistants known as "value billing." This is an idea wherein law firms bill by the task or legal product rather than billing by the hour for the legal assistant's time spent working on a case. In value billing, the value of the work product does not equate to the time invested in performing the tasks. Instead, the work is billed at a fixed price based on its value to the client. The client benefits because there is a limited price to the legal work being performed, and the law firm benefits because it can perform work at competitive market rates for whole tasks rather than for individual hours. Less time is spent keeping track of those billable hours, which, in turn, leads to less bookkeeping headaches.

3. Licensing or certification requirements for legal assistants. With so many programs graduating a record number of legal assistants, the licensure and certification process will help to control the legal assistant population much like the bar exam works to control the attorney population. Licensure and certification will be ways to control the quality of education by confirming that education programs are teaching the legal assistant students the necessary skills in order for them to enter the job market, and will be a way to maintain the level of professionalism needed to be successful once they are in that job. The nationwide certification exam for legal assistants will gain in prominence.

4. Listing legal assistants on law office letterheads and business cards. The ABA now allows law offices to list the names of non-lawyer support personnel on the lawyer's letterhead provided that the non-lawyer status is clear.<sup>13</sup> The Alabama State Bar's Rules of Professional Conduct have been rewritten to include Rule 7.6, which pertains to professional business cards of non-lawyers. Now legal assistants can be identified as a legal assistant, "provided that the individual is employed in that capacity by a lawyer or law firm, that the lawyer or law firm supervises and is responsible for the law-related tasks assigned to and performed by such individual, and that the lawyer or law firm has authorized the use of

such cards."<sup>14</sup>

5. State bar associations adopting codes of ethics for legal assistants. The National Association of Legal Assistants, Inc. has adopted canons of ethics to guide practicing legal assistants in their daily duties. As the legal assistant profession continues to grow and the parameters expand for their proper utilization, the need might well arise for individual state bar associations to govern the ethical aspects of the legal assistant profession just as they do for practicing attorneys.

### Conclusion

The legal assistant profession can be a challenging career for those with a love of the law. The job requires a good education, a capacity to learn quickly on the job and an inquisitive nature. While other states are currently more liberal than Alabama in the use and treatment of legal assistants, that should change with time. The trend is clearly toward great future growth in this field nationwide. And, as goes the nation, so, eventually, goes Alabama. ■

### Footnotes

1. American Bar Association Standing Committee on Legal Assistants, Position Paper on the Question of Licensure or Certification (1986).
2. National Association of Legal Assistants, Inc., Model Standards and Guidelines for Utilization of Legal Assistants, Annotated, 2-3 (1990).
3. National Association of Legal Assistants, Inc., "Career Chronicle", 6 (fall 1990).
4. *Id.*, 50.
5. Legal Professional 1990 School Directory, S1 (Jan./Feb. 1990).
6. L.A. Adams, Paralegals: An Analysis of Utilization (1990).
7. R. Granat, Effective Utilization of Legal Assistants: The Political and Economic Realities, "Legal Assistant Today", 26 (May/June 1990).
8. L. Jevahirian, Legal Assistants Going Freelance, "Facts and Findings", 22-26 (March 1991).
9. L.A. Adams, Paralegals: An Analysis of Utilization (1990).
10. National Association of Legal Assistants, Inc., General Information About the National Association of Legal Assistants, 4-6 (1991).
11. B. Keogh and T. Hyland, NALA and Arizona Affiliates File Amicus Brief on Work Product, "Facts and Findings", 18-30 (Jan. 1991).
12. V. Voisin, Changing Jobs: Ethical Considerations for Legal Assistants, "Facts and Findings", 45-47 (fall 1989).
13. National Association of Legal Assistants, Inc., "Career Chronicle", 37 (fall 1990), and American Bar Association Informal Opinion No. 89-1527.
14. Alabama Association of Legal Assistants, "Business Card Issue Resolved", *The Quarterly Update*, 3 (Sept./Oct./Nov. 1990).



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# DISCIPLINARY REPORT

## Transfer

Guntersville lawyer **John Wallace Starnes** has been transferred to disability inactive status pursuant to Rule 27, Rules of Disciplinary Procedure (interim), effective May 9, 1991.

## Suspension

Former Birmingham lawyer **William Sidney Underwood, Jr.** has been temporarily suspended from the practice of law, effective April 9, 1991, pursuant to Rule 20, Rules of Disciplinary Procedure. (Rule 20-91-03)

## Private Reprimands

On April 19, 1991, a lawyer was privately reprimanded for having intentionally failed to carry out a contract of employment entered into with a client for professional services, in violation of DR 7-101(A)(2). The lawyer accepted a retainer to investigate a claim against a business firm, and never contacted the client with respect to the matter and did not reply to numerous inquiries from the client. Further, the lawyer ignored a number of requests from the bar that he provide a response to the complaint that the client ultimately filed against him. (ASB No. 88-730)

On March 11, 1991, a lawyer was privately reprimanded for willfully neglecting a legal matter entrusted to him. The lawyer, who represented the client in a criminal matter, told the client that the client's appeal was still being pursued in the appellate courts of Alabama when, in fact, such was not the case. The lawyer also failed to file a petition for writ of certiorari within the time required, and likewise failed to inform the client of this filing deadline, thus keeping the client from being able to obtain substitute counsel. (ASB No. 90-352)

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The Handicapped Lawyers Association was formed to bring together people who are handicapped/ disabled. The Association is looking for persons interested in advocacy, education and networking.

As with many organizations, the Association's goals are to educate the public and the profession. The HLA desires advancement of the disabled and is working toward the advancement of the disabled as litigants and their full participation and inclusion in all aspects of the judicial system. For more information or to contribute ideas, interest or experience, contact Victor J. Hoffer, HLA, P.O. Box 934, Mt. Angel, Oregon 97362.

## NOTICE

TO: **Greg Robert Yates**  
FROM: **Alabama State Bar**  
RE: **Order to Show Cause,  
CLE 91-43**

Notice is hereby given to **Greg Robert Yates**, attorney, whose last known address is U.S. Bankruptcy Court, 225 Rector Place, #12E, New York, New York 10280, that his name has been certified to the Disciplinary Commission for noncompliance with the mandatory continuing legal education requirements of the Alabama State Bar and that as a result thereof an Order to Show Cause has been entered against him ordering him to show, within sixty (60) days from the date of entry of the order, why he should not be suspended from the practice of law. Said order was entered April 8, 1991. The attorney has sixty (60) days from the date of this issue to respond to the Order to Show Cause. Said response shall be received in this office before September 13, 1991.

*Disciplinary Commission  
Alabama State Bar  
1019 South Perry Street  
Montgomery, Alabama 36104*

## NOTICE

TO: **Willie Leon Williams, Jr.**  
FROM: **Alabama State Bar**  
RE: **Order to Show Cause,  
CLE 91-41**

Notice is hereby given to **Willie Leon Williams, Jr.**, attorney, whose last known address is 1825 13th Way, SW, Birmingham, Alabama 35211-4418, that his name has been certified to the Disciplinary Commission for noncompliance with the mandatory continuing legal education requirements of the Alabama State Bar and that as a result thereof, an Order to Show Cause has been entered against him ordering him to show, within sixty (60) days from the date of entry of the order, why he should not be suspended from the practice of law. Said order was entered April 8, 1991. The attorney has sixty (60) days from the date of this issue to respond to the Order to Show Cause. Said response shall be received in this office before September 13, 1991.

*Disciplinary Commission  
Alabama State Bar  
1019 South Perry Street  
Montgomery, Alabama 36104*



# RECENT DECISIONS

By DAVID B. BYRNE, JR., and WILBUR G. SILBERMAN

## UNITED STATES SUPREME COURT

### Officer's pursuit of juvenile suspect does not amount to seizure within Fourth Amendment

*U.S. California v. Hodari D.*, 59 LW 4335 (April 23, 1991). Is a juvenile who flees at the sight of a police officer and is chased "seized" for Fourth Amendment purposes before actually being caught or submitting to the police show of authority? The United States Supreme Court said no in a seven-to-two decision.

In *California v. H.D.*, a group of youths, including H.D., fled at the approach of an unmarked police car on an Oakland, California street. One of the officers, who was wearing a jacket with "police" embossed on its front, chased H.D. When H.D., who had been looking behind him as he ran, glanced forward, he saw the police officer and tossed away a piece of crack cocaine. The police officer tackled him and recovered the cocaine.

The state court of appeals ruled that H.D. had been seized when he saw the police officer running toward him, that the seizure was unreasonable because the officer did not have the "reasonable suspicion" necessary to stop the youth, and that the cocaine evidence had to be suppressed.

The only issue presented on review by the Supreme Court was whether at the time he dropped the drugs, H.D. had been "seized" within the meaning of the Fourth Amendment. Writing for the Court, Justice Scalia said the Fourth Amendment does not apply until a pursued suspect has been physically apprehended or submits to police authority. "Street pursuits always place the public at some risk, and compliance with police orders to stop should therefore be encouraged."

The Court's opinion goes further in stating:

" . . . To constitute a seizure of the person, just as to constitute an arrest—the quintessential 'seizure of the persons' under Fourth Amendment jurisprudence—there must be *either* the application of physical force, however slight, or whether that is absent, submission to an officer's 'show of authority' to restrain the subject's liberty."

In this case, no physical force was applied since H.D. was untouched by the police officer before he dropped the drugs. Moreover, assuming that the police officer's pursuit constituted a "show of authority", enjoining H.D. to halt, the juvenile did not comply with that injunction, and therefore, was not seized until he was tackled. Thus, the cocaine abandoned while he was running was not the fruit of a seizure.

### Coerced confessions — harmless error?

*U.S. Arizona v. Fulminate*, 59 LW 4235 (March 26, 1991). May coerced confessions wrongly used as evidence in a criminal trial sometimes be deemed harmless error? The Supreme Court, in a five-to-four decision, answered yes. The Supreme Court, in a significant change to the rights of accused criminals, ruled that convictions based on illegally coerced confessions are not automatically invalid.

Led by Chief Justice Rehnquist, the Court's bare majority extended the harmless error rule to cover such confessions if other trial evidence was sufficient to convict the defendant. In such cases, the Court held that a new trial is not automatically required even if an illegal confession was admitted as evidence. Justice Rehnquist concluded that the harmless error rule adopted in *Chapman v. California*, 386 U.S. 18, was applicable to the admission of involuntary confessions. The Chief Justice reasoned that the admission of such a confession is a "trial error" which occurs

during a case's presentation to the trier of fact and may, therefore, be quantitatively assessed in the context of other evidence presented in order to determine whether the admission is harmless beyond a reasonable doubt.

Justices White, Marshall, Blackmun and Stevens objected stridently to the ruling that some illegal confessions may be "harmless error". Specifically, Justice Byron R. White critically noted:

A confession is like no other evidence . . . and that the Court's decision overrules a vast body of precedent . . . and . . . dislodges one of the fundamental tenets of our criminal justice system—coerced confessions can never be condoned.

### Non-minority defendants have standing to raise Batson challenges

*Powers v. Ohio*, No. 89-5011 (April 1, 1991). Are white defendants entitled to new trials if convicted by a jury from which blacks were excluded because of their race? The Supreme Court said yes in a seven-to-two decision.

Writing for the majority, Justice Kennedy said that the Fourteenth Amendment bar to state prosecutors using peremptory challenges against minorities in a racially biased manner, established in *Batson v. Kentucky*, 476 U.S. 79 (1986), may be raised by defendants who are white or not members of the group of excluded venire persons.

The Court's ruling expands its 1986 decision in *Batson* which barred prosecutors from excluding jurors because of their race. That decision was based on the exclusions of black prospective jurors from the *trial* of a black defendant.

Justice Kennedy said that any exclusion of potential jurors based on their race violates not only their rights, but the rights of the criminal defendant.

In concluding that white defendants have standing to challenge a prosecu-



tor's racially discriminatory use of peremptory strikes against African-American venire members, the Supreme Court has effectively reversed recent decisions by the Alabama appellate courts which have held that *Batson* could not be raised by defendants who are not of the same race as the excluded juror. See *Ex part Bankhead*, No. 89-1179 (Ala. 1991).

### Abuse of great writ

*McCleskey v. Zant*, 59 U.S. LW 4288 (April 16, 1991). Is "deliberate abandonment" the standard for judging whether a federal habeas corpus petition represents an abuse of the writ? The Supreme Court answered no in a six-to-three opinion.

In an effort to rebut *McCleskey's* alibi defense at his 1978 Georgia murder trial, the State called Offie Evans, the occupant of the jail cell next to the defendant's, who testified that *McCleskey* had admitted to and boasted about the killing. On the basis of this evidence, the jury convicted *McCleskey* and sentenced him to death.

After the Georgia Supreme Court affirmed, *McCleskey* filed an unsuccessful petition for state habeas corpus relief alleging, *inter alia*, that his statements to Evans were elicited in a situation created by the State to induce him to make incriminating statements without the assistance of counsel, in violation of *Massiah v. United States*, 377 U.S. 201. *McCleskey* then filed his first federal habeas petition which *did not* raise a *Massiah* claim, and a second state petition, both of which were ultimately unsuccessful.

Finally, the defendant filed his second federal habeas petition in 1987 basing a *Massiah* challenge on a 21-page statement that the cellmate, Evans, had made to police two weeks before the trial.

Led by Justice Anthony Kennedy, the Court held that *McCleskey's* failure to raise his *Massiah* claim in his first federal habeas petition constituted an abuse of the writ. The Court instead adopted for the "abuse of the writ" doctrine, the same "cause and prejudice" standard used in determining whether an appeal must be dismissed for a procedural default. The new standard makes it easier to attack, as abusive, a convicted

criminal's second or subsequent habeas corpus petition.

It is this writer's opinion that *McCleskey* serves as a preface to the Supreme Court's efforts to restrict federal post conviction relief to one turn of the wheel.

## SUPREME COURT OF ALABAMA

### Failure to make *Batson* motion raises colorable *Strickland* claim, i.e., ineffective assistance of counsel

*Yelder v. State*, 25 ABR 1239 (January 11, 1991). In a case of first impression in Alabama, *Yelder* argued that he was denied effective assistance of counsel in that his trial lawyer did not object, under *Batson v. Kentucky*, 476 U.S. 79 (1986), to the State's use of its peremptory challenges to strike 17 of 18 black jurors.

The legal standard for determining a claim for ineffective assistance of counsel as set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), requires that the defendant must show:

First, that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel guaranteed the defendant by the Sixth Amendment". Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Justice Shores, writing for the majority, agreed with Judge Bowen's dissent that it is necessary to create an additional category under the "presumed prejudiced" exception to *Strickland*. Accordingly, the supreme court reversed that portion of the judgment of the court of criminal appeals' finding that counsel's failure to raise *Batson* in the selection of the venire raised a colorable *Strickland* claim and remanded the case to the trial

court for a hearing on the *Batson* question. Specifically, Justice Shores observed:

That the failure of trial counsel to make a timely *Batson* objection to a *prima facie* case of purposeful discrimination by the State in the jury selection process through its use of peremptory challenges is *presumptively prejudicial to a defendant*. (emphasis added.)

### Prosecutor's comment on defendant's silence yields reversal

*Williams v. State*, 25 ABR (January 11, 1991). *Williams* was convicted of first degree rape and sentenced to life imprisonment without parole. His conviction was affirmed by the court of criminal appeals. The supreme court granted *Williams's* writ of certiorari to determine if, in his closing argument to the jury, the prosecutor made an impermissible comment on *Williams's* failure to testify. The closing argument reflects the following:

By the State:

*Mr. Belcher*: — He is charged with rape. He hasn't told you he didn't do it. He hasn't told you—He gave a statement —

*Mr. Johnson*: We object to that. He keeps going on about that. That is not admissible.

*Mr. Belcher*: He did give a statement. He waived his right —

During the hearing on the motion for new trial, the prosecutor denied that he commented on *Williams's* failure to testify. Instead, he contended that he was only trying to point out to the jury that *Williams* had made a statement to the police wherein he stated that he had intercourse with the victim but claimed that it was consensual.

Both the Alabama and United States constitutions prohibit a prosecutor from making a comment to the jury on the defendant's silence. *Griffin v. California*, 380 U.S. 609 (1965); *Ex parte Yarber*, 375 So.2d 1231 (Ala. 1979). To guarantee the enforcement of that prohibition, the Alabama Legislature provided in §12-21-220 that:

... If the district attorney makes any comment concerning the defendant's



failure to testify, a new trial must be granted on motion filed within 30 days from entry of the judgment.

The Alabama Supreme Court, led by Justice Almon, applied their recent decision in *Ex parte Wilson*, \_\_\_ So.2d \_\_\_ (Ala. 1990). The supreme court, in reversing Wilson's conviction, critically noted:

The State's argument that the comment was a permissible reference to the taped statement completely overlooks the obvious inference available to the jury that the defendant *did not take the stand* so as to contradict or amplify his statement. Given the context of the rebuttal, it is difficult to imagine a more specific comment on Wilson's failure to testify, notwithstanding the district attorney's later attempt to limit the comment to a reference to the taped statement.

As in *Wilson*, Justice Almon concluded that the prosecutor's statement was a direct comment on the defendant's failure to testify which required reversal.

## ALABAMA COURT OF CRIMINAL APPEALS

### Right to present defense

*Nichols v. State*, 5 Div. 560 (March 1, 1991). In *Nichols*, the court of criminal appeals reversed the defendant's conviction because of prosecutorial interference with the defendant's pretrial investigation and preparation.

Prior to trial, a prosecutor sent witnesses expected to be subpoenaed for testimony a letter containing the following language:

"Between now and the time of trial, you may be contacted by an attorney representing the defendant. He may ask you for an oral statement, written statement, or tape-recorded statement. Should this occur, you may refuse to discuss the case with him if you wish. Should you decide to discuss the case, you may require that someone from the District Attorney's Office be present or that any discussion take place in the District Attorney's Office."

One witness testified that he decided not to talk with defense counsel without the presence of an employee of the District Attorney's Office based partially on the letter. Another witness indicated that he based his refusal to talk with defense counsel based upon the District Attorney's letter.

The court of criminal appeals held that the defendant's right to due process of law, a fair trial, and effective assistance of counsel were all violated because he was denied the right to discuss the case prior to trial with the State's witnesses.

## BANKRUPTCY

### Downstream payments — fraudulent transfer?

In *In re Rodriguez*, 895 F. 2d 725 (11th Cir. 1990), the court rendered a disappointing opinion from the lender's stand-

point, holding that downstream payments made by the parent corporation on the obligations of its subsidiary were vulnerable as fraudulent transfers. Lenders have been aware for some time that subsidiary's payments pursuant to the guaranty of its parent or a sibling corporation were very much subject to attack.

In the instant case, the parent filed bankruptcy after making payments on the debt of the subsidiary arising from the purchase of a corporate jet. The payments by the parent had not caused the subsidiary to become solvent. In particular, the court held that the payments made by the parent to the lender had created no equity in the jet for the parent, which itself was a corporate shell. Because the parent received no benefit from the payments, they were due to be avoided as a fraudulent transfer. In essence, there was no "reasonably equivalent value flowing to the parent corporation".

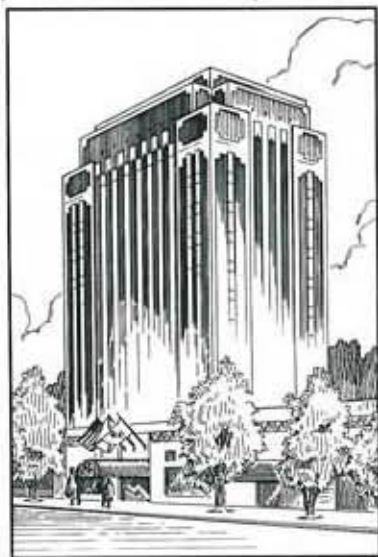
### Subordination of claim

*Matter of Fabricator's, Inc.*, 21 B.C.D. 809 (5th Cir., 1991). A sole stockholder of a corporate creditor entered into an agreement with debtor corporation to manage the debtor under a stock exchange agreement. The court held that the creditor, who had become an insider, made secured loans to the debtor knowing the dire financial condition of the debtor. Accordingly, the creditor's entire claim was placed on par with that of other general unsecured creditors.

The landmark case of equitable subordination for some years has been *Matter of Mobile Steel*, 563 F.2d 692 (5th Cir. 1977). The law in the Fifth Circuit is, and has been, that to equitably subordinate a creditor claim, the creditor must have engaged in inequitable conduct resulting in injury to other creditors and that subordination is consistent with the Bankruptcy Code.

The court also discussed in detail the case of *In re Missionary Baptist Foundation of America*, 712 F.2d 206 (5th Cir. 1983). Additionally, there is an excellent resume as to determination of insider status. For a recent 11th Circuit case on equitable subordination see *Matter of*

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*Lemco Gypsum, Inc.*, 911 F.2d 1553 (11th Cir. 1990).

### Exceptions to discharge — alimony and support

In *In re Paul Chris Gianakas*, 917 F.2d 759, 23 C.B.C. 2d 1510, the Third Circuit affirmed lower court decisions holding that an obligation of the husband to pay a second mortgage is in the nature of alimony, maintenance or support and, thus, not subject to the automatic stay of §362 of the Bankruptcy Code. The divorce decree provided, among other items of support, that the husband would assume and pay the second mortgage on the former home of the parties which was conveyed to the wife. The wife continued to live in the home with four children of the parties. The court stated that one must look behind the labels attached to obligations under a settlement agreement to determine whether the obligation was in the nature of alimony, maintenance or support. This determination is a question of federal and not state law, but the determination depends upon the intent of the parties at the time of the settlement agreement. This case cites many prior cases, including a Pennsylvania case of *Buccino v. Buccino* in which 15 factors were set out to aid in making the determination. There also was mentioned, among others, the 11th Circuit case of

*In re Harrell*, 754 F.2d 902, 906-07, (11th Cir. 1985), rejecting the minority view which allows courts to examine the party's present financial condition in determining whether the obligation is currently necessary for maintenance or support. In other words, "what was, is". For an excellent discussion of dischargeability of obligations under a divorce decree, see *In re Delaine*, 56 B.R. 460 (Bankr. N.D. Ala. 1986).

### Dragnet clause — future advance clause in mortgage

*In re William Robert Rude*, 122 B.R. 533 (Bankr. E.D. Wis. 1990). Although this is a Wisconsin case, the reader may be of the opinion that it could

also apply in Alabama. The mortgage had a dragnet clause allowing it to pertain to future advances. The question became whether it applied to a guaranty later made by the debtor, and finally execution of a consolidated note by the debtor within 90 days of bankruptcy.

The court, in holding against the lender, stated that as the mortgage recited that a future advance was secured by the mortgage only if the documents relating to the transaction contained specific wording that they were to be secured by the mortgage, the dragnet clause would not encompass these future advances. The court stated that any dragnet clause is likely to be viewed with disfavor by the courts and must be closely scrutinized. ■

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**David B. Byrne, Jr.**

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.



**Wilbur G. Silberman**

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



# • M • E • M • O • R • I • A • L • S •



**PERRY HUBBARD**

*Whereas*, Honorable Perry Hubbard died March 11, 1991; and

*Whereas*, the Tuscaloosa County Bar Association desires to remember his name and to recognize his substantial contributions to our profession, as well as to our state and our community;

Now, therefore, be it known, that the said Perry Hubbard was born on March 17, 1921, in Tarrant, Alabama. He received a B.S. degree from the University of Alabama in 1943 and was a member of Beta Gamma Sigma. He went on to receive an LL.B. degree from the University of Alabama School of Law in 1945 and was a member of the Farrah Order of Jurisprudence.

Perry Hubbard was admitted to the Bar of the State of Alabama in 1945 and began practice with the firm of Spain, Davies, Gillon & Grooms in Birmingham. In 1948, he came to Tuscaloosa to teach at the law school where he taught at various times over a period of 43 years such courses as will, trial and appellate procedure, common law pleading, equity pleading and, most recently, appellate advocacy and a seminar in class actions. At one time, Perry Hubbard held the distinction of having taught every member of the Alabama Supreme Court and he was always a positive influence on all of his students.

In 1953, Perry Hubbard became associated with the Tuscaloosa firm of LeMaistre, Clement & Gewin and became a partner in the successor firm of Hubbard & Waldrop. He was senior partner of that firm for approximately

23 years until 1984, when he became "of counsel".

In recognition of his extraordinary talents, Perry Hubbard was elected in 1972 as a Fellow of the American College of Trial Lawyers. He also served his fellow attorneys and our state as a member of the Advisory Committee to the Fifth Circuit Court of Appeals on Appellate Rules; a member of the Advisory Committee to the Supreme Court of Alabama on Appellate Rules; past president of the Tuscaloosa County Bar Association; past chairperson of the Alabama State Bar Practice and Procedure Section; and through his substantial involvement in local community activities, such as the Young Men's Christian Association.

During his 46 years of practice, Perry Hubbard was admitted to practice before all of the state and federal courts in the State of Alabama, as well as the United States Supreme Court and the Fifth and Eleventh circuit courts of appeal. He distinguished himself all over our state as a skillful, aggressive trial and appellate lawyer who not only recognized, but believed in, the concept that the practice of law is a profession, not simply a business. He was a warm and true gentleman to his colleagues at the bar and always adhered to the highest ethical and intellectual standards. He was proud that his clients included not only the very wealthy and powerful, but also those with meager resources who had suffered redressable wrongs. He loved the law and was a "lawyer's lawyer" in every sense of that phrase. Our profession has suffered a great loss in his passing.

Although the death of Perry Hubbard will leave a void, both personally and professionally, which will not easily be filled, we, at the same time, rejoice in having experienced his zeal for life and his profession.

*Douglas McElvy*  
President, Tuscaloosa County  
Bar Association



**HARRY H. HADEN**

*Whereas*, Harry H. Haden died in Huntsville, Alabama on the third day of April 1991, and since his last retirement has been a member of this Association; and

*Whereas*, he was born in Berkeley, California, and after graduating from Englewood High School in California, he moved with his parents to Virginia, and in 1931, after two years of study in the Department of Law at the University of Virginia, successfully passed the bar examination and began the practice of law in Fluvanna County, Virginia; and

*Whereas*, he served in the United States Army Ordnance Department in Africa, Italy and the United States during World War II, attaining the rank of major; and

*Whereas*, in 1946, he was awarded an LL.B. degree from the University of Virginia, and thereafter became a member of the faculty of the School of Law of the University of Alabama; and

*Whereas*, in 1948, he was granted a leave of absence to do graduate work at the University of Virginia and was awarded the LL.M. degree; and

*Whereas*, Professor Haden has taught approximately 14 different courses at the law school, but always considered taxation as his specialty; and

*Whereas*, in 1959, Professor Haden was granted a leave of absence to serve as State Commissioner of Revenue at the request of Governor John Patterson; and

*Whereas*, he returned to his position



on the faculty of the School of Law of the University of Alabama in September 1962, and in addition to his teaching duties served on the University Research Committee, was chairperson of the law school Self-Study and Planning Committee, and was a member of numerous organizations, including the Tax Council of the Association of American Law Schools, Executive Committee of the National Association of Tax Administrators, Committee on State and Local Taxation of the American Bar Association, Board of Directors of the Alabama Credit Union, Board of Bar Examiners of the Alabama State Bar, State Planning and Industrial Development Board, and the Alabama and Virginia state bars; and

*Whereas*, in addition to his services on the faculty of the School of Law at the University of Alabama, Professor Haden served as a visiting professor at

the University of Virginia Law School during the summer of 1949; and

*Whereas*, Professor Haden has published numerous law review articles, book reviews and a textbook, *Fundamentals of Federal Taxation*; and

*Whereas*, after his retirement from the School of Law at the University of Alabama, Professor Haden was designated Professor Emeritus; and

*Whereas*, Professor Haden served on the law faculty of the Stetson University School of Law located in St. Petersburg, Florida on two occasions for eight years and held the Distinguished Professor of Law Chair at Mercer University Law School in Macon, Georgia for three years; and

*Whereas*, upon his last retirement, Professor Haden and his beloved wife, the former Mary V. Johnson, made their home in Huntsville, Alabama to be near their only child,

Dabney Hoefler; and

*Whereas*, Professor Haden has been blessed with three grandchildren and five great-grandchildren; and

*Whereas*, he has been an outspoken advocate for ad valorem tax reform in the State of Alabama and was dedicated to his profession of teaching; and

*Whereas*, the Law School of the University of Alabama and the bar of the State of Alabama have had the benefit of Professor Haden's knowledge of the law and his superlative qualities as a teacher for over 20 years; and

*Whereas*, it is in grateful memory and appreciation for all of his contributions to his fellow man and especially to his profession and to the bar of the State of Alabama that this resolution is adopted.

*John W. Evans*

*President, Huntsville-Madison  
County Bar Association*

BARNES, JOHN RANDOLPH

*Florence*

*Admitted: 1950*

*Died: January 29, 1991*

CANNON, EDMUND R.

*Camden*

*Admitted: 1952*

*Died: April 10, 1991*

FARMER, CARL SEXTUS

*Dothan*

*Admitted: 1929*

*Died: March 26, 1991*

FOWLER, TALBERT BASS, JR.

*Dothan*

*Admitted: 1958*

*Died: March 31, 1991*

HATHCOCK, DOUGLAS WILBURN

*Huntsville*

*Admitted: 1981*

*Died: May 3, 1991*

HUEY, THOMAS E., JR.

*Birmingham*

*Admitted: 1933*

*Died: March 11, 1991*

HUGHES, JAMES LEWIS, JR.

*Birmingham*

*Admitted: 1940*

*Died: December 30, 1990*

MCMINN, THEODORE DAVID, SR.

*Cullman*

*Admitted: 1954*

*Died: April 2, 1991*

MILLER, GEORGE WAYNE

*Gadsden*

*Admitted: 1947*

*Died: March 18, 1991*

ROBERTSON, JOHN STEVEN

*Anniston*

*Admitted: 1988*

*Died: March 26, 1991*

SPEIGHT, JOHN JOSHUA

*Dothan*

*Admitted: 1913*

*Died: July 24, 1954*

WILLIAMS, RALPH ROGER

*Tuscaloosa*

*Admitted: 1952*

*Died: May 19, 1991*



# Consultant's Corner



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

This is the 20th article in our "Consultant's Corner" series. We would like to hear from you, both in critique of the article written and suggestions of topics for future articles.

## Small- and medium-sized firm checkup

As more and more large firms experience growth difficulty, the attendant layoffs and reduced expectations for aspiring partners, it appears that the small- and medium-sized firms will be all the more attractive to the existing partners and associates, as well as to newly admitted members. Therefore, you are becoming more attractive; make sure the attraction is more than skin deep. Consider a checkup that looks at the issues most critical to small- and medium-sized firms: profitability, associate development, growth and business development.

### Profitability

This almost always is the key issue with law firms. Regrettably, many firms spend too much time worrying about it,

at the expense of the other equally critical issues. Gross profit, total income less the cost of delivering the service, is often used as a yardstick to measure profitability. It is a poor measure. The simple act of promoting all your associates to partner will cause a dramatic decrease in expense, since associates' salaries are expenses while partners' draws are not. You can have a 65 percent gross profit, if you wish, and still be dangerously unprofitable.

Profitability is better measured by average fee income per lawyer per year. If your utilization (ratio of billable hours to total hours) is high, 80 percent or more, and if your realization (ratio of effective rate to budgeted rate) is high, 90 percent or so, then you are (and will be) profitable. True, average fee income, as a measure of profitability, seems to ignore the issue of expenses, but it has been my experience that for those firms having a budget, the expenses actually track with 4 percent of budget. Indeed, an expense budget can be said to be self-correcting.

### Associate development

This is the least appreciated responsibility of small- and medium-sized firms. If you ignore or undervalue the importance of this, *you will be training your future competition*. Do not presume that your associates are "happy". Ask! Each associate, even if there is only one in the firm, should have a road map of progression to partnership or principal status.

It should set goals, by year, from first year associate status to partnership threshold. There should be annual expectations for billable hours, effective rate, efficiency in legal research and maturity in the art of writing. Progressively, you may wish to add requirements for supervising younger associates, project management and business

development. At the six-month anniversary, and at least annually thereafter, each associate should be offered a well-thought-out critique of his work and given an opportunity to comment on the work environment, the quality of mentoring, staff support, etc. The punchline to a revue should always be a statement that the associate is (or is not) on track toward principal status (or partnership). If not, what needs to be done to get back on track should be offered.

### Growth and business development

This is another area where partners sometimes hide their heads in the sand, hoping the issue will go away. It will not. Even if you have no growth plans, you must develop 10 to 15 percent new business every year to compensate for "leakage", the loss of existing clients through death, moving away or choosing another provider. The key question is most partners' minds is, "Where will this new business come from?" Good news! A detailed study of firms with viable business development plans yielded the rather astounding discovery that 80 percent of new business came from a firm's existing client base.

Do your clients know *everything* you do, or do they presume you are specialists, like doctors, and do only what you initially did for them? It is your responsibility to see that your clients are aware of the firm's total service offerings. Remind your clients of *everyone's* practice skills, not just yours.

### Summary

Everything mentioned above, from revenue enhancement to associate development to business planning, takes time, and that leads to the last tidbit. Be excellent time *managers*, which requires scrupulous *timekeepers*. ■

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# Request for Consulting Services

## Office Automation Consulting Program

### SCHEDULE OF FEES, TERMS AND CONDITIONS

Firm Size*	Duration**	Fee	Avg. Cost/lawyer
1	1 day	\$ 500.00	\$500.00
2-3	2 days	\$1,000.00	\$400.00
4-5	3 days	\$1,500.00	\$333.00
6-7	4 days	\$2,000.00	\$307.00
8-10	5 days	\$2,500.00	\$277.00
Over 10			\$250.00

\*Number of lawyers only (excluding of counsel)

\*\*Duration refers to the planned on-premise time and does not include time spent by the consultant in his own office while preparing documentation and recommendations.

## REQUEST FOR CONSULTING SERVICES

### OFFICE AUTOMATION CONSULTING PROGRAM

Sponsored by Alabama State Bar

#### THE FIRM

Firm name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ ZIP \_\_\_\_\_ Telephone # \_\_\_\_\_

Contact person \_\_\_\_\_ Title \_\_\_\_\_

Number of lawyers \_\_\_\_\_ paralegals \_\_\_\_\_ secretaries \_\_\_\_\_ others \_\_\_\_\_

Offices in other cities? \_\_\_\_\_

#### ITS PRACTICE

Practice Areas (%)

Litigation \_\_\_\_\_ Maritime \_\_\_\_\_ Corporate \_\_\_\_\_

Real Estate \_\_\_\_\_ Collections \_\_\_\_\_ Estate Planning \_\_\_\_\_

Labor \_\_\_\_\_ Tax \_\_\_\_\_ Banking \_\_\_\_\_

Number of clients handled annually \_\_\_\_\_ Number of matters presently open \_\_\_\_\_

Number of matters handled annually \_\_\_\_\_ How often do you bill? \_\_\_\_\_

#### EQUIPMENT

Word processing equipment (if any) \_\_\_\_\_

Data processing equipment (if any) \_\_\_\_\_

Dictation equipment (if any) \_\_\_\_\_

Copy equipment (if any) \_\_\_\_\_

Telephone equipment \_\_\_\_\_

#### PROGRAM

% of emphasis desired Admin. Audit \_\_\_\_\_ WP Needs Analysis \_\_\_\_\_ DP Needs Analysis \_\_\_\_\_

Preferred time (1) W/E \_\_\_\_\_ (2) W/E \_\_\_\_\_

Mail this request for service to the Alabama State Bar for scheduling.

Send to the attention of Margaret Boone, executive assistant, Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101.



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ment, 1953-64; Code of Alabama, 1975, Vol. 1-23 and Index, Vol. 24-25; American Jurisprudence, Proof of Facts, Vols. 1-11 and General Index; Walker B. Jones Alabama Practice & Forms; Bender's Uniform Commercial Code Service, Vol. 1-1A, 1B, Vol. 2, Vols. 5, 5A, 5C, 5D; Cowans Bankruptcy, 2 vols., 1963; Cowans Bankruptcy, 3 vols., 1978; U.S. Code, 75 vols., 1934 Addition and Supplement. **Contact Alvin B. Foshee at 114 Sixth Street, Clanton, Alabama 35045 or phone (205) 755-1510.**

**For Sale: Model Rules of Professional Conduct;** personal copies now available for \$5 (includes postage). **Mail check to P.O. Box 671, Montgomery, Alabama 36101. Pre-payment required.**

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**Wanted: The New Mexico Supreme Court Law Library, P.O. Drawer L, Santa Fe, New Mexico 87504,** is seeking donations of copies of *The Journal of the Legal Profession*. We would be happy to provide a letter of acknowledgement suitable for tax deduction purposes. You can also deduct your postage, or write us and we may pay postage. The journals can be sent at the less expensive "library rate".

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**Position Offered:** Dissatisfied? Non-practicing attorney has found proven way to build a passive six-figure annual income without a boss, employees or debt. Seeking two or three key people to duplicate my business in your market. Can be developed part time. **For information, send resume to Diane Temple, 1855 Data Drive, Suite 180, Birmingham, Alabama 35244.**

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tered, professional engineer. Forty years' experience. Highway and city design, traffic control devices, city zoning. Write or call for resume, fees. **Jack W. Chambliss, 421 Bellehurst Drive, Montgomery, Alabama 36109. Phone (205) 272-2353.**

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On July 1, 1991, the Alabama Secretary of State stopped accepting the 5"x8" financing statement forms and the 8"x10" UCC-11 request for information as the standard for filing in Alabama. For the past year, the Secretary of State Uniform Commercial Code section has been accepting both size forms without charging the \$2 non-standard form fee.

The newly approved standard forms for filing are the 8"x10" UCC-1 financing statement; 8"x10" UCC-3 statement for continuation, partial release, assignment, amendment or termination; 8"x10" UCC-E extension form; and the 5"x8" UCC-11 request for information form.

Any other size forms will be considered non-standard and will require the additional \$2 fee when submitted to the UCC office for filing.

**Service:** 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 Gidion, 218 Merrymont Drive, Augusta, Georgia 30907. Phone (404) 860-4267.**

**Service:** Certified forensic document examiner, B.S., M.S., graduate of university-based resident school in document examination. Published nat/internat. Seventeen years' trial experience in state and federal courts of Alabama. Forgery, alterations and document authenticity examinations in non-criminal matters. American Academy Forensic Sciences, American Board Forensic Document Examiners, American Society Questioned Document Examiners. **Lamar Miller, P.O. Box 55405, Birmingham, Alabama 35255. Phone (205) 988-4158.**

**Service:** Securities expert witness. Will testify to suitability and churning. Fifteen years' experience in securities business. Arbitrator for National Association of Security Dealers, American Arbitration Association, American Stock Exchange. Can assist in court or arbitration hearing. Member National Forensic Center. **Chuck Schildhauer, Gulf Shores Investment Co., Inc., Gulf Shores, Alabama. Phone (205) 968-8191. ■**

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**Thursday, July 18:** 8:30 a.m. - 4:30 p.m.

**Friday, July 19:** 8:30 a.m. - 4:30 p.m.

**Saturday, July 20:** 8:30 a.m. - 1:00 p.m.

## Grand Prize Drawing:

An IBM PS1 with color monitor, printer and software package will be given away to some lucky visitor to the Alabama State Bar EXPO '91. Visitors who have their exhibit hall passes validated at a minimum of 15 booths then will deposit them in the registration barrel as they leave the hall and have an opportunity to win the computer as well as other prizes. The drawing will be held Saturday morning during the business session.

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**ALABAMA STATE BAR EXPO**

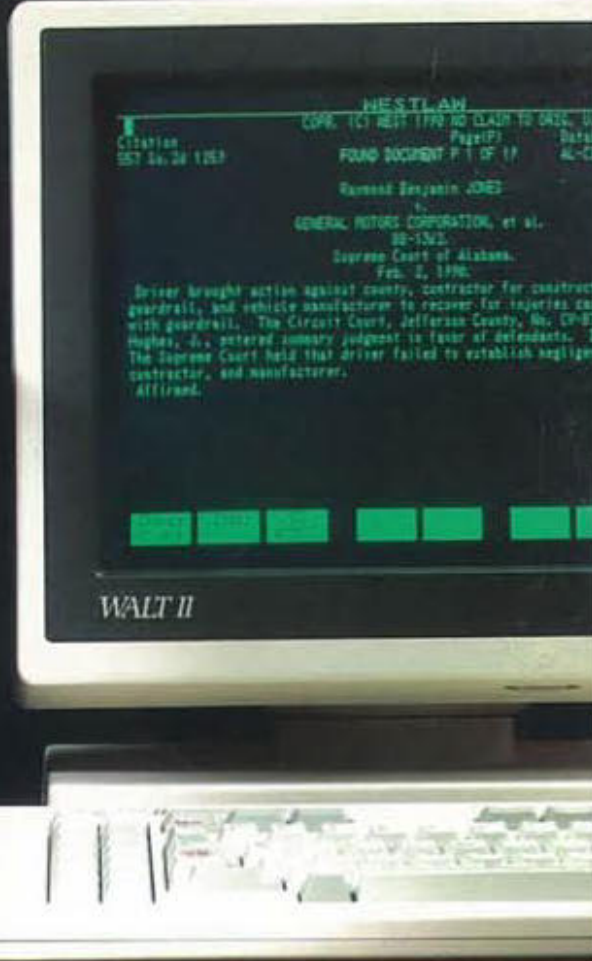
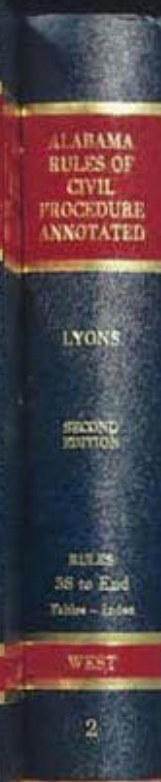
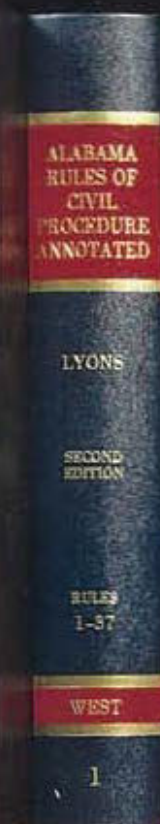
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