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Lawyer
Vol. 61, No. 5 July 2000

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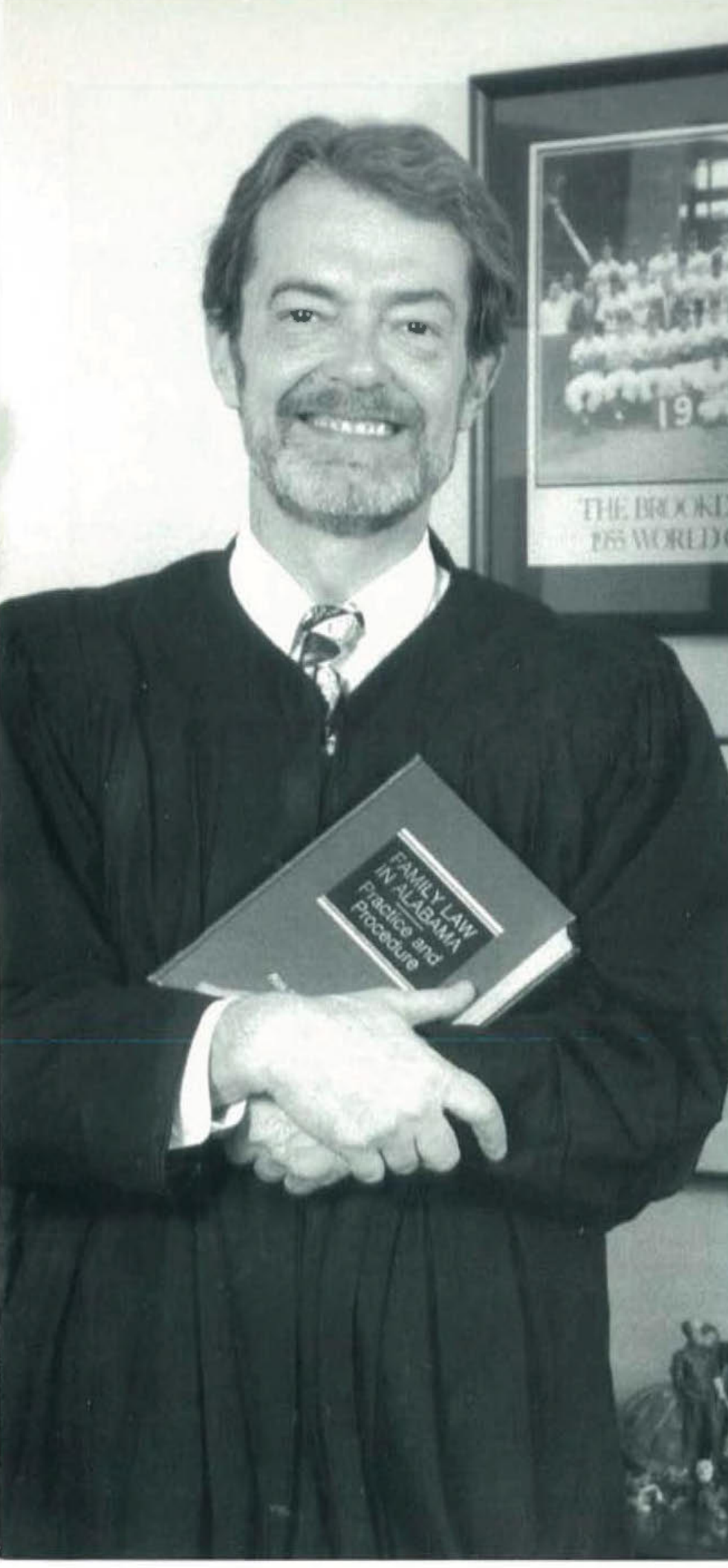


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July 2000

On the Cover

Wildlife Management Area, near the Robert F. Henry Lock & Dam, Lowndes County, Alabama

—Photograph by Paul Crawford, JD



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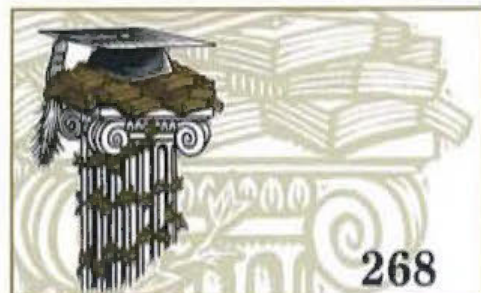
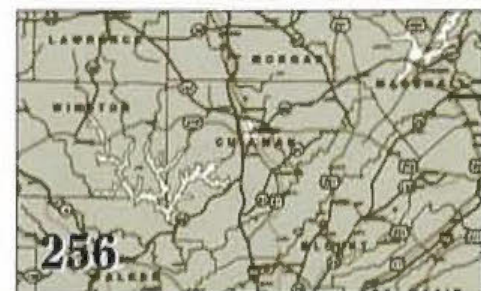
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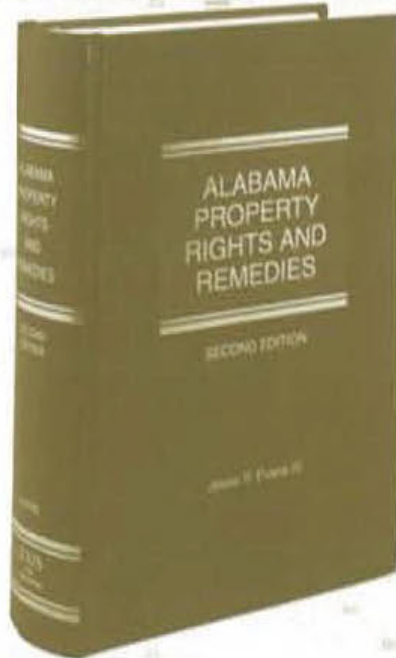
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Swan Song for A Lame Duck



Wade Baxley

Since this is my last "President's Page" in *The Alabama Lawyer*, I have been somewhat undecided on a topic with which to end my year. During my term of office as president, which began in July 1999, I have attempted to report on issues which I felt were of either important or passing interest to the general bar membership. In many ways, I am glad that my year as president is coming to an end. As July approaches, I am better understanding why my good friend and past President **Vic Lott** obtained such a sparkling personality during his last two months of office. In a few short weeks, I will be able to go back to full-time work in a profession I love. Also, I intend to spend a great deal more time on various and sundry golf courses than I have spent over the last 12 months.

Quite frankly, my year as president has been a very pleasant experience and I will miss my constant contact with the state bar staff. Since I had served under and with 14 bar presidents during my years of service as a bar commissioner and as president-elect, I certainly knew what I was getting into as state bar president. Each president under whom I served was a dedicated professional who took his leadership role seriously and had the best interests of the entire bar membership at heart when difficult decisions had to be made. These presidents, as well as other presidents before them, have laid a strong foundation of service to the bar which I have tried to continue during my term. I have also been equally impressed with the professionalism and dedicated service of members of the board of bar commissioners with whom I have come in contact from 1982-88 and from 1991-2000. I do not believe that rank and file members of the Alabama State Bar fully appreciate the time and effort that these commissioners have to allocate serving on disciplinary panels, bar committees and task forces in addition to attending

regular commission meetings and miscellaneous bar functions.

I cannot complete my final remarks without noting that our bar indeed is fortunate to have an executive director the caliber of **Keith Norman**. The National Conference of Bar Presidents holds meetings in conjunction with meetings of the National Association of Bar Executives and I have personally observed how bar executives in other states hold Keith and his staff in the highest respect. Of course, Keith was well trained for the position of executive director by **Reggie Hamner**, who served as executor director before Keith for 25 years. In a number of speeches which I have made as president around the state to local bar associations, I have tried to pay the ultimate compliment to Keith when I have referred to him as a "kinder, gentler Reggie Hamner." Those of you who know both Reggie and Keith understand that the context of my statement and this comparison is indeed complimentary.

There are certain things that I am going to miss as my year draws to a close. These include the following:

1. The pleasant telephone voice and upbeat attitude of **Stephanie Oglesby**, receptionist at the state bar headquarters. I hope that the state bar never attempts to go to an automated answering system that directs a caller to punch in numbers in order to get to someone's voice mail. I hate voice mail.
2. My loss of contact with General Counsel **Tony McLain** and his fine staff who constantly kept me updated and informed as president on matters of professional responsibility. **Vivian Freeman**, secretary to the general counsel, was particularly helpful and accessible on occasions when I needed to get in contact with Tony or someone else in the general counsel's office. However, I

will not miss having to sign off on private reprimands or the administering of public reprimands to attorneys who have fallen short in their professional responsibility and ethical conduct. Like my predecessors in office, I understand that this is part of the duties of the president, but it is certainly not something that I have relished doing.

3. No longer being able to poke fun at **Ed Patterson**, director of programs, about his lengthy reporting and his litany of bad jokes which he allegedly pulls off of the Internet. Ed has done an outstanding job during the past year and he is sometimes under-appreciated for his work.
4. My close work with the various program directors including **Jeanne Marie Leslie** (Alabama Lawyer Assistance Program), **Laura Calloway** (Law Office Management Assistance Program), **Linda Lund** (Volunteer Lawyers Program), **Diane Locke** (Membership Services), and **Tracy Daniel** (Alabama Law Foundation). These directors and their respective staff personnel run professional, effective and efficient programs of the highest quality with the added help and assistance of the many lawyer volunteers around the state who dedicate their time and services.
5. My association with **Susan Andres**, director of communications and public information, whose full-time service over the past several years has often gone unnoticed. Susan serves as our primary contact with the news media for information concerning the Alabama State Bar. Her duties also include drafting public service reports and announcements for publication. Susan does an outstanding job promoting the good things that the organized bar and its individual members do in serving the public.
6. Until I assumed office, I was not aware that the president of the state bar had the responsibility of personally signing vouchers for each and every expenditure made by the bar. I was somewhat shocked on my first visit to the state bar, after becoming president, to be handed a giant pile of vouchers to review and sign. I appreciate **Gale Skinner**, as bookkeeper for the state bar, getting these vouchers to me in reasonable increments for my execution and I am going to miss my association and contact with Gale.
7. Not being able to use my status as president of the Alabama State Bar to get hearings and trials continued and reset to other dates. Before I started my term in July of last year, I personally contacted circuit judges in the Wiregrass area of Alabama and U. S. District judges for the Middle District of Alabama, before whom I regularly practice, and requested that they please try to work with me to resolve conflicts between my bar obligations and court appearances during my term as president. I have tried hard not to abuse this one-time privilege. These judges and most of my attorney colleagues have been very understanding of my conflicts and have been quite gracious in acquiescing to my requests. This has allowed me to fulfill my duties as president and maintain a fairly stable law practice. Unfortunately, with all of the trials and other hearings which I have had put off during the past 12 months, I am already dreading my schedule for the coming fall, winter and spring terms of court.

8. Last, but not least, I am going to miss not being able to irritate **Margaret Murphy**, state bar publications director, who has periodically sent me harassing telephone messages and e-mails over the past year reminding me that I am late again in sending her my bi-monthly "President's Page" article for *The Alabama Lawyer*. Margaret reminds me of some of my old junior high and high school teachers who demanded that homework be finished and turned in on time. I also believe that Margaret was a "slave driver" back in one of her former lives during the days of the old Roman Empire. However, as much as I hate to publicly admit it, Margaret and the communications and publications administrative assistant, **Shannon Elliott**, probably deserve gold medals in putting up with procrastinators like me in their efforts to timely put out *The Alabama Lawyer* and other bar publications.

With **Sam Rumore** and my friend and law school classmate, **Larry Morris**, serving as the next two bar presidents from July 2000 to July 2002, I am sure that the Alabama State Bar will be in the hands of good effective leaders. As with past bar presidents, such as **Vic Lott** and **Dag Rowe**, who were always available with wit and wisdom to help and counsel me, I will be available to them for consultation or simply as someone who understands their plight. It has been an honor and a privilege to have served as president of the Alabama State Bar and I am looking forward to continuing my service to the bar as a past president. ■

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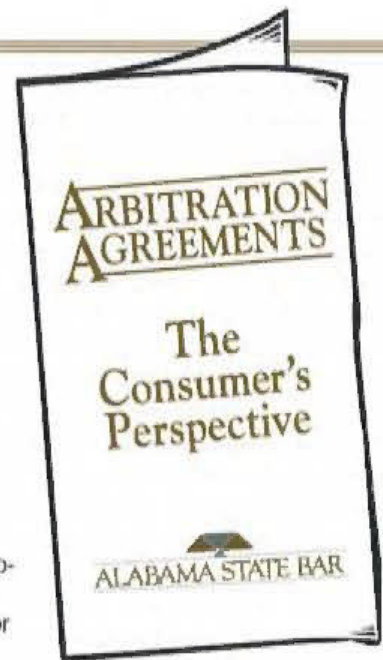
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EXECUTIVE DIRECTOR'S REPORT

By Keith B. Norman

Pro Bono And Then Some



Keith B. Norman

The Alabama State Bar Volunteer Lawyers Program (VLP) has experienced a very successful year. After implementing many of the recommendations of the Access to Legal Services Committee report last year, efficiencies were increased and the program witnessed a sharp rise in the number of cases referred to private volunteer lawyers across the state. Nearly 1,200 low income citizens with legal needs were helped. This more than triples the number of cases handled statewide last year by the VLP and does not include the services rendered by the local *pro bono* programs in Jefferson, Madison and Mobile counties.

Naturally, this dramatic increase would not be possible without the strong participation of the private bar. Some 25 percent of the practicing bar participate in *pro bono* programs either with the state bar's VLP or in the local programs mentioned above. Legal Services, which screens most of these clients for the programs, is unable to meet the overwhelming need of civil legal services of Alabama's poorest citizens. Consequently, the Access to Legal Services Committee is working hard to get more lawyers involved in these programs so the civil legal needs of more clients can be handled. There is certainly room for adding more lawyers.

Currently, there are four counties with no lawyers participating, and two counties with significant lawyer populations—Madison and Shelby—that have less than 10 percent of their lawyers

who are signed up to participate in a *pro bono* program. Notably, six counties have 50 percent or more of their lawyers who have signed up to take referrals. They are: Barbour, 62 percent; Choctaw, 57 percent; Geneva, 55 percent; Marengo, 56 percent; Marshall, 50 percent; and Mobile, 53 percent. If you have not signed up to be a VLP participant, I encourage you to do so. You may visit the bar's Web site at www.alabar.org to learn more about the VLP and how to be a VLP hero.

We are very proud that the National Association of Public Interest Law (NAPIL) has selected our VLP as one of 60 sites nationwide to host a summer NAPIL/VISTA Summer Legal Corps Fellow. We received resumes from outstanding law students across the nation. After conducting several telephone interviews, **Melissa Hutchens**, a University of Alabama law student, was selected. We are very fortunate to have Melissa with us this summer. She has a master's degree in sociology and is a top law student. We are delighted that she chose to spend this summer working with VLP Director **Linda Lund** to help initiate the VLP's legal education program for low-income individuals.

Two examples where lawyers are rendering *pro bono* services that benefit the bar and the legal profession are worth mentioning. First, the Alabama State Bar was named as a creditor in a bankruptcy pending in Nashville, by a lawyer whose Alabama State Bar license is suspended. In his bankruptcy petition

the lawyer sought to have the publication costs of his suspension discharged. We had also been alerted that a former client of this lawyer would be seeking indemnification by the Client Security Fund for a defalcation of settlement proceeds that had been collected by this lawyer on the client's behalf. I sought the assistance of bar member **Woody Woodruff** who is a member of the Nashville firm of Waller, Lansden, Dortch & Davis. Although Woody does not handle bankruptcy matters, he arranged for **David Lemke** of the firm to protect the interest of the Alabama State Bar and the Client Security Fund *pro bono*. Needless to say, we are grateful to Woody and David and the Waller, Lansden firm for their help.

The other example involves the work of Mobile lawyers to bring to a close one of the worst cases of lawyer defalcation ever in this state. The Mobile County District Attorney's Office seized all the lawyer's files, which were in the thousands. Now that the lawyer has been prosecuted, these thousands of files finally can be destroyed. Before doing so, a team of lawyers guided by **Sam**

Stockman of Stockman & Bedsole has reviewed each client file to make sure all files with an original of an important document are preserved and returned to the client if possible. Giving their time to assist with this worthy endeavor are: **Candace D. Johnson**, Adams & Reese; **Craig D. Martin**, Armbrrecht, Jackson; **William C. Hamilton** and **Norman M. Stockman**, Hand, Arendall; **Katherine P. Nelson**, Johnstone, Adams, Bailey, Gordon & Harris; **Philip A. Stroud**, Lyons, Pipes & Cook; and **Wendi B. Molz**, Miller, Hamilton, Snider & Odom. Because of the dedication of these eight lawyers, important documents belonging to clients of a disbarred lawyer, that would have in all likelihood been destroyed, will be preserved and returned to their owners.

Lawyers who take VLP referrals, the lawyers at Waller, Lansden in Nashville, and the eight Mobile lawyers are not required to render *pro bono* service. But, out of a sense of professionalism and public service, they have done so and they are the examples of those lawyers who render assistance each day to others without regard to payment. ■

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MEMORIALS

John F. Mandt

The Birmingham Bar Association lost one of its most distinguished members through the death of John F. Mandt on January 12, 2000, at the age of 43.

John Mandt was born in Kingston, New York on January 2, 1957 and grew up in Huntsville, Alabama. John received a bachelor's degree in 1979 from the University of Alabama and was awarded his Juris Doctorate in 1982 from the University of Alabama School of Law. While in law school, he served as editor-in-chief of the *Alabama Law Review*, was an M. Harrison Scholar and earned membership in the Order of the Coif. John joined Balch & Bingham, LLP as an associate upon his graduation from law school and became a partner in the firm in 1989. He practiced with Balch & Bingham throughout his entire career in the areas of corporate and project finance, mergers and acquisitions, and securities regulation

and was recognized nationally as an authority in the areas of antitrust counseling, compliance and appellate litigation. John exemplified the best qualities of a member of the legal profession and was dedicated to his firm and its clients.

John was a loving and devoted husband, father, son and brother and a loyal friend. He is survived by his wife, Patricia Trott Mandt; their children, Jennifer, David and Maggie Mandt; his parents, Richard and Jeanne Mandt; and his brothers, Richard and David Mandt.

John will be remembered by his family, friends and colleagues not only for his professional accomplishments, but also for his sense of humor, compassion, selflessness and integrity.

— *S. Shay Samples, president*
Birmingham Bar Association

George Chester Batcheler, Sr.

George Batcheler passed away on February 11, 1999 at the age of 70. He was committed to the cause of justice and had devoted his life to insuring that justice would prevail.

Mr. Batcheler was a member of the Alabama State Bar and the Birmingham Bar Association and served for many years as an assistant in the United States Attorney's Office for the Northern District of Alabama and, prior to that, he was an assistant district attorney for the 10th Judicial Circuit in Birmingham.

George Batcheler was a member of the First United

Methodist Church of Birmingham where he was a member of the administrative board and the Wesley Sunday School Class.

In addition to the innumerable friends who mourned his passing, he left behind a loyal and devoted wife, Peggy C. Batcheler; daughter Ginger Kisela and her husband, John; son George Batcheler and his wife, Freida; and grandchildren Andy, Koby and Katy Kisela and Christopher and Michelle Batcheler.

— *S. Shay Samples, president*
Birmingham Bar Association

Mayer Ullman Newfield

The Birmingham Bar Association lost one of its most distinguished members through the death of Mayer Ullman Newfield on January 9, 2000 at the age of 95.

Mayer Newfield was born in Birmingham on April 5, 1905, and was the son of Rabbi Morris Newfield and Leah Ullman Newfield, and the grandson of Samuel Ullman, a Birmingham civic leader and poet. He was predeceased by Bertha Lehman Newfield, his wife of 35 years. He is survived by Loretta, his wife of 21 years; his two daughters, Jane Newfield of Houston and Melanie Newfield Seigle of Houston; four grandchildren, Clay, Laura, Emily and Daniel Seigle; two step-granddaughters, Sara Rose and Chelsea Ostrow; and his brother-in-law, William Schneiderman and his wife, Ann, of Cincinnati.

Mr. Newfield graduated from Samford University in 1927, attended Harvard Law School in 1928 and 1929 and received an LL.B. degree from the University of Alabama School of Law in 1931. He was a member of the Alabama State Bar and the American Bar Association and was admitted to practice before the Supreme Court of the United States. He began practicing law in 1931 in Birmingham, and in 1934 and 1935

served as supervising attorney for the Home Owners Loan Corporation, a New Deal agency. From 1935 until 1947, Mr. Newfield served in various positions with the United States Securities and Exchange Commission in Atlanta, Washington, Philadelphia and New York City and, in 1942, was a co-author of SEC Rule 10B-5. He returned to Birmingham in 1948, where he became an assistant attorney for the City of Birmingham and served in that capacity until 1956, when he opened a general law practice. He became of counsel with the firm of Sirote & Permutt in 1973 and continued in that capacity until his death.

Mr. Newfield was involved in many civic activities, including serving as president of the Birmingham Civic Opera Association; various offices with the National Conference of Christians and Jews; president of Temple Emanu-El; president of B'nai B'rith of Alabama; president of the Jewish Community Center; and member of the Board of Directors of the Birmingham Music Club and the American Lung Association.

— *S. Shay Samples, president*
Birmingham Bar Association



Orville Campbell

Orville Campbell was called by his maker to his eternal reward on June 17, 1999 at the age of 56.

Orville Campbell was a member of the Alabama State Bar and the Birmingham Bar Association and, at the time of his death, was practicing law in Birmingham. In addition to his legal service, he was an Air Force veteran and a long-time volunteer fireman in Cullman County.

In addition to the many friends who mourn his passing, he

left behind his loyal and devoted wife, Gloria Wright Campbell; sons David Campbell and his wife, Kitty, and Daniel Campbell and his wife, Kathy; sisters Jeanine McCary, Marie Lawrence and Earnestine Cook; brothers Gene Campbell, Buford Campbell and Stanley Campbell; and grandchildren Christian, Ginny, Joshua and Leland Campbell.

— *S. Shay Samples, president,
Birmingham Bar Association*

Frank Wood Hanvey

Mr. Hanvey was born on January 10, 1927 in Heflin, Alabama. He died on January 24, 2000 at St. Francis Medical Center.

He was a Navy veteran of World War II and a member of the American Legion Post #13. Mr. Hanvey graduated from Snead College in Alabama and received his Juris Doctorate from the University of Alabama School of Law in 1952. He was a member of the Pi Kappa Phi Fraternity, the Alabama State Bar for 48 years and the Louisiana State Bar Association.

Mr. Hanvey was a Master Mason and a member of the Caldwell Lodge #502 of Heflin. He was a member of the Order of the Eastern Star Mangham Chapter #152.

Mr. Hanvey retired as a divisional claims superintendent from State Farm Insurance Companies after 32 years. He served as district governor of Toastmasters International and a loaned executive with the United Way. He practiced law in



Monroe, Louisiana with Anzalone, Parker, Noel & Hanvey for 15 years.

On June 5, 1999, he received the Cross of Military Service Number 14025 from the United States Daughters of the Confederacy. Mr. Hanvey was a 30-year member of the Parkview Baptist Church where he served as a deacon, trustee, parliamentarian and a member of the Baptist Men, and served on the Children's Ministry.

Survivors include his wife, Hazel Marie Sellers Hanvey of Monroe; daughters Angela Sellers Hanvey Hales and husband Myrt Tilman Hales, Jr. of Rayville, Louisiana; and Dr. Jan Kathleen Hanvey Fairchild and her husband, William McCray Fairchild, of Denham Springs, Louisiana; "Daddy Frank's" grandchildren, Myrt Tilman Hales, III, Jan Marie Hales, Kathleen DeLacy Fairchild and Mattie Louise Fairchild; two sisters, Inez Hanvey Gill and Louise Hanvey Gill, both of Heflin; and special friends, John Sears and Carolyn Pounds Casey and family, and Myrt Tilman and Atsie Mae Hales and family; and numerous nieces and nephews.

— *Myrt T. Hales, Jr.*

Murray Cobb Hollis, Jr.

Murray Cobb Hollis, Jr., a respected member of the Marion County Bar, passed away on March 23, 2000. With his death, the Winfield area also lost one of its most beloved civic leaders.

Murray Cobb Hollis, Jr. was born in Marion County in 1914, to Dr. Murray Cobb Hollis and Ida Guin Hollis. He attended Winfield schools and graduated from Winfield High School in 1931. Later, Mr. Hollis earned a degree in education from Auburn University and served as principal at Madison County High School for several years. He then returned to his native Winfield, where he ran a popular restaurant and became active in civic affairs.

In 1948, after serving one term on the Winfield City Council, Mr. Hollis was elected mayor at the age of 32, mak-

ing him the youngest mayor in the State of Alabama. He served as mayor of Winfield from 1948 until 1956 and was instrumental in re-building the elementary school building and establishing the Winfield City School System.

At the age of 45, Mr. Hollis earned his law degree from the University of Alabama School of Law and practiced law in the Winfield area for the next 32 years, including 14 years in which he served as Winfield's municipal judge.

Murray Cobb Hollis, Jr. was noted for the gentlemanly manner and kind nature he displayed throughout his many years of public service.

— *Ernest G. Hester and M. Lionel Leathers,
Marion County Bar Association*



Walter J. Merrill

Walter J. Merrill, a prominent attorney and member of the Calhoun-Cleburne County Bar Association and the Alabama State Bar, died February 22, 2000 in Anniston at the age of 87. Walter Merrill hailed from one of Alabama's most prominent families of legal scholars, including his father, Judge Walter B. Merrill, and his brothers, the late Associate Justice Pelham J. Merrill and former Cleburne County District Attorney Carl Merrill.



Merrill graduated from Cleburne County High School and the University of Alabama, and received his law degree from the University of Alabama School of Law in 1935. While attending the University of Alabama, he was recognized for his scholarship and leadership by his election to Phi Beta Kappa, and numerous other scholastic and honorary societies.

Walter Merrill commenced his practice of law in Anniston with the firm of his uncle, the late Hugh D. Merrill, Sr., and then, in 1941, entered the service of his country where he served in highly sensitive and secret intelligence work in the field of cryptography as an officer of the United States Army/Air Force. After serving in various theaters of operation around the world, Mr. Merrill emerged from the war in 1945 with the rank of lieutenant colonel.

Following his discharge from the service, Mr. Merrill joined the firm of Knox, Jones, Woolf & Merrill (now Dillon, Field, Monk & Stedham) in Anniston, where he distinguished him-

self and the firm for the next 50 years. He was recognized during his career as one of the most respected and talented trial attorneys in the State of Alabama and as a trusted legal representative and advisor for numerous public officials, private parties and public institutions in northeast Alabama, including Jacksonville State University, Northeast Alabama Regional Medical Center and Commercial National Bank (now AmSouth Bank). During his career, Mr. Merrill served on numerous committees of the Alabama State Bar and the State of Alabama, and participated in the formulation of the Alabama Rules of Civil Procedure. Walter Merrill was honored as a Fellow of the American College of Trial Lawyers.

Mr. Merrill developed a love of sports in his early years in Heflin, where he and his brothers played organized baseball in the old Georgia/Alabama Baseball League at Heflin. He was also an avid sportsman who enjoyed bird hunting, tennis, University of Alabama football and sports of all kinds.

Mr. Merrill was loyal to his church, Parker Memorial Baptist Church in Anniston, and was a long-time member of the Anniston Rotary Club and the Anniston Country Club.

He was preceded in death by his beloved wife, Polly McCarty Merrill, and is survived by two daughters, Martha Merrill and Mary Merrill, and two grandchildren, Sarah Williams and Matthew Williams.

Walter J. Merrill personified the very best attributes of a citizen and lawyer and set a high example to which all lawyers should aspire.

— *Gregory N. Norton, president,
Calhoun-Cleburne County Bar Association and
William H. Broome, bar commissioner,
Seventh Judicial Circuit*

Cameron, George William, Jr.

Montgomery
Admitted: 1950
Died: May 3, 2000

Dowling, Brian Westervelt

Dothan
Admitted: 1976
Died: April 13, 2000

Holmes, Richard L.

Montgomery
Admitted: 1961
Died: May 2, 2000

Hughes, William Winston

Winter Park, Florida
Admitted: 1952
Died: July 26, 1999

Jenkins, Herbert, Jr.

Birmingham
Admitted: 1961
Died: December 31, 1999

Neilson, Felix Marshall

Birmingham
Admitted: 1936
Died: September 28, 1996

Newfield, Mayer Ullman

Birmingham
Admitted: 1931
Died: January 6, 2000

Sizemore, Mary Ellen

Tallassee
Admitted: 1938
Died: April 28, 2000

Stott, Barbara Norris

Birmingham
Admitted: 1979
Died: November 5, 1999

Thomas, Daniel H.

Mobile
Admitted: 1929
Died: April 15, 2000

Thomas, John R., Jr.

Birmingham
Admitted: 1958
Died: March 18, 2000

Weaver, Wayne Hampton

Haleyville
Admitted: 1947
Died: November 21, 1999

Zoghby, Guy Anthony

Niceville, Florida
Admitted: 1965
Died: December, 1999





BAR BRIEFS



Cumberland's national championship trial team — from left, standing, Chad Greer, Dianne Gamble, Marc Jaskolka; seated, Matt Abbott
Photo by Owen Stagner, Cumberland School of Law

• **Cumberland School of Law's** trial team won the national championship in the American Trial Lawyers Association Mock Trial Competition in West Palm Beach on March 24-26.

The team, composed of **Matt Abbott, Chad Greer, Dianne Gamble** and **Marc Jaskolka**, successfully competed against 25 other law schools, including Harvard, Baylor, The University of Alabama and, in the final round, Howard University.

• **Samuel A. Rumore, Jr.** of Birmingham joined some 280 other emerging leaders of lawyer organizations at the American Bar Association's Bar Leadership Institute in March. Rumore is the president-elect of the Alabama State Bar and will take over as president this month.



Sam Rumore, ASB president-elect, Martha Barnett, ABA president-elect, and William Paul, AIA president

The BLI is held annually in Chicago for incoming officials of local and state bars, special constituency lawyer organizations and bar foundations. The seminar provides the opportunity to confer with ABA officials, bar leader colleagues, executive staff, and other experts on the operation of such associations.

• **William T. Stephens** of Montgomery has devoted countless hours over the past 20 years to Little League Baseball and recently had a baseball field named in his honor. The Bill Stephens field is located behind Dannelly Elementary. Stephens, who was admitted in 1969, serves as deputy director and counsel for the Retirement Systems of Alabama.

• **Jerry C. Oldshue, Jr.** of Rosen, Cook, Sledge, Davis, Cade, Shattuck, P.A. in Tuscaloosa was admitted to membership in the Commercial Law League of America. The CLL, founded in 1895, is North America's premier organization of bankruptcy and commercial law professionals.

• **S. Shay Samples**, of the Birmingham firm of Hare, Wynn, Newell & Newton, has been inducted as a Fellow into the International Academy of Trial Lawyers.

• **Rodney A. Max**, of Sirote & Permutt of Birmingham, has been elected vice-president of the American College of Civil Trial Mediators, a national association of attorneys who are distinguished by their skills and professional commitment to civil trial mediation. Members have been selected as a result of achieving substantial experience in their field, as well as professional recognition for their accomplishments.

• **Tazewell T. Shepard, III** of Huntsville has been appointed to the President's Advisory Committee on the Arts.

• The Pro Bono Committee of the Mobile Bar Association appointed **Ann Gathings** as director of the bar association's Pro Bono Program, a systematic effort of the Mobile Bar to provide legal help to those who can't afford it. This year, over 1,000 clients will be assisted by the program through the participation of 525 Mobile attorneys. ■



ABOUT MEMBERS, AMONG FIRMS

Due to the huge increase in notices for "About Members, Among Firms," The Alabama Lawyer will no longer publish addresses and telephone numbers unless the announcement relates to the opening or address change of a firm or solo practice. Please continue to send in announcements and/or address changes to the Alabama State Bar Membership Department, at (334) 261-6310 (fax) or P.O. Box 671, Montgomery 36101.

About Members

F. Tim McCollum announces the opening of his office at 312 Montgomery Street, Suite 210, Montgomery, 36104. Phone (334) 262-9100.

W. Roscoe Johnson, III announces the opening of his office at 340 S. 2nd Street, Gadsden, 35901.

Jonathan Cross announces the opening of his office at 1117 22nd Street, South, Birmingham, 35205. Phone (205) 939-0000.

Patrick J. Ballard announces the opening of his solo practice at Suite 909, Frank Nelson Building, 205 20th Street, North, Birmingham, 35203. Phone (205) 321-9600.

Marshall A. Enteliano announces the opening of his office at 600 Lurleen Wallace Boulevard, Courthouse Plaza, Suite 150, Tuscaloosa, 35401. Phone (205) 752-1202.

Among Firms

Christopher Lawrence Kottke, who received the Meritorious Service Medal from the United States Air Force, has joined the firm of **Welchel & Dunlap, LLP** in Gainesville, Georgia.

Bradley Arant Rose & White LLP announces that **James F. Archibald, III**, **Douglas A. Eckert**, **K. Wood Herren**, **Justin T. McDonald**, **Kenneth M. Perry**, **John W. Smith**, and **Arnold W. Umbach, III** have become partners in the firm.

Briskman & Binion, P.C. announces that **Christ N. Coumanis** has become a member of the firm.

Gamble, Gamble, Calame & Wilson, L.L.C. announces that the firm name has changed to **Gamble, Gamble, & Calame, L.L.C.** and that **Valerie Kisor Chittom** has become an associate of the firm.

Berkowitz, Lefkovits, Isom & Kushner, P.C. announces that **Lynn Reynolds** has joined the firm as an associate.

Wallace, Jordan, Ratliff & Brandt, L.L.C. announces that **Glenn G. Waddell** and **William B. Stewart** have joined the firm as members and that **Jay H. Clark** has become a member. **Kevin A. McNamee** has become an associate at the firm.

Volz, Prestwood & Hanan, P.C. announces that **Judy H. Barganier** has become a partner in the firm and that **Jamie A. Durham** has become an associate of the firm.

Copeland, Franco, Screws & Gill, P.A. announces that **Shannon L. Holliday** has joined the firm as an associate.

Johnston, Barton, Proctor & Powell, L.L.P. announces that **Clark R. Hammond** has joined the firm as a partner and that **S. Shelton Foss** has become associated with the firm.

Karen N. Dice and **Steven P. Gregory, P.C.** announce the formation of **Dice & Gregory, L.L.C.** Offices are located at 2824 Seventh Street, Tuscaloosa, 35401. Phone (205) 758-2824.

Baker, Johnston & Wilson L.L.P. announces that **Mathew A. Aiken** has joined the firm as an associate.

Farmer, Price, Hornsby & Weatherford, L.L.P. announces that **D. Lewis Terry**, **Elizabeth B. Glasgow** and **J. Vincent Edge** have become partners in the firm and that **Cathey E. Berardi** has joined the firm as an associate.

Constangy, Brooks & Smith L.L.C. announces a merger with the offices of **Malfitano, Campbell & Dickinson of Florida**.

Brandon D. Jackson and **Robert B. W. McLaughlin** announce the formation of **Jackson & McLaughlin, L.L.C.** Offices are located at SouthTrust Bank Building, 61 St. Joseph Street, Suite 510, Mobile, 36602. Phone (334) 433-1100.

Balch & Bingham, L.L.P. announces that **G. Bartley Loftin, III** and **George A. Smith** have joined the firm's partnership.

Olen & Nicholas, P.C. announces that **S. Russell Copeland** has joined the firm and the firm name has been changed to **Olen, Nicholas & Copeland, P.C.**

J. Allen Schreiber and **P. Mark Petro** announce the formation of **Schreiber &**

Petro, P.C. Offices are located at Two Metroplex Drive, Suite 107, Birmingham, 35209. Phone (205) 871-5080.

Wendy Brooks Crew & Associates announces that **Sybil Corley Howell** has become an associate of the firm.

Gorham & Waldrep, P.C. announces that **John A. Lentine** has become a partner in the firm.

Thomas F. Campbell and G. Richard Baker announce the formation of **Campbell & Baker, L.L.P.** **Bert J. Miano** is an associate. Offices are located at 150 Financial Center, 505 N. 20th Street, Birmingham, 35203. Phone (205) 278-6650.

DiSanti, Watson & Capua announces that **Frank C. Wilson, III** has become associated with the firm. The firm is located in Boone, North Carolina.

Edwards & Edwards, P.C. announces that **Clyde T. Bailey, III** has joined the firm as an associate.

Massey & Stotser, P.C. announces that **Marcie A. Lanier** has joined the firm as an associate.

Harris & Harris, L.L.P. announces that **Clyde O'Neal Westbrook** has joined the firm as an associate.

Holt, Cooper & Upshaw announces that **Kelli Hogue-Mauro** has joined the firm as a partner.

K. Stephen Jackson and John M. Fraley announce the formation of **Jackson & Fraley, P.C.** **Thomas S. Moore, Jeff S. Daniel and Charles C. Dawson, Jr.** are associates with the firm. Offices are located at 1740 Oxmoor Road, Suite E, Birmingham, 35209. Phone (205) 870-9797.

Capell & Howard announces that **Kenneth D. Walls, II** has become a member of the firm and that **Christine B. Dean** and **Wyndall A. Ivey** joined the firm as associates.

Haskell, Slaughter & Young L.L.C. announces that **J. Vernon Patrick, Jr.** has become of counsel to the firm.

Simon Borden L.L.P. announces that **Fern Singer** and **Frances Heidt** have become partners of the firm and the new firm name is **Simon, Borden, Singer & Heidt L.L.P.**

Robert P. Reynolds, P.C. announces that **Robert D. Reynolds** and **Jackson E. Duncan** have joined the firm as partners. The firm name is now **Reynolds, Reynolds & Duncan, P.C.**

Hardwick, Hause & Segrest announces that **Thomas M. Little** has become associated with the firm.

Evans, Jones & Reynolds announces that **William Lee Horn** has become associated with the firm.

Phelps, Jenkins, Gibson & Fowler, L.L.P. announces that **Stephen E. Snow** and **W. David Ryan** have become partners of the firm.

Parsons, Lee & Juliano, P.C. announces that **Marjorie P. Slaughter** has joined the firm.

The Marshall County District Attorney's Office announces that **A. Scott Hughes** has joined the office as an assistant district attorney.

Brent L. Crumpton, H. Arthur Edge and **W. Brian Collins** announce the formation of **Crumpton Edge**. Offices are located at 925 Financial Center, 505 N. 20th Street, Birmingham, 35203. Phone (205) 324-1846.

Charles R. Gillenwaters and **Braxton Blake Lowe** announce the formation of **Gillenwaters & Lowe** and that **John F. Scroggins** has joined the firm as an associate. Offices are located at 214 Calhoun Street, Alexander City, 35011. Phone (256) 234-0724.

Miller, Hamilton, Snider & Odum, L.L.C. announces that **Kenneth A. Watson** has become a member of the firm and that **Kirkland A. Reid, Wendi B. Molz, Hope T. Stewart, Giles G. Perkins, Benjamin H. Harris, III,** and **W. Kyle Morris** have become associated with the firm.

Pitts & Pitts announces that **Rickman E. Williams, III** has become a partner in the firm. ■

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LEGISLATIVE WRAP-UP

By Robert L. McCurley, Jr.

The Alabama Legislature adjourned the 2000 Regular Session May 15th. There were 1,571 bills introduced, but only 512 bills passed, with 322 of them considered appropriation, sunset or local legislation. Eighty-three bills will apply to the state at large. Of these 83 bills, the following are those that are most likely to be of interest to lawyers:

Law Institute-Drafted Bills

SB-201—Mergers and Consolidation of Business Entities

Sponsored by Senators Roger Bedford, Steve French and J.T. Waggoner, and Representative Bill Fuller

This Act provides a convenient, simple way for different kinds of business entities for profit to convert or merge with each other.

See *Alabama Lawyer*, November 1999. This Act will become effective October 1, 2000.

HB-391—Principal and Income

Sponsored by Senators Rodger Smitherman and Zeb Little and Representative Mike Rogers

This Act revises Alabama's 1931 law that will allow persons to designate in their trusts how principal and income will be distributed to life beneficiaries and to remaindermen.

See *Alabama Lawyer*, November 1999. This Act will become effective January 1, 2001.

SB-129—Determination of Death

Sponsored by Senators Ted Little, George Clay and Larry Dixon and Representatives Mark Gaines and Bill Fuller

This Act provides a comprehensive legal basis for determining death. This amends Alabama's current law § 22-31-1. This uniform act is already the law in 41 states, including Georgia and Mississippi.

See *Alabama Lawyer*, November 1999. This Act became effective July 1, 2000.

Other General Acts

SB-22—Taxpayer Advocate

This act creates the position of taxpayer advocate, with authority to provide relief to the taxpayer when a tax has been erroneously assessed and collected or when a refund has been erroneously denied. It is intended to set minimum procedures for refund. § 40-2A-2 through -4.

(Continued on page 238)



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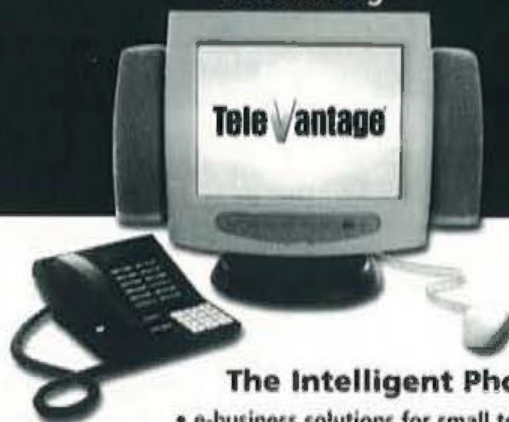


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SB-149—Automobile Insurance, 55 Years of Age or Older

This Act provides that when the principal operator of an automobile who is 55 years of age or older successfully completes a motor vehicle accident prevention course, the certificate of completion will be the basis for a reduction of automobile insurance premiums for a three-year period.

SB-183—Community Notification Act Amendment

This amends *Ala. Code* § 13A-6-67 and § 15-20-26 to provide for the prohibition on establishing of residence or accepting employment by adult sexual offenders.

SB-193—District Attorney Spouse Fund

The District Attorney Spouse Fund is repealed and transferred to the Alabama District Attorney's Association.

SB-218, HB-103—Credit Cards

The use of credit cards is authorized for any payments made to a county or municipal office, department, agency, board, or commission when authorized by the county commissioner or municipal governing body.

SB-221—Guardian of Adult Mentally Retarded Child

This amends § 26-2A-102 to provide an informal procedure for the custodial parent of an adult child who is incapacitated by reason of mental retardation to be appointed guardian.

SB-224—Bomb Threats

This amends *Ala. Code* § 13A-11-11 to provide the offense of false reporting of a bomb is a Class C felony.

SB-238—Building Permits

Ala. Code § 34-14A-13 is amended to require builders, when requested by the issuing municipality, to submit a list of the subcontractors who will be involved in the construction project with the subcontractors' physical addresses and phone numbers within 15 days of the issuing of the building permit. Should the builder add other subcontractors to the project, the builder will submit those names within three working days of hiring.

SB-299—Terrorist Threat

This act makes it a crime to make a terrorist threat.

SB-300—Family Court

Section 12-17-24.1 is amended to provide that counties that do not have juvenile courts to provide for the appointment of juvenile court judges and to establish in all counties family court divisions. It further repeals § 12-15-3.

SB-329—Secretary of State Corporation Fees

Sections 7-9-403 and 10-2B-1.2 are amended to provide an increase in fees for expedited services for corporations and documents in the Office of Secretary of State and also for expedited service for filing of UCC security instruments.

SB-337—Safe Foods Act

This prevents the sale and delivery of out-of-date foods. It provides that the Department of Agriculture may bring an action in circuit court.

SB-339—Telephone Fraud Schemes

Section 8-19-5 is amended to add an additional deceptive trade practice of making telephone communications which are known to be false and which offer a gift, award or prize.

SB-348—Domestic Abuse Insurance Protection Act

This act provides that insurance and health benefit plans cannot deny or exclude coverage of victims of abuse and provides the confidentiality of records, § 10-4-115.

SB-415—Rape by Female

Sections 13A-6-61 and -62 are amended to provide that females may commit the crime of rape in the first or second degree.

SB-422—Discovery of Healthcare Providers

Section 6-5-551 is amended to provide that in suits against healthcare providers for breach of care, the Alabama Medical Liability Act governs discovery. However, any amendment to a claim must be made at least 90 days before trial.

HB-3—Building Codes

Section 41-9-166 is amended to provide that any municipality may adopt any building code published by the Southern Building Code Congress International and the National Electrical Code published by the National Fire Protection

Association as its municipal ordinance as it relates to private buildings, school-houses, hotels, public and private hospitals, and moving picture houses.

HB-7—Poll Watchers

Poll watchers are required to be residents and qualified electors of the state, thereby amending § 17-6-8.

HB-16—Domestic Violence

This act creates the crime of domestic violence in the first, second and third degree. Domestic violence in the first degree is a Class A felony, second degree a Class B felony, and third degree a Class A misdemeanor.

HB-30—Habitual Offender Law

Alabama's Habitual Offender Law is amended to provide that for the habitual offender law to apply for third or fourth offenses, at least one of these offenses must be for a "violent offense." It amends §§ 13A5-8 through -9.

HB-76—Courthouse Pay Increase

Pay increases are provided for probate judges, county commissioners, sheriffs, tax assessors, tax collectors, revenue commissioners, and license commissioners, and increases are also provided for probate fees.

HB-82—DUI

This bill amends the current DUI law to bring it into conformity with federal guidelines, especially on the second offense where a person must perform 30 days of community service (up from 20 days). It establishes a separate offense and a new code section, 32-5A-191.4, for the fourth conviction, which is a felony. The punishment is one to ten years with a minimum of 90 days if this is the person's first felony offense, otherwise a year and a day minimum. Prior offenses must be pled and proved. The circuit court has exclusive jurisdiction over fourth offense DUIs.

HB-83—Sentencing Commission

This act establishes within the judicial branch a Sentencing Commission Advisory Council to study criminal sentences, provide a staff and report back to the legislature before the 2002 legislative session.

(Continued on page 240)



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HB-105—Firearms

A county or city is prohibited from filing suit against the manufacturer of firearms or ammunition for damages, abatement or injunctive relief resulting from or relating to design, manufacture, marketing or unlawful sale of firearms or ammunition. It further makes a legislative intent that a firearm does not constitute an "unreasonably dangerous activity and is not inherently dangerous." It further repeals the waiting period and registration of pistols, § 13A-11-77.

HB-112—Right-of-Ways

Section 11-88-14 is amended to require that to use the right-of-ways of public roads by water, sewer and fire department authorities each must contain the consent of the governing body, whether it be the municipality or county, and to post bond in the amount required to restore to the pre-used condition when excavation or other work is done as required by the county engineer.

HB-115—Abandoned Babies

When newborns are abandoned at hospital emergency rooms, the hospital has the authority to take possession of the child. The parent who voluntarily leaves the infant cannot be prosecuted for abandonment.

HB-119—Credit Cards

Section 13A-9-14 is amended to expand the definition of illegal possession of credit cards or fraudulent use of a credit card to include welfare cards or electronic benefit transfer cards.

HB-126—Probate Judge Retirement

This bill amends § 12-18-113 to provide a new formula for calculation of retirement benefits for probate judges.

HB-130—Multi-County Competitive Bid Law

This amends *Ala. Code* § 41-16-21.1 to allow two or more counties, that are not adjoining, to enter into joint purchasing agreements subject to the competitive bid law.

HB-134—Mandatory Liability Insurance

This creates a new § 32-7A-1 to require proof of motor vehicle liability

insurance prior to registration and licensing of vehicles.

HB-182—Extreme Cruelty to Animals

This establishes the crime of cruelty to dogs or cats where there is intentional, extreme cruelty to a domesticated dog or domesticated cat.

HB-196—Paternity

This amends § 26-17-6 to extend the statute of limitations for bringing an action to determine paternity.

HB-200—Domestic Violence

Before a person is released from jail, after having been arrested for domestic violence crimes, a 12-hour cooling-off period is provided.

HB-293—Open Containers in Motor Vehicle

It is unlawful for a person to possess an open container of alcoholic beverages in the passenger area of a motor vehicle.

HB-308—Ten Worst Delinquent Child Support Obligators

This provides for the publication of the photographs of the ten most delinquent child support obligators in each county. This publication can be on the DHR Web site and in newspapers around the state.

HB-311—Foreign Language Interpreters

In any stage of a criminal or juvenile proceeding, if the defendant informs the court that he or she does not speak or understand English, the court must appoint an interpreter.

HB-360—Medical Clinic Immunity

This repeals § 6-5-339 and provides limited immunity from civil liability to medical professionals who volunteer their services at free medical clinics without compensation.

HB-519—Nursing Home Residents

Being a resident in a nursing home is *prima facie* evidence the person is a "protected person" which allows the Department of Public Health to investigate reports of physical abuse and neglect.

HB-671—Business Privilege and Corporate Shares Tax

Technical corrections are made to Act 99-665 passed in the 1999 Special Session.

HB-677—Mental Health Coverage

Health benefit plans must cover mental illness with in-patient day treatment and out-patient services.

HB-690—Adoption Records

Amended are §§ 26-9A-12, 31 and 32 of the adoption code relating to birth certificates and identifying information for adopted persons born in Alabama and to provide procedures for obtaining copies of the original birth certificates.

HB-798—Tobacco Master Settlement Agreement

This bill provides tobacco manufacturers not participating in the Master Settlement Agreement to pay funds into escrow in the state.

HB-955—Corporate Income Tax Amendments

This bill makes technical corrections in Act 99-664 as it relates to tax exempt status of limited liability entities.

Annual Meeting of the Alabama Law Institute

The annual meeting of the Alabama Law Institute will be held at 11 a.m. on July 14th at the Perdido Beach Resort in Orange Beach, in conjunction with the ASB Annual Meeting.

For information about bills and the current legislative term, go to www.legislature.state.al.us.

For more information concerning the Institute or any of its projects contact Bob McCurley, director, Alabama Law Institute, at P.O. Box 861425, Tuscaloosa 35486-0013, fax (205) 348-8411, phone (205) 348-7411, or Web site, www.law.ua.edu/ali. ■



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.

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BUILDING ALABAMA'S COURTHOUSES

By Samuel A. Rumore, Jr.



Coffee County

Established: 1841

The following continues a history of Alabama's county courthouses—their origins and some of the people who contributed to their growth. 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.



Front view, Coffee County Courthouse, Elba

Coffee County - Part I

The territory that would eventually become Coffee County, Alabama passed through a long list of jurisdictional changes. At first it was part of immense Adams County in the Mississippi Territory, established on April 2, 1799. Then it was included in Washington County created on June 4, 1800, still part of the Mississippi Territory. On December 21, 1809, the territorial legislature reduced the area of Washington County from approximately 27,500 square miles to a more manageable area of 1,640 square miles. They placed most of future Alabama, including Coffee County, in what was called Indian country, making it for a time a non-county area.

On June 29, 1815, the Mississippi Territorial Legislature designated approximately 21,500 square miles of the non-county area as Monroe County. The future Coffee County, included in

Monroe County, became a part of the Alabama Territory when it was created on March 3, 1817. On February 13, 1818, the area was removed from Monroe County and became a part of Conecuh County. A further subdivision took place on December 13, 1819 when the area was placed in Henry County. Another division created Dale County on December 22, 1824 which included the future Coffee County. Finally, on December 29, 1841, the Alabama Legislature created Coffee County.

The original Coffee County boundary extended to the Florida line. The legislature reduced the total area of the county by more than one-third when it created Geneva County on December 26, 1868, from parts of Coffee, Dale, and Henry counties. The county area has remained basically unchanged since the 1870s.

Coffee County was named for General John Coffee, a hero of the Creek Indian

War of 1813-1814 and the Battle of New Orleans in 1815. Coffee was born in Prince Edward County, Virginia on June 2, 1772. His father was a Revolutionary War officer. In 1789, Coffee and his widowed mother moved to Davidson County, Tennessee. He worked as a merchant and a surveyor.

In 1813 he led the mounted troops under Andrew Jackson that fought in the Creek Indian War. He served at the decisive Battle of Horseshoe Bend in 1814. The next year he led the cavalry, again under Andrew Jackson, at the Battle of New Orleans. Following his military service, due to his experience, as well as his friendship, with the politically influential Andrew Jackson, Coffee was appointed surveyor of the northern district of the Mississippi Territory. He later became Surveyor-General of the Alabama Territory.

Upon moving to Alabama, Coffee resided in Huntsville. He then became a shareholder and the most active member of the Cypress Land Company which founded the town of Florence. He relocated to Lauderdale County, Alabama, and remained there as a surveyor and land developer until his death on July 7, 1833. Coffee is buried in the Coffee Cemetery near Florence. Coffeetown on the Tombigbee River in Clarke County is also named for him.

The early settlers of the future Coffee County arrived in the 1830s. Many of them came from Georgia and South Carolina. They were small farmers who established homesteads in the Alabama wilderness, growing cotton, which soon became the principal crop of the county.

The Alabama Legislature created Coffee County on December 29, 1841 from the western portion of Dale County. The Act establishing the county named a five-member commission to select the county seat location. The members were Britton T. Atkinson, James Claxton, Thomas Cole, John B. Cruise, and Amos Wiggins. This commission was authorized to secure a seat of justice not to exceed 160 acres and located not more than six miles from the geographical center of the county. They were also to erect a courthouse and jail. The remaining land was to be divided into lots and sold.

The legislative act called for the election of county officers. However, there



Side views of present-day Coffee County Courthouse (Elba), the fourth courthouse built to serve the county's needs

was a provision that Dale County officials who resided in the territory that became Coffee County could hold office as Coffee County officials until their terms expired as though they had been duly elected in that county. The Act of December 29, 1841 also mandated that the county seat site would be called Wellborn. This name was to honor General William Wellborn who served in the Creek Indian War in 1836-1837. The first courts were probably held at the courthouse for Dale County located at Daleville.

The original law authorizing the selection of the county seat was amended on February 1, 1843. This Act directed the sheriff to advertise an election to be held on the first Monday in May 1843, the purpose of which was to select a seat of justice for the county. The results of this election are not known. However, on January 23, 1845, the Alabama Legislature appointed commissioners one more time to select a county seat location within one mile of the center of the county. The site selected became Wellborn, located approximately

12 miles east of Elba. The commissioners sold lots and used the proceeds to build a log courthouse and jail in 1846. A post office was established at Wellborn that same year.

The choice of the county seat was not overwhelmingly accepted and there remained dissatisfaction over the location, due in part to the inaccessibility of Wellborn from the population centers of the county. In March 1851, the courthouse burned to the ground. Though no cause of the fire was actually determined, arson was suspected.

On December 16, 1851, the legislature authorized a county tax for the purpose of rebuilding the courthouse. Then, on January 30, 1852, the legislature passed a new Act calling for an election to be held on the first Monday in August 1852, for the purpose of selecting a permanent county seat. Three towns sought this honor—Wellborn, Elba and Indigo Head. The town selected had to provide the county with a suitable courthouse and jail free of charge to the county. This first election eliminated Wellborn.

The runoff took place on October 5, 1852. The election was quite close but in the end Elba had 491 votes, while Indigo Head (later called Clintonville) received 433 votes. Elba had a 58-vote majority and the election committee declared Elba to be officially selected as the permanent county seat of Coffee County.

After this election, Wellborn began a steady decline. By 1866 the post office was closed. Soon the town disappeared from state maps altogether. Today it is a dead town of Alabama and it contains only a few broken grave stones at a cemetery to indicate the location of this former county seat.

Elba began its existence as a ferry crossing over the Pea River. A Mr. McLane started his ferry service some time in the early 1830s. The locale was first given the name of Bridgeville. A post office was established at Bridgeville

HISTORIC COURT SQUARE

The first Coffee County Courthouse was at Wellborn and burned in 1851. This site given by John B. Simmons when Elba was selected the county seat polling 58 more votes than Indigo Head (Clintonville) in a county election on October 5, 1852. The first building erected on this site was a two story frame structure burned by Ward's Raiders, September 3, 1863. A new courthouse was completed in 1867. This building served Coffee County until 1881 and was sold at auction. A third building completed in 1882 was enlarged in 1899. Failing to meet the needs of Coffee County, it was replaced by the present courthouse in 1903. Listed in the National Register of Historic Places.

Historic marker at Elba Courthouse

on February 2, 1841. This name was changed on June 20, 1850 to Bentonville in honor of Thomas Hart Benton, the senator from Missouri, who had served in the Creek Indian War in 1813-1814 with both Andrew Jackson and John Coffee.

The first settler at the site of the future Elba was Ephraim King who recorded his claim on February 17, 1836. In 1840 he sold his land to John B. Simmons and his brother-in-law Gappa T. Yelverton. These two men organized the first store in the community, the Simmons Mercantile Company. John B. Simmons became the postmaster for the town in 1850. The post office was located in his store.

In late 1851, after the courthouse had burned at Wellborn, the citizens of Bridgeville, now called Bentonville, decided that they needed to rename their town again with a name suitable for a county seat. They could not decide on a proper name so every voting age male submitted a name. The names were placed in a hat from which the winning suggestion would be pulled out during a public ceremony.

John B. Simmons had recently read a biography of Napoleon. He saw a similarity between Napoleon's island of exile and the location of his town at the confluence of the Pea River, Whitewater Creek and Beaver Dam Creek. The location was nearly surrounded by the streams. (This fact would have a significant impact on the town's future.) By chance, Simmons' suggestion of Elba was drawn out of the hat. Henceforth,

Bentonville became known as Elba and Elba became the county seat of the county in 1852.

After the selection of Elba as the new county seat, the town suffered an outbreak of yellow fever. The town fathers decided to locate the town center back from the river approximately one-half mile to give Elba room to grow and to reduce the potential for future yellow fever epidemics. John B. Simmons donated the land for the courthouse square and the lot for the jail. F. M. Gannons, Nicajah Harper and James N. Cauthen served as a building committee for the erection of a courthouse and jail which had to be furnished to the county without charge. Private donations for the construction were necessary because the town was not yet incorporated. A successful incorporation vote took place on May 7, 1853.

The first courthouse at Elba was a two-story, white frame building located in the center of the town square. A painted rail fence surrounded this building. Early records show that the county paid \$2 per week for sawdust service. Since this was an era where tobacco chewing was common, the presence of barrels of sawdust for use on the courtroom floor was an absolute necessity. Title to the courthouse was conveyed to Coffee County on September 12, 1853.

At the outbreak of the Civil War, the probate judge of Coffee County was Pierre Darcy Costello, an Irishman who had been born in Dublin, educated in New York, served in the Mexican War, and then settled in Alabama. Costello studied law in Elba and was the first probate judge to be a lawyer. In 1861 he organized local volunteers into Company K of the 25th Alabama Infantry Regiment, which fought in Mississippi, Tennessee and Kentucky. Costello was wounded on January 1, 1863 at Murfreesboro, Tennessee, and died there on January 4, 1863.

While many men went off to war, a Home Guard protected people and their property in Coffee County. Unfortunately, a group of northern raiders and deserters, known as Ward's Raiders, burned the county courthouse on September 3, 1863. A marker is located on the courthouse grounds honoring Thomas P. Larkins, a member of

the Home Guard, who was killed while defending the Elba courthouse against the raiders. Many county records were burned that day, though some were saved. After the raid, the county had no courthouse until 1867. Rooms were rented for use by the county from C. S. Lee and R. P. Brooks. The rent paid was \$20 per month to each.

By April 1866, the county commissioners appointed a building committee to let a contract for a new courthouse. Members of the committee were J. B. Simmons, J. W. Harper, A. V. Vaughn, B. A. Cummings, and F. M. Rushing, who would later serve as probate judge from 1892 to 1904. They contracted with Major B. H. Lewis to construct a new courthouse for a price of \$4,600. He completed the courthouse on June 4, 1867. This building was another two-story, frame structure.

In May 1881, the county commission determined that the county needed a new courthouse. The existing structure could no longer be "satisfactorily repaired." In August 1881, the county treasurer was directed to sell the old courthouse to the highest bidder, who then had to remove the structure by September 15, 1881. The building was sold for \$150.

The county commission next entered into a contract with M. M. Tye for the construction of Coffee County's first brick courthouse. Tye had also designed and built the Bullock County Courthouse at Union Springs in 1871. The new Elba courthouse was completed in August 1882. The county paid for the building by levying a 5 mill property tax. Another similar tax, levied in 1884, paid for the construction of a new brick jail in Elba, completed in 1886. In 1893 the county bought a fire-proof vault for the courthouse at a cost of \$1,100 and later added an annex at a cost of \$2,800.

In 1899, the courthouse needed additional space and the jail needed repairs. The county issued "Courthouse Improvement Bonds" to pay for an addition on the east end of the courthouse and "Jail Building Bonds" to pay for the jail repairs. These bonds were paid off by the county on March 17, 1923.

Coffee County experienced a dramatic population growth in the late 19th and early 20th centuries. In 1880 the population recorded by the official census



Elba Courthouse, named to the National Register of Historic Places

was 8,119. This figure was less than the 1860 census total of 9,623. By 1900 the population had more than doubled to 20,972. In 1910 it had grown to 26,119. Due to this growth, the county needed another new courthouse. This time plans were drawn for an elaborately designed structure, befitting a growing county, to fill the court square. The resulting edifice continues to serve the county's needs.

The cornerstone of the present Coffee County Courthouse in Elba was laid on August 22, 1903 during the administration of Probate Judge F. M. Rushing. The building is a two-story, Romanesque structure. The dominant features of the building are twin turrets which flank a square clock tower that rises majestically between them. The front entrance of the courthouse appears almost castle-like. The semicircular turrets project from the building and are topped by conical roofs and finials. Each turret has two large rectangular windows on the first floor that match the first floor windows throughout the building. Each turret has three arched windows on the second floor and these likewise match the second floor windows throughout the structure. A bricked archway above the entrance connects the turrets. Above the entrance-way is a balcony with a plain balustrade. Opening onto the balcony is a double door topped by a three-paned fan window.

The center clock tower rises above the entrance and balcony. It contains three arched ribbon windows and a non-functional balcony. A circular clock is found on each side of the tower. The clock faces are set in circular patterned brickwork. The clock tower is capped by a pyramidal roof topped with a finial. The building is constructed of red brick and is rectangular. It has a hipped-on-hipped roof. The dark roof, contrasted with the white trim of the building, gives the structure an appealing appearance. This 1903 courthouse not only continues to serve the residents of Elba, but stands as a symbol of continuity with the town's early history. It was named to the National Register of Historic Places on May 8, 1973. ■

(To be continued)



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 served as the bar commissioner for the 10th Circuit, place number four, and as a member of *The Alabama Lawyer* Editorial Board. He is the current president-elect of the state bar and will become president this month. He is a retired colonel in the United States Army Reserve JAG Corps.



OPINIONS OF THE GENERAL COUNSEL

By J. Anthony McLain, general counsel

Uncooperative Client is Grounds for Permissive Withdrawal



J. Anthony McLain

Question:

"This is to follow up our conversation of last week in which we discussed my firm's position in a lawsuit in South Alabama. Please accept this letter as my law firm's request for guidance on the question of whether we may ethically withdraw from the case at this point.

A brief rendition of the facts of the case may be helpful to you. In May of 1991, my law firm became involved in a lawsuit in ABC County, Alabama. We filed suit alleging, among other things, breach of contract, fraud, and environmental damage.

The facts which gave rise to the lawsuit are as follows: At one time, our clients were the owners of a 250-acre tract of property near the City of Anywhere, Alabama. Our clients fell into financial difficulty and found it necessary to sell this tract of land. The defendant in the ABC County lawsuit is the purchaser of the property. The defendant purchased the entire tract with the exception of a one-acre parcel which sits in the middle of the tract. Our clients' dwelling sits on this one-acre parcel. Our clients have access to his property by way of an access easement which runs from his one acre to the public highway. A rough sketch of the property is enclosed to aid you in visualizing the area.

As part of the conveyance, our clients negotiated a right to repurchase the property within three years of the sale. There is some question as to whether our clients will ever be in a position to exercise the option due to their financial condition.

Subsequent to the sale of the property, the defendant began to do a considerable cleanup operation on his newly purchased property. The defendant began to tear down a number of old, rotted chick-

en houses which were on the property. The defendant also destroyed and completely rebuilt a dam for a large pond on the property. Furthermore, the defendant cleared a good deal of what he considered 'trash' trees from the property. During his cleanup operation, the defendant began to dig large pits on the property. Old tires were trucked to the property and thrown into the pits along with trash generated from the tearing down of the chicken houses and clearing of the trash trees. All of the materials in the pits were then set afire and allowed to burn freely.

These pits with burned refuse in them amount to an illegal dump under ADEM regulations. Thus, we filed a lawsuit against the defendant because of this alleged fraud and breach of contract. Our theory is that the illegal dump amounts to an unreasonable and bad faith interference with our clients' right to repurchase the property within three years.

Subsequent to our filing of the lawsuit, one of our clients began what amounts to a feud with the defendant. Our client has become involved in several petty disputes with the defendant, which in our view, has materially diminished our ability to represent him in this case.

The first indication of a problem came to us several months ago when our client was accused of malicious mischief in the second degree. The defendant alleged that our client had maliciously damaged a cattle gate which he had placed up on his property. The gate was also at the point of the beginning of my client's access easement to his reserved one acre of property. However, at that time, the defendant had not placed a lock on the gate nor had he restricted my client's access to

his property in any way. Despite this fact, my client admitted that he had taken the gate off the hinges and had bent its hinges in such a way as to prevent its being rehung. This case was eventually tried in XYZ Municipal Court and our client was convicted of malicious mischief.

After this incident, I explained to our client that he must refrain from these petty squabbles with the defendant. I told him in no uncertain terms that if he had a problem with the defendant he should call me first before he did anything.

Recently, I received a call from the defendant's attorney. He informed me that the defendant's gate had been left open and that the defendant's cows had been allowed to wander away from the property. This created a significant hazard to area motorists.

I confronted my client about this incident. He did not deny that he left the gate open and allowed the defendant's cows to escape. However, he did state to me that he would not 'recognize' the defendant's right to put up a gate on the property because he considered it to be an unreasonable interference with his access easement. My client contends that he owns the property which is described within the bounds of the access easement. Despite my best efforts to explain to him the rights of an easement owner, he contends that he owns the area described within the easement and will tolerate no interference with it.

After this latest incident with the defendant's cows, the defendant's lawyer and I discussed a compromise whereby the defendant would be allowed to put a lock on his gate so that he would

know it would be secure. However, the defendant would provide my client with a key to the lock so that he could freely have access to his property. I relayed this proposition to my client and he flatly refused to go along with it. He still contends that he owns the easement property and that he should not have to have a key to get onto his own property.

At this point, it is obvious to me that my client does not wish to heed my advice nor does he intend to cooperate in my firm's representation of him. On the contrary, it is obvious to me that my client intends to continue his petty feud with the defendant. It is obvious to me

and my partners that our case has already been materially damaged by our client's actions thus far. Our question is whether we may ethically withdraw at this point because our client refuses to cooperate with us or follow our advice."

Answer:

You may ethically withdraw from representation of your client at this point due to your client's refusal to cooperate with you or follow your advice.

Discussion:

The applicable ethical principle concerning your fact situation is found at Rule 1.16, Alabama Rules of Professional Conduct (ARPC), specifically, subsection (b)(3), which states as follows:

"Rule 1.16 Declining or Terminating Representation

- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or it:
- (3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent."

Pursuant to Rule 1.16(b)(3), you *may* withdraw from representing the present client since the client has demonstrated by his past actions his refusal to heed your advice and conduct himself in accordance with applicable law. As stated in the Comment to Rule 1.16:

"Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it."

Based on the prior misconduct and conviction of your client, and his refusal to accept the requirements of the law applicable to the property rights he possesses, you may ethically withdraw from representation of the client. This conclusion is further supported by your belief, based on your client's previous actions, that he will, in the future, continue to refuse to follow your advice and possibly contravene other laws applicable to his particular situation.

Consistent with your withdrawal, please heed the provisions of Rule 1.16(d) which states as follows:

"Rule 1.16 Declining or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law."

Strict compliance with the provision of the Rules of Professional Conduct would ensure transition for the client to possibly substitute counsel, and likewise conform your conduct in these matters to the Rules of Professional Conduct. ■

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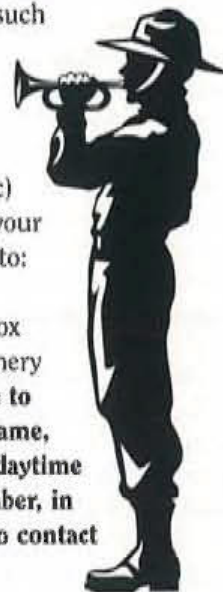
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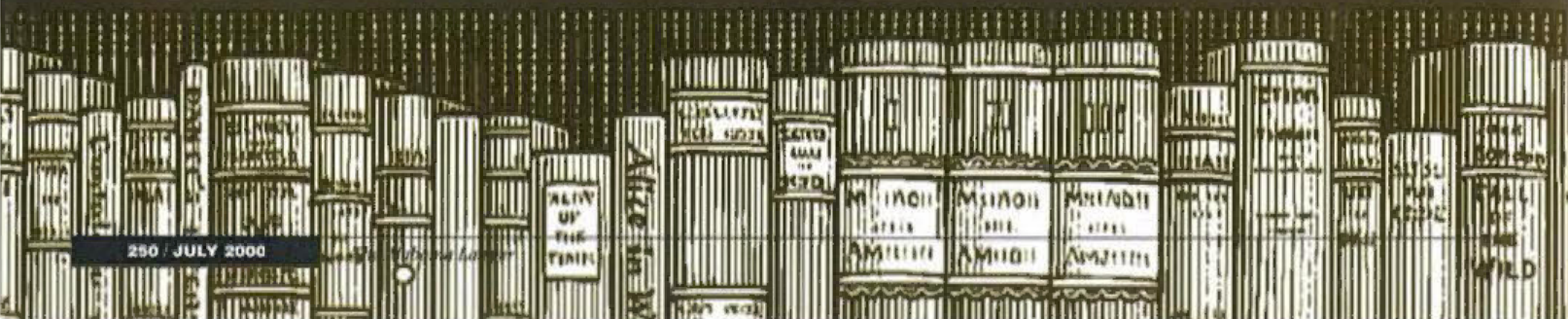
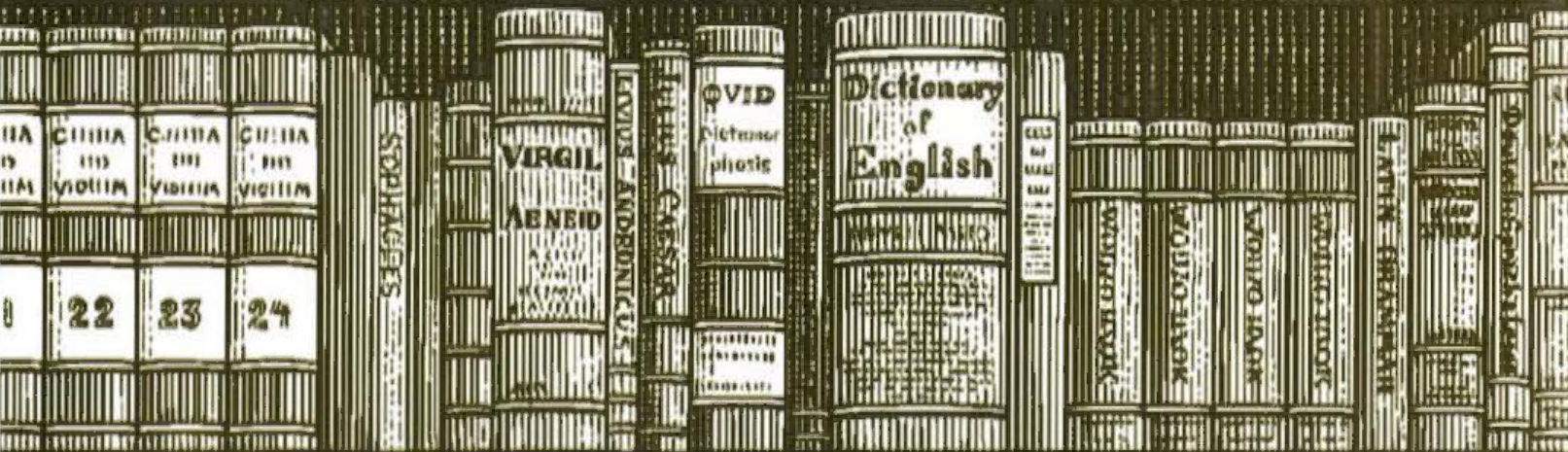
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AUTHORS OF ALABAMA:

A Look at the Diverse Work of the State's Attorneys

by Rhonda Sessions Gregg



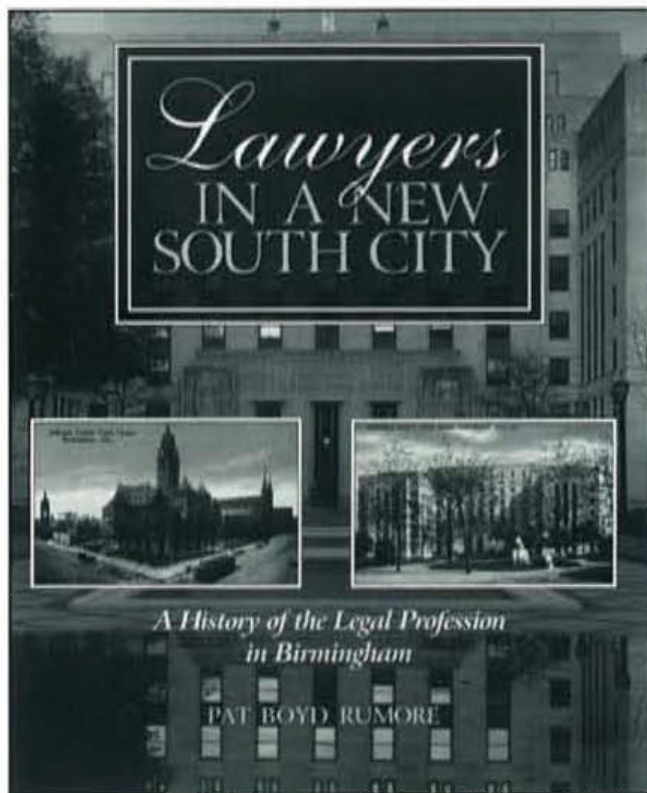


T

he history of a profession and a city. A collection of philosophical memoirs and articles. The memories of an elderly man. A correspondence with the devil. A law professor's secret past. The consequences of a dead man's sins. An eclectic literary collection? Without doubt. Yet, the authors of all the works described have a home state and a profession in common. Here, the similarities stop. From histories to fictional thrillers, the works created by the following six authors are as unique as the people who created them.

Patricia B. Rumore

"I quickly found out that when you write a history of the legal profession, you write a history of the city," says Patricia B.



Lawyers in a New South City: A History of the Legal Profession in Birmingham by Patricia B. Rumore



Patricia B. Rumore

Rumore, an attorney who is currently administering her husband's firm, Miglionico & Rumore in Birmingham. "Lawyers are so integrally connected with everything that happens. As I wrote, the book inevitably evolved into a history of Birmingham from the perspective of the legal profession."

Rumore was recruited by the History and Archives Committee of the Birmingham Bar Association to write a history of the legal profession in Birmingham. Released in March of this year, *Lawyers in a New South City: A History of the Legal Profession in Birmingham* goes back to the founding of the city in 1871.

"I did a number of interviews in collecting information," says Rumore. "But I also went to original sources like the archives of the Birmingham Public Library and the minutes of the Birmingham Bar Association. As far as stories that are the most familiar to readers, the '60s is the highlight. For every issue, there were lawyers on each side. Your heroes depend on your perspective."

Although created with members of the Birmingham Bar Association in mind, Rumore says that anyone interested in history would be interested in the book. "Birmingham has a tremendously interesting history. Writing this book made me proud to be associated with the legal profession."

F.A. "Berry" Flowers, III

In the words of Birmingham attorney Berry Flowers, "Lawyers know how to get things done." Whether he's searching the nation's libraries for obscure philosophical articles or moving to another country to be near the source of his subject matter, Flowers does whatever it takes to get the job done in pursuing his literary endeavors as an author and an editor.



F.A. "Berry" Flowers, III

In 1992, Flowers co-authored a book titled *Products Liability Law, Loss Control, and Insurance*. "The first third of the book is about products liability law



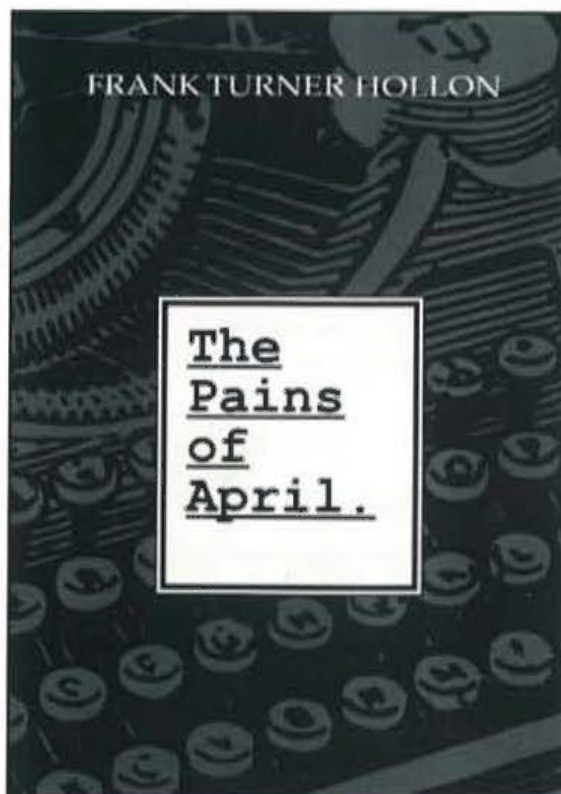
dealing with equipment," Flowers explains. "The next third deals with loss control, and the last part is about products liability insurance. The book was published by the National Association of Manufacturers for its members."

As an editor, Flowers's interests are much different. "I did not study philosophy in college, but I started reading philosophy when I got out of law school," says Flowers. "In my reading, I kept coming across the name Ludwig Wittgenstein, one of the most influential philosophers of the twentieth century. There was no complete biography of him at the time; his biography was not published until December of 1990. But there were some articles, and all mentioned that Leo Tolstoy's *The Gospel in Brief* had a great impact on him. I tried to buy a copy of this book in 1981, but I found out the book was out of print. Although I periodically checked at bookstores, it never came back into print. I finally found a copy through an antiquarian book dealer in 1991. I edited the book, which was already in English and wrote a preface in which I discussed the impact of the book on Wittgenstein. I got two offers, but I decided to go with the University of Nebraska Press because the book will stay in print longer with an academic publisher than with a commercial one."

At around the same time Flowers edited the Tolstoy book, he began writing his own work on Wittgenstein. Just as he was getting started, however, he got the opportunity to edit a four-volume collection of memoirs, recollections, and articles on the philosopher titled *Portraits of Wittgenstein*. "When I was working on the book, I took a leave of absence and moved to Cambridge, England where Wittgenstein studied and taught," says Flowers. "The work consists of 79 articles. I do appellate work so I have pretty good research skills. I was able to track down articles I didn't have in my possession and get copyright permission from various authors and editors. My experience as a lawyer has taught me how to get things done and to work under deadlines. Working on this book was a gratifying and unique experience."

Frank Turner Hollon

For Frank Hollon, writing was something he did for himself. He never expected to be published. After writing a novel while in law school, he put the manuscript away and didn't think of it again for ten years. "By coincidence, I made friends with a guy who owns a bookstore," says Hollon. "One day, I overheard him talking with an editor about how difficult it was to publish a book. I eventually got up enough nerve to tell them about my story."



The Pains of April by Frank Turner Hollon



Frank Turner Hollon

Published in October of 1999 by Over the Transom Publishing Company, Inc., *The Pains of April* conveys the recollections of an old man in a rest home on the Gulf Coast. The book, which is written in journal form, covers a one-year time span, from the man's 86th birthday in April to his 87th birthday the next April. "People often ask me why a 26-year-old, which is the age I was when I wrote the book, would want to be thinking like an 86-year-old," says Hollon.

"Looking back over the ten years that have gone by, I think I had some personal things happening in my life that made me wish I had the wisdom of an older person. I asked myself what my priorities would be if I was 86 instead of 26. What would I think of my school, my girlfriend, or my family if I was my grandfather's age? I think the theme of the book is that people never stop learning and getting better."



Hollon is in the process of working on his second book, *The God File*, which tells the story of a wrongfully imprisoned inmate's attempt to find evidence that God exists. "During the course of his 22-year imprisonment, the inmate keeps a file, which includes smaller files with titles such as suicide and fear," says Hollon. "Within those individual files, he keeps notes on how he sees evidence of the existence of God. For instance, suicide is a real option for him. He is in the worst place a person can imagine, and he is wrongfully accused. Yet, he doesn't take his own life."

Hollon, who is a partner in a law firm in Robertsdale, Alabama, says he tries to keep his legal career and his writing separate. "I enjoy practicing law, but writing is my escape," says Hollon. "This book is very personal to me. That's why I never actively tried to get it published. It's one thing to stand in front of a jury and talk about someone else's business. It's another thing to talk about something personal. If I worry about what others think, I will lose my edge. That's why I write for myself."

Norman Jetmundsen, Jr.

Due to overwhelming personal and professional obligations, finding the time to write is an insurmountable obstacle for many aspiring attorney authors. But Norman Jetmundsen made time to pursue his passion. "Just before I started writing the novel, my wife gave birth to triplet boys. My new responsibilities as a father combined with the demands of maintaining a full-time law practice left little time for anything else. I would write at night after the boys went to sleep or on planes. I tried not to let it interfere with work or family, but I found I really enjoyed writing. It was a nice outlet."



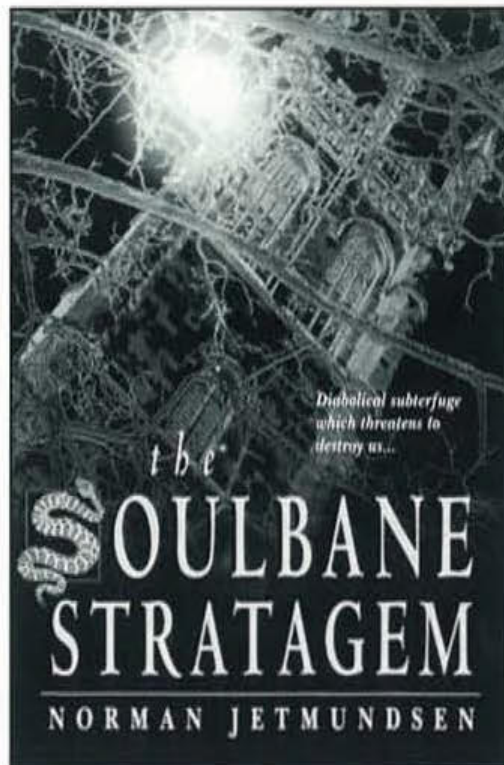
Norman Jetmundsen, Jr.

Jetmundsen's first book, *The Soulbane Stratagem*, was published in October of 1999 by John Hunt Publishing in England. The book is a follow on C. S. Lewis's book, *The Screwtape Letters* about a senior devil named Screwtape and a junior devil named Wormwood who plot to tempt a "patient" away from God. "I lived in Oxford in the early eighties and studied at Magdalen College," says Jetmundsen. "One day, I started thinking about Lewis's book, and I had the idea of continuing the story. What if new letters from Screwtape

and Wormwood came out? What would they say now? Lewis's book only contains letters from Screwtape; Wormwood never speaks. My book is a mystery thriller. Cade Bryson, a student at Magdalen College, stumbles upon correspondence between Foulheart, a senior devil, and Soulbane, a junior devil. The discovery takes the student on a spiritual journey. He eventually finds Soulbane's report to Foulheart, and, like the characters in *The Screwtape Letters*, the evil characters are pleased with the state of the world."

The devils' perspectives are naturally reversed, which presented certain challenges for Jetmundsen. "Writing from the standpoint of someone with no compassion was almost suffocating," says Jetmundsen. "Trying to accomplish this in a way that didn't turn off readers was extremely difficult."

Because *The Soulbane Stratagem* was published in England, and the story takes place in Oxford, Jetmundsen and his wife, Kelli, went to Magdalen College to launch the book. "Friends and family members got to go over with me. It was very exciting."



The Soulbane Stratagem by Norman Jetmundsen



Karl B. Friedman

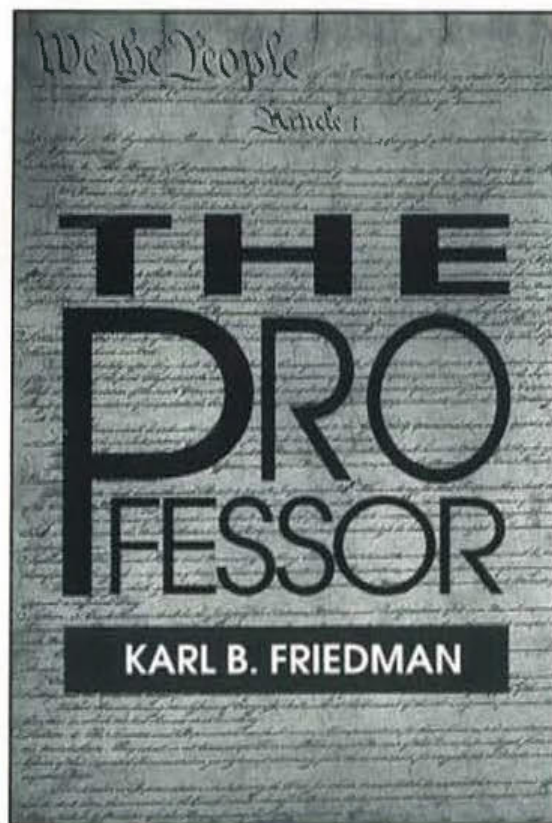
When Karl Friedman set out to write his novel, he had one single purpose in mind—to make an unusual gift to his wife.



Karl B. Friedman

“Not a soul knew about the novel except myself, my secretary, and my publisher,” says Friedman. “My wife, Gladys Friedman, has been my wife for 52 years. She had everything else she wanted, but nobody had ever written a book for her.”

Friedman, who works with Sirote & Permutt, P.C., in Birmingham, has been practicing law for more than 50 years. His first work of fiction, *The Professor*, was published by Black Belt



The Professor by Karl B. Friedman



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Press on April 17 of this year. “I was born here in Birmingham and lived on a little street on the west side of St. Vincent’s Hospital,” says Friedman. “Behind us was a black ghetto full of people living in the worst poverty imaginable. I wanted to report in fiction what occurred in that community. The main character, Joseph Jasper Smith, is born in poverty and hunger, but becomes very successful as an attorney. His law career is cut short after a victory against the most powerful law firm in Birmingham, and he embarks on his second career as a law professor. Eventually, a group of his students solves the mystery behind the reason he quit practicing law and discovers that their professor is also their friend. The span of the character’s life covers 100 years, from the early 1900s to the end of the century. A lot happens in the city during this time. I think the book illustrates some attitudes and events that people who lived through those eras will recall and regret.”



The book is written entirely from Friedman's own memories. Some of the events in the story are based on true-life experiences of Friedman or his clients. "One of the most difficult aspects of writing the novel was trying to get the actual facts of what happened in that century into a timeline that would make a fictional story," says Friedman. "I had to move some dates. Some cases which really did happen may not be in chronological order."

Friedman says that since *The Professor* has been published, he plans to devote his energy to his law career, a career path that has become a family institution. Friedman's son, Mark, has been practicing with Sirote & Permutt, P.C. for more than 20 years, and his two daughters, Tracy Friedman Stein and Lauren "Lolly" Friedman Miller, practice law in Houston, Texas.

Michael Stewart

Since he was 13 years old, Michael Stewart knew he wanted to be a writer. Although many adults abandon their adolescent dreams, Stewart took a leap of faith and actually made his a reality. "I always wanted to try to be a professional writer," says Stewart. "I saved money. I took a writing course, and I decided to go for it."

Although he was first told there was no market for legal mysteries, he eventually found an agent who was more interested in his writing than what was selling. Stewart's first book, *Sins of the Brother*, was a success, and the attorney was soon reassured that he had made the right decision in pursuing his dreams of being an author. Published in October of 1999 by Putnam, the murder mystery has garnered wide critical acclaim. "The story is about a young Mobile attorney named Tom McInnes who has just left a large law firm and gone out on his own," says Stewart. "He gets a phone call to find out his brother is dead. Tom soon gets involved in the sins of his brother as he begins investigating the murder."

Stewart's next book, *Dog Island*, is due out in October of this year. "This story centers on the same character, Tom McInnes," says Stewart. "On an island off the Florida panhandle, a young girl who is wandering the beach looking for a place to sleep witnesses a murder. She goes to a friend of Tom

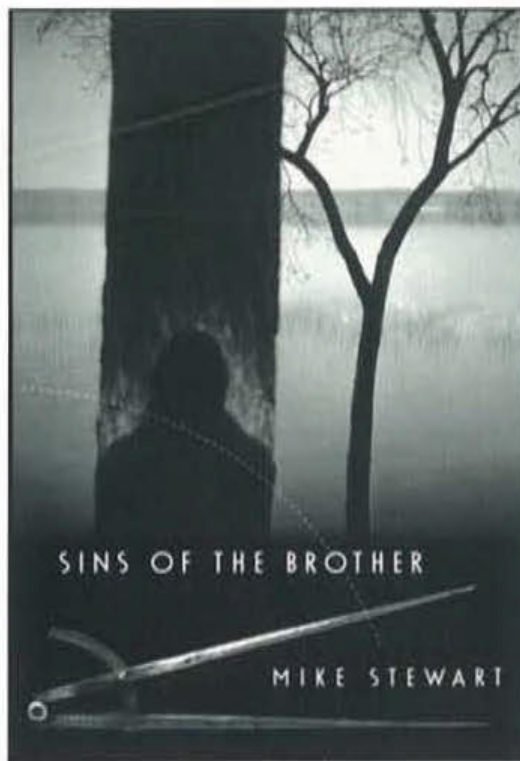
McInnes for advice. Tom tries to advise her, but she can't go to the police because she is a runaway. The story involves the illegal trade along the panhandle and deals with the clash between the Cubans and the long-time residents."

According to Stewart, the endings of his books are as big a surprise to him as to his readers. "Plotting is the hardest part of writing for me," says Stewart. "Initially, I just sit down and start writing. I wouldn't have any fun if I knew who did it from the beginning. At the end, when I find out who the killer is, I look back through the book and see all kinds of clues."

Stewart admits that the success he has found is rare. "No one should quit their job to write a book. I had been working and thinking about doing this for a long time. It's very unusual to make a living as a full-time writer." ■



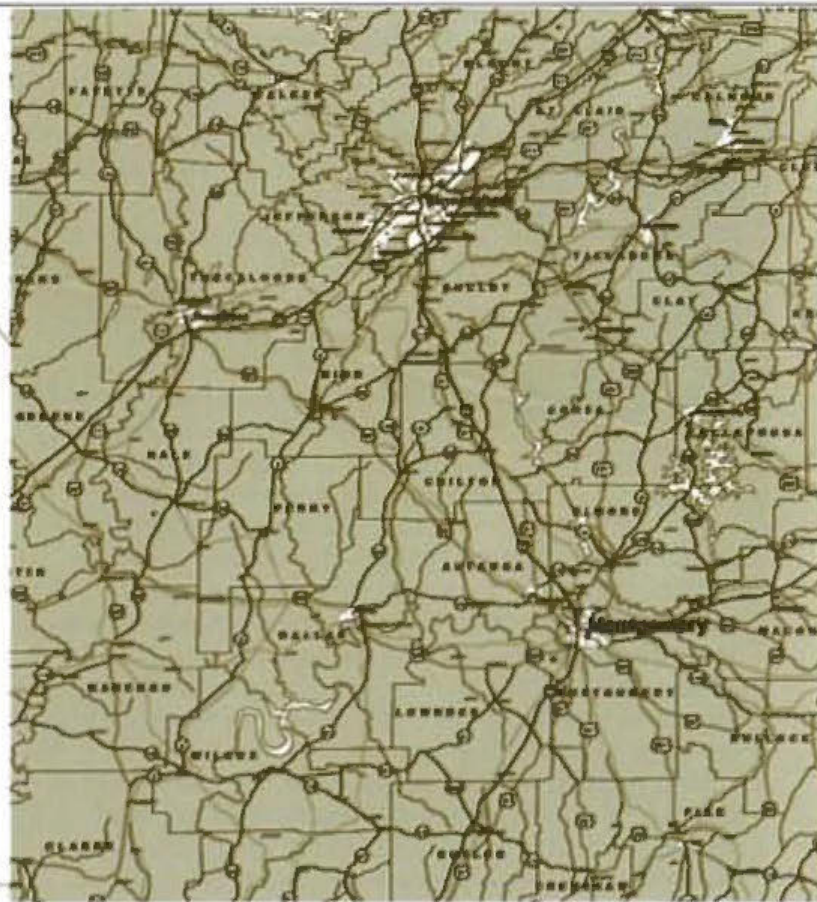
Michael Stewart

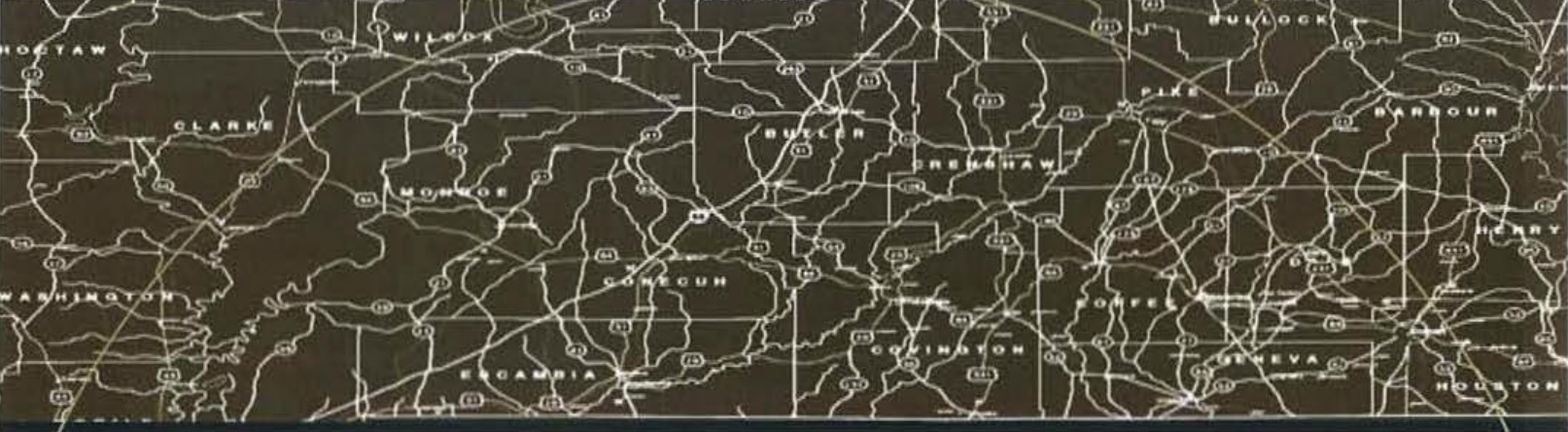


Sins of the Brother by Michael Stewart

State Law Local Governmental Liability: A Primer

By George W. Royer, Jr.





Lawsuits against local governmental entities, their officers and employees are frequently asserted under federal law, i.e., 42 U.S.C. § 1983, or other similar statutes. However, in addition to liability issues facing local governments under federal law, there is a separate body of law governing state law claims against local governments.

1. Generally:

(a) Liability of municipalities

Section 11-47-190, *Code of Alabama* 1975, Alabama limits the *respondeat superior* liability of municipalities to claims arising out of "the neglect, carelessness or unskillfulness" of their officers or employees. This restriction limits vicarious liability claims against an Alabama municipality to negligence-based claims only. Intentional tort claims as malicious prosecution,¹ civil conspiracy,² willful and reckless misrepresentation and promissory fraud,³ or outrage⁴ may not be maintained. In addition to prohibiting intentional tort claims, § 11-47-190 has also been held by the Supreme Court of Alabama to preclude liability for claims of wantonness against a municipality.⁵ The supreme court has held, however, that § 11-47-190 does not prohibit the imposition of liability upon a municipality for "gross negligence," holding that "'gross' when used in connection with the word 'negligence' implies nothing more than simple negligence."⁶

Even though § 11-47-190 appears on its face to only permit the assertion of negligence-based claims against a municipality, the Alabama Supreme

Court has held that "negligent" assault and battery and "negligent" false imprisonment claims may be asserted against a municipality arising out of an arrest.⁷ The court has held that where excessive force is used upon a plaintiff during the course of an arrest, such can constitute an "unskillful" use by a law enforcement officer of more force than is called for under the circumstances.⁸ Likewise, the supreme court has held that where it is alleged that a law enforcement officer is "careless" or "unskillful" in making an arrest on less than probable cause or under other circumstances where the arrest might be unlawful, a cause of action will exist under § 11-47-190 for false arrest or false imprisonment.⁹

(b) Liability of municipal officers and employees

The prohibition against intentional tort claims contained in § 11-47-190 applies *only* to lawsuits against a municipality itself. Section 11-47-190 does not prohibit the assertion of intentional tort claims against individual employees.

(c) Liability of counties

There is no county counterpart statute to § 11-47-190 which limits the liability of counties to negligence-based claims. Accordingly, unlike municipalities, Alabama counties may have liability for intentional, as well as negligence-based, claims of county employees.

Unlike municipalities, counties generally have very limited liability in the law enforcement area. In 1987 the supreme court held in *Parker v. Amerson*¹⁰ that an Alabama sheriff is *not* a county officer for the purpose of imposing liability upon Alabama counties for actions aris-

ing out of law enforcement activities of a sheriff. In *Parker* the supreme court held that an Alabama sheriff is a *state*, not a county, official. The supreme court in *Parker* stated: "A sheriff is not an employee of a county for purposes of imposing liability on the county under a theory of *respondeat superior*."¹¹ Based on *Parker*, the supreme court has also held that a county has no liability for the law enforcement acts of a deputy sheriff.¹²

Liability of an Alabama county arising out of the operation of the county jail is somewhat complicated. Under Alabama law, the legal custody and charge of the jail is vested in the sheriff of the county.¹³ The authority of the sheriff over the jail is totally independent of the county commission.¹⁴ As a consequence, an Alabama county cannot be liable for state law claims arising out of acts or omissions of the sheriff in connection with the operation of the jail.¹⁵ However, because § 11-14-10, *Code of Alabama* 1975, requires an Alabama county to "maintain a jail" within the county, there is an affirmative duty upon the county to maintain the jail in a state of good repair.¹⁶ If a jail inmate suffers an injury arising out of some defect in the physical facilities of the jail, the county can have liability for the injury.¹⁷

2. Punitive damages

Punitive damages are not recoverable against any county or municipality in Alabama "or any agency thereof" under § 6-11-26, *Code of Alabama* 1975. § 6-11-26 does not, however, bar recovery of punitive damages against individual

public officers or employees. Section 6-11-26 also does not prohibit the institution of wrongful death actions against counties or municipalities. Section 6-11-29, *Code of Alabama* 1975, specifically exempts the applicability of § 6-11-26 to actions involving wrongful death.

3. Statutory cap on damages

Section 11-93-2, *Code of Alabama* 1975, provides a cap of \$100,000 on the recovery of damages "for bodily injury or death for one person in any single occurrence." There is a \$300,000 aggregate cap "where two or more persons have claims or judgments on account of bodily injury or death arising out of any single occurrence." Property loss claims are limited to "\$100,000 for damages or loss to property arising out of any single occurrence."

This statute applies only to state law claims; it does not apply to any federal claims which a plaintiff may have against a governmental entity.¹⁹ The supreme court has held that, because of the language of the cap limiting its applicability to claims arising out of "bodily injury or death," the statutory

cap does not apply to claims for "intangible injuries," such as a retaliatory discharge claim by an employee alleging that he was wrongfully terminated from his employment for filing a Workers' Compensation claim.¹⁹

There is a \$100,000/\$300,000 aggregate statutory cap on damages in actions in which both the municipality and its employees are joined as defendants. Section 11-47-190 provides that "no recovery may be had under any judgment or combination of judgments, whether direct or by way of indemnity or otherwise, arising out of a single occurrence, against a municipality, and/or any officer or officers, or employee or employees, or agents thereof, in excess of a total \$100,000 per injured person up to a maximum of \$300,000 per single occurrence."

There is no counterpart statute to § 11-47-190 in the area of county employee liability. However, in *Smitherman v. Marshall County Commission*,²⁰ the Alabama Supreme Court held in a road defect case, that claims against members of a county commission and a county engineer in their official capacities were subject to the \$100,000 cap contained in § 11-93-2. The court noted in *Smitherman* that the statutory definition of "employee" under the statute

containing the cap included "persons acting on behalf of any governmental entity in any official capacity" and included elected officials of governmental entities.²¹ Although that portion of the cap statute which established the \$100,000 limitation did not specifically refer to claims against "employees," the court held that "[t]o hold that the caps of § 11-93-2 did not apply to claims against the county commissioners and the county engineer in their official capacities would effectively repeal that *Code* section, because the plaintiffs would simply file their actions against the employees of a governmental entity instead of the governmental entity itself"²²

4. Ante litem notices

Under Alabama law, prospective tort plaintiffs must file pre-lawsuit notices of claim with the city clerk or the county commission within a certain period of time after the occurrence of the matters giving rise to the claim. Failure to do so bars any later claim. There are differing rules regarding the time within which the *ante litem* notices of claim must be filed with municipalities and counties.



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(a) Claim against municipalities

Section 11-47-23, *Code of Alabama* 1975, provides that "all claims against [a] municipality (except bonds and interest coupons and claims for damages) shall be presented to the Clerk for payment within two years from the accrual of said claim or shall be barred." With regard to tort claims, § 11-47-23 requires that "[c]laims for damages growing out of torts shall be presented [to the city clerk] within six months from the accrual thereof or shall be barred." Although § 11-47-23 requires that such claims be filed with the city clerk, the commencement of a lawsuit within the six-month period has been held by the Alabama Supreme Court to satisfy the requirements of this section.²⁷

Section 11-47-23 only applies to actions brought against a municipality itself; it is inapplicable to actions brought against city employees.²⁴ The *ante litem* notice provisions of § 11-47-23 apply only to state law tort claims; § 11-47-23 is inapplicable to actions brought under 42 U.S.C. § 1983 in either federal court²⁵ or state court.²⁶

(b) Claims against counties

An *ante litem* claim must be filed with the county commission within 12 months of the accrual of the claim or else the claim is barred.²⁷ A county commission has a period of 90 days within which to act upon the claim. If the commission fails to act upon the claim within 90 days, the claim is automatically denied by operation of law and a lawsuit may then be filed.²⁸

5. Immunity defenses available to state law tort claims

(a) Absolute immunity

The Alabama Supreme Court has held that because an Alabama sheriff is a state

officer, the sheriff has absolute immunity from monetary damage claims under Article I, § 14 of the *Alabama Constitution of 1901*.²⁹ This absolute immunity has been held by the supreme court to bar damage claims for false arrest and malicious prosecution,³⁰ negligence and wantonness in the hiring of a jailer who sexually assaulted an inmate,³¹ the mistaken release of an inmate who later robbed the plaintiffs,³² negligent and wanton failure to provide medical care to an inmate,³³ a high speed pursuit,³⁴ failure to arrest a drunken driver who later killed a motorist,³⁵ negligent and bad faith service of process,³⁶ failure to maintain safe electrical fixtures in a jail resulting in the electrical shock to an inmate,³⁷ and trespass and conversion.³⁸ This absolute immunity has also been held applicable to deputy sheriffs, whom the Alabama Supreme Court have determined are extensions of the sheriff, and therefore, are also executive officers of the State of Alabama entitled to § 14 sovereign immunity.³⁹

There are no reported state court decisions discussing the issue of whether a jailer (as opposed to a deputy sheriff) has absolute immunity under § 14 from state law claims. The Eleventh Circuit has considered this issue and have held that jailers and correctional officers serve as the alter-ego of the sheriff in the area of jail operations, in similar fashion to deputy sheriffs in the area of law enforcement, and, as such, are entitled to the same § 14 immunity from state law claims as the sheriff.⁴⁰

(b) Discretionary function immunity

Under Alabama law, "discretionary function" immunity from "tort liability is afforded to public officials acting within the general scope of their authority in performing functions that involve a degree of discretion."⁴¹ The source of this doctrine of discretionary function immunity is § 895D *Restatement (Second) of Torts* which governs immunity from tort liability of public officers.⁴² In determining whether a particular action of a public official constitutes the exercise of a discretionary function, "[c]ourts must make

this assessment on a case by case basis."⁴³ The supreme court has described discretionary acts as "those acts [as to which] there is no hard and fast rule as to course of conduct that one must or must not take and, if there is [a] clearly defined rule, such would eliminate discrimination one which requires exercise in judgment and choice and involves what is just and proper under the circumstances."⁴⁴

The Alabama appellate courts have reached differing conclusions on the applicability of discretionary function immunity to local governmental officials depending upon the status of the official, and the nature of the conduct at issue. In *McCluskey v. McCraw*,⁴⁵ the court of civil appeals held that a county engineer had discretionary function immunity with regard to claims that he had failed to insure that a bridge on a county road in the county was reasonably safe for travel. In *Tuscaloosa County v. Henderson*,⁴⁶ a

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county license inspector was sued for malicious prosecution, defamation, abuse of process, negligence, wantonness, and outrage. The plaintiff alleged that the license inspector had had the plaintiff arrested for operating a business without a license when the plaintiff was not, in fact, operating a business. The court of civil appeals stated that, with regard to the conduct at issue, i.e., determining whether the plaintiff was operating a business without a license, the license inspector was performing only a ministerial function and was not entitled to discretionary function immunity.

(c) Immunity available to law enforcement officers

On April 26, 1994, the Governor signed into law Act No. 94-640, which is presently codified as § 6-5-338, *Code of Alabama* 1975. Section 6-6-338 provides that law enforcement officers "shall have immunity from tort liability arising out of his or her conduct in the performance of any discretionary function within the line and scope of his or her law enforcement duties." The supreme court has interpreted § 6-5-338(a) as providing "discretionary function immunity to municipal police officers unless the officer's conduct is so egregious as to amount to willful or malicious conduct or conduct engaged in bad faith."⁴⁷

Both the Eleventh Circuit and the Alabama Supreme Court have held that the procedural framework for analyzing discretionary function immunity claims has a two-pronged inquiry.⁴⁸ The first prong involves proof by the defendant officer that the officer was "engaged in the performance of discretionary functions at the time the alleged torts occurred."⁴⁹ If the actions complained of were discretionary acts, "the burden shifts to the plaintiff to demonstrate that the defendants acted in bad faith, with malice or willfulness in order to deny them immunity."⁵⁰

(d) Interlocutory reviewability of denial of discretionary function immunity

In federal court, a denial of discretionary function immunity to a police officer under § 6-5-338(a) is interlocutorily appealable as a matter of right under 28 U.S.C. § 1291.⁵¹ In *Sheth v. Webster*, the Eleventh Circuit, in holding that it had jurisdiction to consider an interlocutory appeal of a denial of a motion for summary judgment seeking immunity under § 6-5-338(a), stated: "We conclude that we have jurisdiction to review the denial of discretionary function immunity provided for under Alabama law."⁵²

A denial of a motion for summary judgment is also interlocutorily reviewable under Alabama law, although not as a matter of right. In *Ex Parte Davis*,⁵³ the Alabama Supreme Court held that the denial of a motion for summary judgment based upon discretionary function immunity was reviewable on a petition for writ of mandamus. The court stated: "A petition for a writ of mandamus is the proper means for achieving appellate review of a trial court's denial of absolute and discretionary function immunity."⁵⁴

6. Substantive immunity for local governmental entities

An immunity from tort liability known as "substantive immunity" exists in certain circumstances for local governmental entities. The Alabama Supreme Court has applied this immunity in situations in which the actions at issue relate to a public service function of the local government "so laden with public interest as to outweigh the incidental duty to individual citizens."⁵⁵

The substantive immunity doctrine has been applied to cases in which a municipality has been sued for failure to provide adequate police protection. In *Calogrides v. City of Mobile*,⁵⁶ and *Garrett v. City of Mobile*,⁵⁷ the City of Mobile was sued for failure to provide

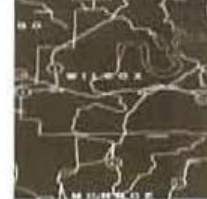
adequate security at a city-sponsored exhibition. The supreme court held that the providing of police protection was one of the functions of governmental activity which would be subject to immunity under the substantive immunity doctrine and denied recovery. However, the supreme court has refused to extend the doctrine to a claim of negligent failure to provide fire protection.⁵⁸

Other cases in which the substantive immunity doctrine has been applied are *Hilliard v. City of Huntsville*,⁵⁹ (negligence in inspecting electrical wiring in new construction) and *Rich v. City of Mobile*⁶⁰ (negligent failure to inspect and negligent inspection of sewer lines). Examples of cases in which substantive immunity has been denied are *City of Mobile v. Sullivan*,⁶¹ (negligent misrepresentation regarding zoning coverage), and *Long v. Jefferson County*,⁶² (negligent maintenance and construction of sewer easement).

7. Effect of individual immunity on the liability of the governmental entity

(a) Lack of liability under common law

If a local governmental entity is claimed to be vicariously liable for the act or omission of a public officer or public employee, and the officer or employee is held to have immunity, then the local governmental entity can have no liability as well. Under Alabama common law principles, a principal can only be held liable on the basis of *respondeat superior* if liability is found on the part of the agent.⁶³ This common law rule has been held to bar claims against municipalities where the officer or employee was found to have immunity.⁶⁴



The rule has also been applied to bar claims against counties where liability was sought to be imposed arising out of the act of the chairman of the county commission.⁶⁵

(b) Statutory immunity arising out of performance of a discretionary function by a law enforcement officer

Section 6-5-338(b) also clothes a municipality with immunity in instances where a police officer is engaged in the performance of a discretionary function. § 6-5-338(b) states that "[t]his section is intended to extend immunity only to peace officers and governmental units or agencies authorized to appoint peace officers." In *Montgomery v. City of Montgomery*,⁶⁶ the court of civil appeals has held that where individual police

officers were held to be entitled to immunity under § 6-5-338(a), the municipality by whom the officers were employed also had immunity. The court of civil appeals stated:

[Officers] Burch and Sellers were immune from liability pursuant to § 6-5-338. Furthermore, contrary to the arguments of [plaintiff] Montgomery, the plain language of *Ala. Code* 1975, § 6-5-338(b), clearly extends discretionary-function immunity to the City of Montgomery, Burch and Sellers' employer.⁶⁷

Judge Albritton in the Middle District of Alabama has analyzed the liability of municipalities under § 6-5-338 and has concluded that, if it is proven that a defendant police officer was acting with-

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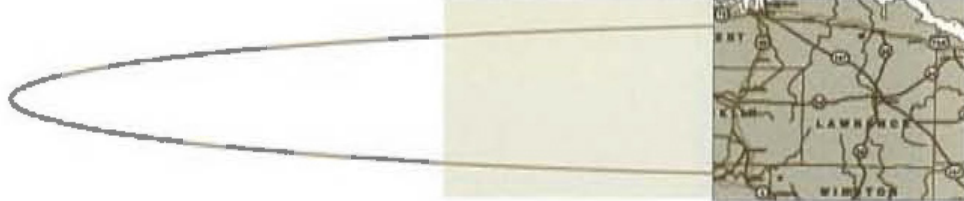
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in the scope of his discretionary authority, a municipality can have no liability as a matter of law, regardless of whether it is shown that the officer was guilty of "willful or malicious conduct or conduct engaged in bad faith." In *Hardy v. Town of Hayneville*,⁶⁸ Judge Albritton held that because municipalities are immune from intentional tort claims under § 11-47-190, the second prong of the analysis of the applicability of discretionary function immunity under § 6-5-338(a) is irrelevant insofar as a municipality is concerned. Judge Albritton stated: "The exception [from § 6-5-338(a) immunity] which renders individual peace officers liable for 'willful or malicious conduct or conduct engaged in bad faith,' ... would not apply to a municipality. Municipalities are immune from claims based on such conduct. *Ala. Code* § 11-47-190."⁶⁹ Based upon this analysis, Judge Albritton concluded in *Hardy* that "the Town of Hayneville could not be held liable for the conduct of [the police officers] if the Court determines that [the officers] were engaged in discretionary functions within the line and scope of their law enforcement duties."⁷⁰

Footnotes

1. *Neighbors v. City of Birmingham*, 384 So.2d 113 (Ala. 1980)
2. *Scott v. City of Mountain Brook*, 602 So.2d 893 (Ala. 1992)



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3. *Aitmeyer v. City of Daphne*, 613 So.2d 366 (Ala. 1993)
4. *Luckie*, 1999 WL 64933
5. *Hilliard v. City of Huntsville*, 585 So.2d 680 (Ala. 1991)
6. *Town of Loxley v. Coleman*, 720 So.2d 907, 909 (Ala. 1998)
7. *Franklin v. City of Huntsville*, 670 So.2d 848 (Ala. 1995); *Luckie* 1999 WL 64933 at *4 ("Our Supreme Court has held that a municipality is not immune under § 11-37-190 from claims of false arrest and false imprisonment"). See also, *Rose v. Town of Jackson's Gap*, 952 F. Supp. 757 n. 15 (M.D. Ala. 1996) ("The Alabama Supreme Court recently [held] that where a plaintiff makes a claim of false arrest or imprisonment and 'alleges a factual pattern that demonstrates 'neglect, carelessness or unskillfulness' on the part of city employees, the plaintiff has a cause of action under § 11-47-190 of the Alabama Code [citations omitted]. So while in the past under Alabama law, [the plaintiff] normally would not have been able to make a claim against the municipality for false imprisonment, she may now do so as long as she alleges negligence by the officers.")
8. *Franklin*, 670 So.2d at 852; *City of Birmingham v. Thompson*, 404 So.2d 589, 592 (Ala. 1991)
9. *Franklin*, 670 So.2d at 852
10. *Parker*, 519 So.2d 442
11. *Parker*, 519 So.2d 442
12. *Hereford v. Jefferson County*, 586 So.2d 200 (Ala. 1991)
13. Section 14-6-1, *Code of Alabama* 1975
14. *King v. Colbert County*, 620 So.2d 623 (Ala. 1993)
15. *King*, 620 So.2d at 625
16. *King*, 620 So.2d at 625
17. *King*, 620 So.2d at 625-26
18. *Patrick v. City of Florida*, 793 F. Supp. 301 (M.D. Ala. 1992)(statute not applicable to actions brought under section 1983)
19. *Macon v. Huntsville Utilities*, 613 So.2d 318 (Ala. 1992) modified, 1992 Ala. LEXIS 1172 (Ala. Sept. 11, 1992)
20. *_So.2d_* (Ala. 1999), 1999 Ala. LEXIS 230 (Ala. August 27, 1999)
21. *Id.* at *19. See § 11-93-1(2)
22. *Id.* at * 23
23. *Diamant v. City of Mobile*, 474 So.2d 663 (Ala. 1985)
24. *Harris v. City of Montgomery*, 436 So.2d 1207 (Ala. 1983)
25. *Acoff v. Abston*, 762 F.2d 1543 (11th Cir. 1985)
26. *Morrow v. Town of Littleville*, 576 So.2d 210 (Ala. 1991)
27. § 6-5-20(a) and § 11-12-6, *Code of Alabama* 1975
28. § 6-5-20(a) *Code of Alabama* 1975
29. *Parker v. Amerason*, 519 So.2d 442 (Ala. 1987)
30. *Karrick*, 659 So.2d 77
31. *Parker*, 519 So.2d 442
32. *Hereford v. Jefferson County*, 586 So.2d 209 (Ala. 1991)
33. *Oliver v. Townsend*, 534 So.2d 1038 (Ala. 1988)
34. *Drain v. Odum*, 631 So.2d 971 (Ala. 1994)
35. *Wright v. Bailey*, 611 So.2d 300 (Ala. 1992)
36. *Alexander v. Hatfield*, 652 So.2d 1142 (Ala. 1994)
37. *King v. Colbert County*, 620 So.2d 623 (Ala. 1993)
38. *Tinney v. Shores*, 77 F.3d 378 (11th Cir. 1996)
39. *Parker*, 519 So.2d 442; *Hereford v. Jefferson County*, 586 So. 2d 209 (Ala. 1991); *Karrick v. Johnson*, 659 So. 2d 77 (Ala. 1995)
40. *Lancaster v. Monroe County*, 116 F.3d 1419, 1431 (11th Cir. 1997)
41. *Grant*, 537 So.2d at 8
42. *Grant*, 537 So.2d at 8
43. *Nance*, 622 So.2d 297 (Ala. 1993) (citing *Grant*, 537 So.2d at 8)
44. *Nance*, 622 So.2d 200 (Ala. 1993)
45. 672 So.2d 805 (Ala. Civ. App. 1995)
46. 699 So.2d 1274 (Ala.Civ.App. 1997)
47. *Couch v. City of Sheffield*, 708 So.2d 144, 153 (Ala. 1998)
48. *Ex Parte Davis*, 721 Ala. 665; *Sheth v. Webster*, 145 F.3d 1231, 1238 (11th Cir. 1998)



49. *Sheth*, 145 F.3d at 1238; *Ex Parte Davis*, 721 So.2d at 689. If a police officer acts outside of a municipality's territorial police jurisdiction, the officer would not be acting within the scope of the officer's discretionary authority. See *Newton v. Town of Columbia*, 695 So.2d 1213 n. 2 (Ala. Civ. App. 1997) ("If the [plaintiff's] residence was outside the town's police jurisdiction, and outside [the county in which the officers were also authorized to act], then Armstrong and the Mayor had no discretion to exercise police authority there.") (Emphasis in original.)
50. *Sheth*, 145 F.3d at 1239; see also *Ex Parte Davis*, 721 So.2d at 689.
51. *Sheth*, 145 F.3d at 1327-38
52. *Sheth*, 145 F.3d at 1238
53. 721 So.2d 689
54. *Ex Parte Davis*, 721 So.2d at 689
55. *Rich v. City of Mobile*, 410 So.2d 385, 387-88 (Ala. 1982)
56. 475 So.2d 560 (Ala. 1985)
57. 481 So.2d 376 (Ala. 1985)
58. *Ziegler v. City of Middlebrook*, 514 So.2d 1275 (Ala. 1987)
59. 585 So.2d 889 (Ala. 1991)
60. 410 So.2d 385
61. 667 So.2d 122 (Ala. Civ. App. 1995)
62. 623 So.2d 1130 (Ala. 1993)
63. *Gore v. City of Hoover*, 559 So.2c 163 (Ala. 1990). See also *United Steel Workers of America v. O'Neal*, 437 So.2d 101 (Ala. 1983); *Larry Terry Contractors, Inc. v. Bogle*, 404 So.2d 613 (Ala. 1981)
64. *Gore*, 559 So.2d at 156
65. *Roden v. Wright*, 646 So.2d 605 (Ala. 1994)
66. 1999 WL 164248
67. *Montgomery*, 1999 WL 164248 at *7
68. 50 F. Supp. 2d 1178 (M.D. Ala. 1999)
69. *Hardy*, 50 F. Supp. 2d at 1201-02
70. 50 F. Supp. 2d at 1202



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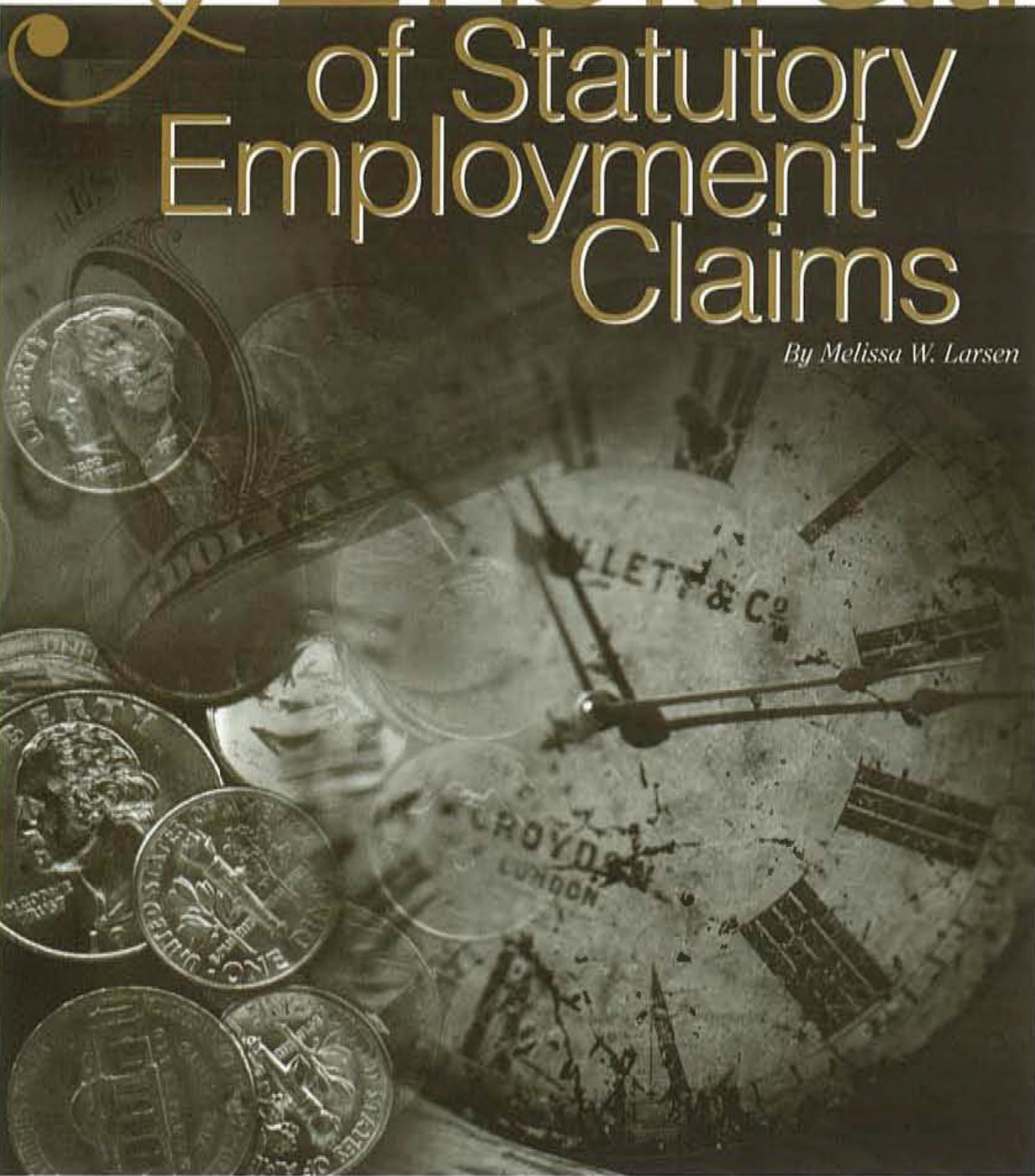
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Arbitration of Statutory Employment Claims

By Melissa W. Larsen





A client/employer comes to your office and says that he understands that employment discrimination claims are dramatically on the rise and that the use of arbitration to handle these claims can save him time money and cut down on his potential liability. Is he right? Are arbitration agreements enforceable as they relate to federal statutory employment claims? Can arbitration be used to discourage employees from filing claims?

Introduction

Congress enacted the Federal Arbitration Act ("FAA") in 1925 at the urging of the nation's business community. The FAA was enacted, in part, to combat what the business community perceived to be courts' hostility toward arbitration agreements. Courts were particularly reluctant to enforce arbitration agreements which related to disputes which might arise after the execution of the agreement, the exact use of arbitration business leaders sought. Despite Congress's enactment of the FAA, the courts were reluctant in their allowance of arbitration. Gradually, however, the mood of courts began to change, setting the stage for the decision in *Gilmer v. Interstate/Johnson Lane Corp.*¹ which found that a claim under the Age Discrimination in Employment Act was subject to compulsory arbitration. The *Gilmer* court stated:

It is by now clear that statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the FAA. Indeed, in recent years we have held enforceable arbitration agreements relating to claims arising under the Sherman Act,...; Section 10(b) of the Securities Exchange Act of

1934,...; the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO),...; and Section 12(2) of the Securities Act of 1933,... In these cases we recognize that '[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statutes; it only submits to their resolution in arbitral, rather than a judicial, forum.'

The FAA does not specifically address employment contracts, rather it mandates that arbitration agreements are "valid, irrevocable and enforceable" with regard to two types of contracts: those relating to a maritime transaction and those involving commerce. Given the broad interpretation of the term involving commerce, almost any employer/employee relationship seems to meet this definition. Many litigants and some courts now appear to gloss over the involving commerce requirement and turn their attention instead to the arbitration agreement itself.

Preserving the Statutory Purpose

After *Gilmer*, the Court of Appeals for the Eleventh Circuit soon followed suit in finding that sexual harassment claims and race discrimination claims under Title VII of the Civil Rights Act were also subject to arbitration.

Correspondingly, as the number of federal employment claims rose, so too did the use of arbitration agreements presumably to avoid such claims. The Eleventh Circuit next turned its attention to ensuring that the dual federal goals of encouraging arbitration and providing an individual meaningful relief pursuant to the various statutory

employment provisions did not become mutually exclusive. In *Paladino v. Avnet Computer Technologies, Inc.*,² though the Eleventh Circuit found that the parties' arbitration agreement was specific enough to include the plaintiff's Title VII claims, it still determined that the agreement was unenforceable. The agreement provided that Avnet and Paladino "consent to the settlement by arbitration of any controversy or claim arising out of or relating to...[Paladino's] employment or the termination of...[her] employment. This clause, alone, would indicate that all claims, statutory and non-statutory, would be included within the scope of the agreement. The agreement, however, contained a second provision which clouded the issue. That clause stated that A[t]he arbitrator is authorized to award damages for breach of contract only, and shall have no authority whatsoever to make an award of other damages." Because of this language, the court refused to enforce the arbitration agreement as it sought to improperly deprive the plaintiff of Title VII damages which would have been available to her in a judicial forum. The court was also bothered by the fact that, by not specifying that the employer would pay the cost of arbitration, the agreement shifted "at least half the hefty cost of an arbitration" and "steep filing fees" to the plaintiff. The court added that to be enforceable, an arbitration agreement that purports to cover statutory claims must contain terms that generally and fairly advise the parties that it, in fact, is intended to cover statutory claims and provide remedies which are fully consistent with the purposes underlying any statutory claim. *Paladino* also expressed serious concern about the attempted use of arbitration agreements by employers to unfairly hamper their employees' rights to obtain appropriate statutory relief.



Drafting an Enforceable Agreement to Arbitrate

Now we turn to the practical question of how do we draft an arbitration agreement for our clients that will be enforced when an employee files a statutory claim? The first step should be a clear communication to the client of what the arbitration agreement can and cannot do. Many employers believe that they can use an arbitration agreement to cut off or limit their employees' rights to bring suit against them. Arbitration agreements which are drafted with this goal in mind are unlikely to be enforced. The client must understand that an enforceable arbitration agreement not only must be fair to the employees, but may also require the employer to shoulder some of the employees' actual costs of arbitration.

Let's turn now to the actual agreement itself. The first issue to consider is where or in what type of document the arbitration agreement should be located. Some employers choose to place an arbitration agreement in their employee

handbooks. When an arbitration agreement is placed within an employee handbook, care should be used to set apart the arbitration provision from the employer's other practices and procedures. If the arbitration provision is included in the handbook, the employee should be required to execute a specific acceptance of the arbitration provision. This acceptance should be separate and apart from any generalized acknowledgment of receipt of the handbook and its policies. In instances where arbitration agreements are included in an employer's handbook, an employee may attempt to avoid the arbitration provision by pointing to other provisions within the handbook which presumably indicate that the handbook is not intended to be a binding contract between the employer and the employee. An obvious way to avoid this issue is to have the arbitration agreement as a separate document. New employees may be asked to sign the arbitration agreement prior to being employed. Existing employees may be asked to execute the agreement as a condition of their continued employment. An arbitration agreement to be used with existing employees, however, should be fully explained to the employees prior to the time that they are asked to execute the agreement. This can be done through company memos detailing changes in the company's dispute resolution process, training classes on the agreement, or issuance of an updated employee handbook which sets out the details of the agreement but which requires the employee to execute a separate and distinct arbitration agreement.

The language of the agreement itself must set out what types of claims are to be covered by arbitration. Several courts have found that the language "any and all disputes arising out of the employee's employment relationship and/or

termination" encompasses any potential statutory claims. To eliminate any doubt as to whether or not statutory claims are encompassed within the arbitration agreement the above phrase could be coupled with the statement "including, but not limited to, all federal and state statutory claims."

The agreement should make clear that an employee can obtain, through arbitration, any and all relief to which he would have been entitled pursuant to the statute. The arbitration agreement should also include provisions concerning the manner in which the arbitration will be conducted. Many arbitration agreements state that the arbitration will be conducted pursuant to the rules of the American Arbitration Association.⁷ Such a general statement covers the procedural rules needed to actually conduct the arbitration. Though the AAA rules provide a method to determine the number of arbitrators to be used, this issue, as well as the payment of the costs associated with the arbitration, are best addressed in the agreement. In determining how many arbitrators should be used, the employer should keep in mind that the greater the number of arbitrators used, the higher the cost. This relates not only to the actual payment of the arbitrator's fees, but also to the initial filing fee. The filing fee for a case with one arbitrator is \$500, while the filing fee for a case with three or more arbitrators is \$1,500. Likewise, arbitration with a single arbitrator requires a hearing fee of \$150 per day, while an arbitration hearing conducted before a multi-arbitrator panel requires a fee of \$250 per day. These fees are particularly significant if the employer is going to shoulder a substantial portion of such fees itself. The arbitration agreement should specifically address the payment of the



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arbitration costs by the parties. As mentioned earlier, the court will not enforce an arbitration agreement which places a disproportionate share of the cost of arbitration on an employee who is unable to bear that cost. For an employer's mid- to lower-level employees, the employer should be prepared to shoulder a substantial part, if not all, of the cost of the arbitration. Courts may not, however, be so quick to require employers to pay the cost of arbitration for its more senior executive employees. Keeping in mind that the court's overriding concern is fairness to the employee, a more senior employee could more easily afford the cost associated with arbitration. Similarly, in determining what amount of the cost to bear, the employer should keep in mind that it would not be unreasonable to require the employee to pay a filing fee equivalent to the cost of filing a judicial complaint.

An arbitration agreement which adequately addresses the above issues should be found by the federal courts to be enforceable in the context of an employee's statutory employment claim. As a final caveat, before sending off a client with his newly drafted arbitration agreement, be sure that she understands that, unlike an initial judicial determination, the determination of an arbitrator is a final, non-appealable order. ■

Endnotes

1. 500 U.S. 20 (1991).
2. *Paladino v. Abvet Computer Technologies, Inc.*, 134 F.3d 1045 (11th Cir. 1998).
3. Employer should be aware that pursuant to the rules of the American Arbitration Association employers who make such a reference in their arbitration agreements or alternative dispute resolution plans are required to notify the AAA within 30 days of its commencement of use of such agreement or plan. AAA's National Rules for the Resolution of Employment Disputes Rule 2 (January 1, 1999).



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By Bert S. Nettles and Amy Lynn Stuedeman

On April 7, 2000, the Alabama Pattern Jury Instructions Committee (Civil) presented \$50,000 checks to both the University of Alabama School of Law and Cumberland Law School in order to create *APJI* scholarships for those institutions. These recent gifts were made possible by the royalties from the sales of the widely utilized second edition of the committee's *Alabama Pattern Jury Instructions (Civil)*, published in 1993 by Lawyers Cooperative Publishing (now a subsidiary of West Group). These contributions are the latest of several which the committee has made to our legal community.

The *APJI* has a short but active history. In 1966, *The Alabama Lawyer* published an address presented by the late Judge Ingram V. Beasley of Birmingham during the Alabama Association of Circuit Judges' seminar in July 1965. In his address, Judge Beasley discussed the innovative subject of "Pattern Jury Charges." He observed that California had been the first state to formally adopt and publish jury instructions and that several other states had followed its lead. At that time, courts were already subject to problems of case backlog in the face of increased case filings. To alleviate this growing problem, Judge Beasley recommended published jury instructions as part of the modernization of jury trials, and urged the creation of a committee "to investigate the improvement of our judicial system with special emphasis on jury trials." In keeping with Judge Beasley's recommendation, the Alabama Pattern Jury Instructions Committee (Civil) was formed in early 1967.

The original committee was developed as a project of the Alabama Program of Continuing Legal Education under the directorship of Douglas Lansford. Committee members included legal professionals from the Alabama Circuit Judges' Association, the Alabama Plaintiffs' Lawyers' Association and the Alabama Defense Lawyers' Association. The late Judge James N. Bloodworth of Decatur served as committee chairman, and Judge Beasley was vice-chairman. Other original committee members were Judge Will G. Caffey, Jr. of Mobile, Judge William C. Sullivan of Talladega, H. R. Burnham of Anniston, the late Richard L. Jones of Birmingham, and Janie L. Shores of



Seated: Janie L. Shores, Becky Clapp, James O. Haley, William C. Sullivan
Standing: Bert S. Nettles, Arthur J. Hanes, Jr., Brittin T. Coleman, William H. Atkinson, E. Ted Taylor, Thomas A. Woodall, J. Scott Vowell, William R. Gordon, Charles W. Gamble, Carlton Mayhall, Jr., Robert L. Gonce

Samford University Photographic Services

Birmingham, who also served as the first committee reporter.

When Judge Bloodworth left the committee to become an Alabama Supreme Court justice, Judge Beasley became the committee's chairman, while Judge Sullivan assumed the position of vice-chairman. Judge Caffey went on to become a United States Referee in Bankruptcy, and was replaced on the committee by Judge Reneau P. Almon of Moulton. After Judge Almon became a member of the Alabama Court of Criminal Appeals (and later a justice on the Alabama Supreme Court), Judge Edward N. Scruggs of Guntersville filled his vacancy.

In its early years the committee met for a full day once a month and undertook the daunting task of drafting jury instructions which were legally accurate, unbiased, and understandable to laymen. A few years later, the committee reported its undertaking to the Alabama Supreme Court, providing the court with a pre-publication manuscript of *Alabama Pattern Jury Instructions in Civil Cases*. The formation of a permanent committee was recommended to review these instructions and develop additional instructions as needed. On April 19, 1973, the supreme court issued an order acknowledging "the painstaking care, attention to detail and many hours of work and study" put into the instruc-

tions, finding that the instructions would serve as "an invaluable aid to trial judges of this State in charging juries in civil cases," and recommending use of the instructions "by bench and bar." Further, the court ordered the publication of the instructions, as well as the creation of a permanent committee to review and improve upon these instructions.

At the time of the *Alabama Pattern Jury Instructions'* first publication in 1972, committee members were Judge Beasley (chairman), Judge Sullivan (vice-chairman), Judge Robert E. L. Key of Evergreen, Judge George Murphy of Gadsden, Judge Scruggs, H. R. Burnham, Richard L. Jones, Sonny Hornsby of Tallassee, and Professor Janie Shores. Of these members, Jones and Shores later became justices of the Alabama Supreme Court, and Hornsby a chief justice. On August 10, 1973, the committee was incorporated as a non-profit organization, and has continued as such through the present time.

Justice Janie Shores, who resumed her current committee position after leaving the bench, recalls that before the first set of instructions was published, "It was a real burden for trial judges and lawyers to get charges prepared." The instructions, she says, proved to be "a vast improvement over the old system." Judge Sullivan, who served on the original committee and who has acted as commit-



Left: William C. Sullivan, chairman, Alabama Pattern Jury Instructions Committee (Civil), presenting \$50,000 check to John Saxon, president of the University of Alabama Law Foundation



Left: Thomas A. Woodall, vice-chairman, Alabama Pattern Jury Instructions Committee (Civil), presenting \$50,000 check to James N. Lewis, Jr., vice-dean, development and administration, Cumberland School of Law, Samford University

tee chairman for the past 25 years, remembers being given only a few standard jury instructions when he first began hearing cases. To him, the introduction of the pattern instructions "made all the difference in the world." Current member Ted Taylor, who has a well-established plaintiffs' practice, remembers a time when plaintiffs' attorneys shied away from requesting any charges because plaintiffs' verdicts were frequently reversed on appeal due to erroneous instructions. Taylor credits the *APJI* for the fact that plaintiffs' attorneys now customarily request the pattern instructions without fear of verdict upheavals.

Every year after the first publication the committee has produced a supplement to the instructions. Judge Sullivan explained that "because the 1992 supplement had more pages than the first edition, the committee produced a two-volume set," *Alabama Pattern Jury Instructions (Civil)*.

Since its initial publication, *APJI* has assisted judges and attorneys by providing straightforward, understandable and accurate instructions which save judges and lawyers substantial time and headaches in preparing for and conducting trials. *APJI* has also become regarded as an indispensable research tool. Judge Sullivan finds that "next to the *Alabama Code*, the *Alabama Pattern Jury Instructions* is the most useful research tool to own. Lawyers can pick up *APJI* and quickly find the elements of a cause of action." He adds that the 1993 volumes and their annual supplements are available in disk format, making the second edition even more user-friendly than the first.

Substantial efforts have been made by

committee members in authoring both *APJI* editions. Becky Clapp, law librarian and professor of law at Cumberland, who has served as the committee's reporter since 1978, and to whom Judge Sullivan "can't give enough praise," explains that "the committee has continued to meet once a month since its inception." Cumberland has always been home to the committee, and the members now meet there in the Friendship Room of the law library.

Professor Clapp says the instruction drafting process begins with Judge Sullivan giving draft assignments to members within their areas of interest and expertise. Current committee member Judge Robert B. Harwood, Jr. describes that next, "Extensive legal research by one or more committee members precedes the presentation of a proposed instruction to the whole committee, and the proposed instruction is then subjected to intense study and peer review by the committee, often involving a number of redrafts over the course of several months, before receiving final approval."

Surprisingly, both current and former members overwhelmingly agree that despite there being broad-based representation on the committee, everyone remains unbiased and focused on the committee's goals. Current committee vice-chairman Judge Thomas A. Woodall, first appointed to the committee in 1985, observes, "The most amazing thing to me is how hard everyone on the committee has worked to make the charges accurate." Last year's Birmingham Bar Association President and former *APJI* member Britt Coleman, who primarily

represents defendants, attests that the committee has always tried "to give the bench and bar useful and uniform tools for instructing the jury." Ted Taylor believes that "the attorneys leave their plaintiff and defense badges at the front door when we come into the meeting."

This is not to say that the committee never engages in what Coleman, who served on the committee for approximately a decade, describes as "lively debate" about proposed instructions. However, an instruction is not approved unless and until there is a solid consensus that it presents a clearly correct statement of Alabama law. The committee attributes much of its success in reaching such agreements to Judge Sullivan. Vice-chair Judge Woodall states that, "The committee has benefited greatly from Judge Sullivan's leadership, and he deserves a lot of credit for the committee working together as well as it has."

The *APJI* Committee presently is working on a number of draft instructions to be included in the upcoming annual *APJI* supplement. The committee strongly encourages both the bench and bar to contact members with suggestions of new instructions and instruction changes which will allow the committee to even better serve Alabama's civil trial needs. Please send suggestions to *APJI* Committee Chairman William C. Sullivan, Love, Love & Love, P.C., P.O. Box 517, Talladega 35161.

Current *APJI* Committee Members

Judge William C. Sullivan, chairman
Judge Thomas A. Woodall, vice-chairman

William H. Atkinson
 Professor Becky Clapp
 Gregory S. Cusimano
 Professor Charles W. Gamble
 Robert L. Gonce
 Judge William R. Gordon
 Judge Arthur J. Hanes, Jr.
 Judge Robert B. Harwood, Jr.
 Judge Carlton Mayhall, Jr.
 Tyrone C. Means
 Bert S. Nettles
 Justice Janie L. Shores
 E. Ted Taylor
 Judge J. Scott Vowell
 Leila Hirayama Watson

Dean Nathaniel Hansford
 R. Benjamin Hogan, III
 Chief Justice Sonny Hornsby
 Justice Richard L. Jones
 Douglas Lanford
 Judge Robert E. L. Key
 Professor Francis E. McGovern
 William D. Melton
 Judge Josh Mullins
 Judge George Murphy
 Judge Claud Neilson
 Judge Don Patterson
 Professor Herbert Peterson
 Professor Robert Reigert
 Judge Jack C. Riley
 Judge Edward N. Scruggs
 George Earl Smith
 Stan Starnes, Sr.
 Frank M. Wilson

Others who have substantially contributed to the *APJI* include Ann McKinney (court reporter to Judge Sullivan), Alice Bullington (secretary to Professor Clapp at Cumberland), and the many subcommittee members who have assisted the committee since its creation, as well as several former Cumberland law students who assisted the committee in its early years. ■

Former APJI Committee Members

Justice Reneau P. Almon
 Professor Mable F. Beasley
 Justice James N. Bloodworth
 H. R. Burnham
 Judge Will G. Caffey, Jr.
 Davis Carr
 Andrew T. Citrin
 Brittin T. Coleman
 John T. Crowder
 Judge James O. Haley



Bert S. Nettles

Bert S. Nettles is a senior member of the Birmingham firm of London & Yancey, L.L.C. He is a long-time member of the APJI Committee, a former president of the Alabama Defense Lawyers Association, and a member of the International Association of Defense Counsel and the American Law Institute.



Amy L. Stuedeman

Amy Lynn Stuedeman, a native of Birmingham, graduated from the University of Alabama (B.A., *summa cum laude*, 1993). After graduating from Alabama, she attended law school at the University of Georgia (J.D., *cum laude*, 1997) and is now an associate at London & Yancey, L.L.C.

Free Report Shows Lawyers How to Get More Clients

Calif.—Why do some lawyers get rich while others struggle to pay their bills?

The answer, according to attorney, David M. Ward, has nothing to do with talent, education, hard work, or even luck.

"The lawyers who make the big money are not necessarily better lawyers," he says. "They have simply learned how to market their services."

A successful sole practitioner who once struggled to attract clients, Ward credits his turnaround to a referral marketing system he developed six years ago.

"I went from dead broke and drowning in debt to earning \$300,000 a year, practically overnight," he says.

Most lawyers depend on referrals, he notes, but not one in 100 uses a referral system.

"Without a system, referrals

are unpredictable. You may get new clients this month, you may not," he says.

A referral system, Ward says, can bring in a steady stream of new clients, month after month, year after year.

"It feels great to come to the office every day knowing the phone will ring and new business will be on the line."

Ward has taught his referral system to over 2,500 lawyers worldwide, and has written a new report, "How To Get More Clients In A Month Than You Now Get All Year!" which reveals how any lawyer can use this system to get more clients and increase their income.

Alabama lawyers can get a FREE copy of this report by calling 1-800-562-4627, a 24-hour free recorded message, or visiting Ward's web site, <http://www.davidward.com>

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BOOK REVIEW

Lawyers in a New South City

A History of the Legal Profession in Birmingham

By Pat Boyd Rumore • Association Publishing Company, Birmingham, Alabama 2000

Reviewed by Robert R. Kracke

In the early 1990s this reviewer and Beth Carmichael, executive director of the Birmingham Bar Association, approached the leadership of the BBA with a proposal that a history be written of the bar with a firm profile section which would finance the undertaking. There was little interest in the project. During the administration of BBA President Carol Ann Smith in 1997, the Executive Committee approved the project and a History and Archives Committee was formed. The committee was chaired by Sam Rumore, now president-elect of the Alabama State Bar, and Lyman Harris as co-chair. In 1998, Sam again chaired the committee and James L. O'Kelley co-chaired it. In 1999, Harold Williams became the chairman and David Ward the co-chair.

A thoroughly researched, well-written, 130-year history of the Birmingham Bar Association, numbering 312 pages and covering all aspects of the association before and after its formation, was the result of that committee's three-year effort. The subscription for firm profiles and book sales, for which there was previously little interest, generated between \$275,000 and \$300,000.

Pat Boyd Rumore, an attorney with her husband in the firm of Miglionico & Rumore, is primarily responsible for the high quality of authorship and presentation of the story of the membership of this bar association from its beginnings in 1885. Of course, proper credit would not be complete without a mention of the author's husband as stated in the preface to this book: "Finally, I want to acknowledge the contribution of my husband, Sam Rumore, who probably is most responsible for my being asked to write this book (a story too long and involved to tell here). Sam is a wonderful historian in his own right. His lifelong avocation as a historian of Birmingham and Alabama provided the resources that allowed me to include in this history more detail on more subjects than any of us could have imagined when I first accepted the assignment. It was wonderful to mention a possible source to my husband and have him be able to pull it from his personal history collection in our home. It was also wonderful to be able to look to him to help me present this material in an organized and accurate fashion. We have collaborated many



Pat Rumore

times throughout our marriage and this book has been one of the most enjoyable collaborations we have undertaken."

The labors and persistence of Harold Williams as chairman of the History and Archives Committee were legion. He not only participated in the organization of the material but, along with this reviewer, proof-read every draft of the book. Sam and Harold and this reviewer also met, along with the author, with photographic archivist of the Birmingham Public Library, Don Veasey, who in his capacity as curator of the photographic collections of the Department of Archives and Manuscripts, allowed us to sift through hundreds of photographs which have become a significant complement to the text. For instance, the son of the one of the pictured lawyers, William H. Brantley, Jr., commented to this reviewer that he had never seen the photograph of his father that appears in this book. This is mentioned here to emphasize the resources that were made available to the committee, the author and the publisher, John Compton, who was an integral part of the project's completion.

The BBA has certainly had some historically colorful characters among its membership. Luther Patrick, an attorney who was also a radio personality on Birmingham's first radio station, became a four-term congressman who was truly a maverick and a colorful lawyer. He once composed and filed a complaint for divorce in verse which satisfied all requirements of equity pleading. This book not only features prominent past members of the Birmingham bench and bar but even covers controversial subjects. Bull Connor and his sex scandal trial of 1952 is covered. The bar's opposition to the Ku Klux Klan in 1922 is detailed. The book contains a "...full text of the minutes of the meetings concerning the Klan as taken from the records of the Birmingham Bar Association." The bar was successful in requiring state and county candidates for office to reveal any affiliation with the Klan. It was a hotly contested issue with a vote taken of 64 members in favor of the proposal and 46 members against it. The quickie divorce scandal which was policed by the bar in the 1970s and stopped is also mentioned. The political schism that took place in one of Alabama's oldest and most prominent firms between Joseph F. Johnston and his brother, Paul Johnston, is featured. This reviewer distinctly remembers this matter appearing in Time magazine as an item of national interest. Of course, Hugo Black, as a lawyer, a Klan member, a senator and a judge, appears often in these pages. One sidebar recounts the representation by Mr. Black of a mur-

der defendant who was acquitted by a jury wherein the defendant, an irate father of a daughter who married a Puerto Rican, killed a Roman Catholic priest who performed the ceremony. Black won the case by knowing which jurors were on the membership rolls of the Klan (a member himself), and by striking the jury to include his prejudiced members and by darkening the courtroom to make the Puerto Rican's skin appear darker than in reality. Also mentioned, on a more positive note, are attorneys who have attained leadership in Alabama's premier corporations, as well as prominent members of the bench and bar.

There is a section in the book concerning female attorneys who trailblazed gender acceptance, including "Miss" Nina Miglionico and Justice Janie Shores. Also, there is proper credit given to Arthur Shores, Oscar Adams, Jr. and Judge U.W. Clemon, with pictures and text, as black attorneys who trailblazed racial acceptance. It also gives recognition to those attorneys who, in years past, took an unpopular position in public affairs and are now revered because of their courageous action. One of these was Oscar W. Underwood, one of the founders of the Birmingham Bar Association, who probably lost his United States senatorship because of his opposition to the Klan. Another was Sidney Johnston Bowie, a U.S. Congressman, promoter of the 1901 Alabama Constitution and an advocate against the Klan.

The firm profiles, listed alphabetically in the latter half of the book, tell the story of not only the old established firms but the newer ones as well.

This reviewer has attempted to tell the story in this review of what appeared initially to be an impossible publishing task but which, because of the efforts of so many here unnamed History and Archives Committee members, became a realized accomplishment. It is the hope of the BBA that its efforts will inspire lawyers in other, older cities in Alabama to undertake a history of their bar which, because of their deeper roots than those of Birmingham, could likewise produce a valuable volume of historical permanence chronicling the achievements of attorneys and judges in their area.

To say that this book is a quality publication would be an understatement. It is a volume that should and will serve as a resource for future historians and a reference of historical accuracy. It is a bargain at \$40 plus \$8 postage and handling, and can be ordered from the BBA, 2021 Second Avenue, N., Birmingham 35203-3703. Phone (205) 251-8006. ■



Robert R. Kracke

Robert R. Kracke

Robert R. Kracke received his B.A. in 1962 from Samford University and his J.D. degree in 1965 from Cumberland School of Law, Samford University. He has served on the Birmingham Bar Association's Executive Committee and as chairman of its Law Day Committee and editor and book reviewer for the *Birmingham Bar Bulletin*. Kracke has had numerous articles published in the *Alabama Defense Lawyers Journal*, the *Alabama Journal of Medical Science* and *The Alabama Lawyer*.

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DISCIPLINARY NOTICES

Reinstatements

- The Supreme Court of Alabama entered an order reinstating Montgomery attorney **Ranah Leigh Stapleton** to the practice of law in the State of Alabama effective April 20, 2000. This order was based upon the decision of Panel I of the Disciplinary Board.
- Effective February 28, 2000, attorney **David Garrett Hooper** of Montgomery has been reinstated to the practice of law in the State of Alabama. He was suspended on November 22, 1999 for noncompliance with the 1998 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [CLE No. 99-14]
- Effective March 22, 2000, attorney **Orrin Russell Ford** of Wilsonville was reinstated to the practice of law in the State of Alabama. He was suspended in 1995 for failure to comply

with the 1995 Client Security Fund Assessment and the 1994 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [Pet. 00-001; CSF 95-02; CLE 95-04]

Disbarments

- On May 1, 2000, the Alabama Supreme Court disbarred **David Lloyd Miller** of Brownstown, Illinois in accordance with his consent to disbarment filed with the Disciplinary Board. Miller was admitted in the states of Alabama and Illinois. He practiced solely in Illinois and was disbarred by consent in Illinois on January 24, 2000. Between 1995 and 1998, Miller used \$171,600 of the funds of an estate which he was representing for his own personal or business purposes. Miller opted to consent to disbarment in Alabama rather than go through the reciprocal discipline process. [Rule 25(a); Pet. 99-03]

- On December 29, 1999, the Supreme Court of Alabama adopted the Disciplinary Commission's order disbaring Tuscaloosa attorney **John Archie Acker, Jr.** on grounds that he had been convicted of a "serious crime." Acker has previously pled guilty to a felony in the U.S. District Court for the Northern District of Alabama. The offense charged was conspiracy to defeat income taxes. Acker was served with notice of the Disciplinary Commission's hearing by publication. He did not appear. [Rule 22, Pet. No. 99-02]

Suspensions

- Mobile attorney **Ruthann Mott McCrory** was interimly suspended by Order of the Disciplinary Commission of the Alabama State Bar effective May 15, 2000. McCrory was suspended pursuant to Rule 20(a), Alabama Rules of Disciplinary Procedure. The Office of General Counsel filed a petition pursuant to

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Rule 20(a) based upon sworn affidavits from clients that the respondent attorney had abandoned their cases, failed to communicate with them regarding their cases and failed to account for unearned retainer fees and trust funds. The Disciplinary Commission further ordered that McCrory be restricted from maintaining a trust account. [Rule 20(a); Pet. 00-05]

- Birmingham attorney **Jerome Tucker** received a 45-day suspension from the Disciplinary Board of the Alabama State Bar on February 23, 2000. However, the Disciplinary Board stayed the 45-day suspension and placed Tucker on probation for a period of two years. Tucker was appointed to represent an indigent criminal defendant on appeal to the Alabama Court of Criminal Appeals, but failed to file a brief after having been notified by the court that his brief was overdue and after having been granted an extension of time in which to file the brief. The board found Tucker's conduct to have violated Rule 1.3 of the Alabama Rules of Professional Conduct which provides that an attorney shall not willfully neglect a legal matter and Rule 8.4(g), *A.R.P.C.*, which prohibits conduct that reflects adversely on an attorney's fitness to practice law. During the probationary period, Tucker is to practice law under the supervision and tutelage of a mentor attorney and must participate in the Law Office Management Assistance Program. [ASB No. 98-245]
- On February 21, 2000, the Disciplinary Board accepted a conditional guilty plea from Scottsboro attorney **Dennis G. Nichols**. The guilty plea resolved three cases in which clients had complained about neglect of their legal matters and lack of communication by Nichols. In one instance he failed to timely respond to the bar investigation. Nichols received a 91-day suspension which is being held in abeyance pending his successful completion of one year's probation. The Rules of Professional Conduct implicated were Rules 1.3, 1.4(a) and 8.1(b). Nichols was admitted in 1989 and

had no prior discipline. [ASB Nos. 99-39(A), 99-136(A) & 99-174(A)]

- Mobile attorney **Clarence Christopher Clanton** was interimly suspended from the practice of law in the State of Alabama pursuant to Rule 20(a), Alabama Rules of Disciplinary Procedure, by order of the Disciplinary Commission of the Alabama State Bar dated March 17, 2000. The Disciplinary Commission suspended Clanton on the basis of information provided by the Grievance Committee of the Mobile Bar Association to the effect that on March 14, 2000, Clanton was arrested for the possession of crack cocaine, drug paraphernalia and other illegal substances. The Disciplinary Commission determined that Clanton's conduct is causing or is likely to cause immediate and serious injury to his present clients and to the public. [Rule 20(a); Pet. 00-04]

Public Reprimands

- Birmingham attorney **Jerome Tucker** received a public reprimand without general publication for willfully neglecting a legal matter entrusted to him. He represented a client who alleged that he was wrongfully terminated. Because of poor communication with the trial court and the failure to file certain ordered exhibits, the client's case was dismissed twice on defendant's motion for summary judgment. The court of civil appeals remanded after the first dismissal but affirmed on the second occasion because of Tucker's failure to file an appropriate post-trial motion. His conduct was in violation of Rule 1.3

of the Rules of Professional Conduct [ASB No. 97-270(A)]

- Springfield, Missouri attorney **Nicholas Nagrich** (also admitted in Alabama) received a public reprimand without general publication. He was suspended indefinitely by the United States District Court for the Northern District of Alabama for conduct amounting to willful contempt of the District Court's orders. Nagrich had been representing a plaintiff in a racial discrimination case before that court. He moved from Alabama to Missouri and effectively stopped representing his client without obtaining a withdrawal order from the U. S. District Court. He failed to comply with disclosure deadlines and did not attend the scheduled pre-trial conference. The court reported the matter to the bar. His conduct constituted a violation of rules 1.3 (willful neglect) and 1.4(a) (failure to communicate). No prior discipline was involved or considered. [ASB No. 99-135(A)]
- Birmingham attorney **William Edward Ramsay** received a public reprimand without general publication for neglecting three client matters and for failing to communicate with the clients during the latter part of 1991. Ramsay accepted fees in fraud, divorce and bankruptcy cases. He failed to do any significant work in the matters. On February 1, 1992, he petitioned for disability inactive status and was transferred to that category by the Disciplinary Commission. He did not notify his

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clients about this circumstance prior to abandoning his practice. His conduct was found to be in violation of rules 1.3 and 1.4(a) of the Rules of Professional Conduct. Clients were reimbursed fees by the Client Security Fund. Ramsay has made restitution to the fund. [ASB Nos. 92-082(A), 92-146(A) & 92-218(A)]

- On March 17, 2000, Mobile attorney **John Mark Greer** received a public reprimand with general publication for a violation of rules 1.3, 1.4(a) and 5.3(b) of the Rules of Professional Conduct. Greer was retained in November 1997 to represent a client and her husband in an uncontested divorce. As of January 1998, all necessary documents had been prepared, and the fee of \$350 had been paid. In March 1998, the client made several calls to Greer's office in an effort to learn about the status of the divorce. Greer never returned any calls and his office staff was unable to answer any questions. After calling the circuit court in March, the client learned that the case had not been filed. Greer stated that his staff did not notify him that the case was ready for filing in January. The case was finally filed on March 27, 1998. After March 27th, the client called often to check on the status, and was told that they were awaiting a ruling from the court. In fact, the pleadings submitted in March had been returned due to errors. This was not rectified until July 17, 1998. The divorce was finally granted on August 6, 1998. [Prior discipline consisted of Public Reprimand with General Publication (7/17/94) and a Private Reprimand (12/8/97).]
- Mobile attorney **Mayer William Perloff** received a public reprimand with general publication for violating rules 4.1, 4.3 and 8.4(d) of the Alabama Rules of Professional Conduct. Perloff represented a client in her claim to life insurance proceeds. Perloff engaged in settlement negotiations with the insurance company on behalf of the client and also on behalf of the mother of the deceased. Perloff represented to the mother of the deceased that he was a

disinterested party when in fact he represented the rival claimant to the insurance proceeds. Furthermore, Perloff represented to the insurance company that he was acting on the behalf of both. Perloff also made false or unfounded representations to the mother of the deceased regarding the amount of the insurance proceeds she was entitled to receive. [ASB No. 96-276(A)]

- Birmingham attorney **Edwin Ogden Rogers** received a public reprimand without general publication for violating Rule 8.4(g), Alabama Rules of Professional Conduct. During depositions, Rogers got into a dispute with opposing counsel concerning scheduling problems related to the deposition. Upon termination of the depositions, statements were made by each attorney for the record. After these statements were concluded, as Rogers was leaving the conference room, he "erupted into a very violent state" and physically attacked opposing counsel, shouting, cursing and threatening him as he fell to the floor. Non-lawyer witnesses present for the deposition had to intervene to stop Rogers's attack. Opposing counsel received physical injuries that required medical attention as a result of the attack. [ASB No. 97-248(A)]
- Abbeville attorney **Christopher Paul Turner** was disciplined by the Disciplinary Board of the Alabama State Bar by order entered October 21, 1999. As part of the discipline imposed, Turner received a public reprimand with general publication pursuant to his plea of guilty to soliciting professional employment from prospective clients, a violation of Rule 7.3, Alabama Rules of Professional Conduct. Turner contacted individuals with whom he had no prior professional or familial relationship for the purpose of soliciting them as clients. Although Turner also had a legitimate reason to contact these individuals, because he did not strictly comply with the Alabama Rules of Professional Conduct, he was disciplined for his actions. [ASB Nos. 98-105 and 98-138]

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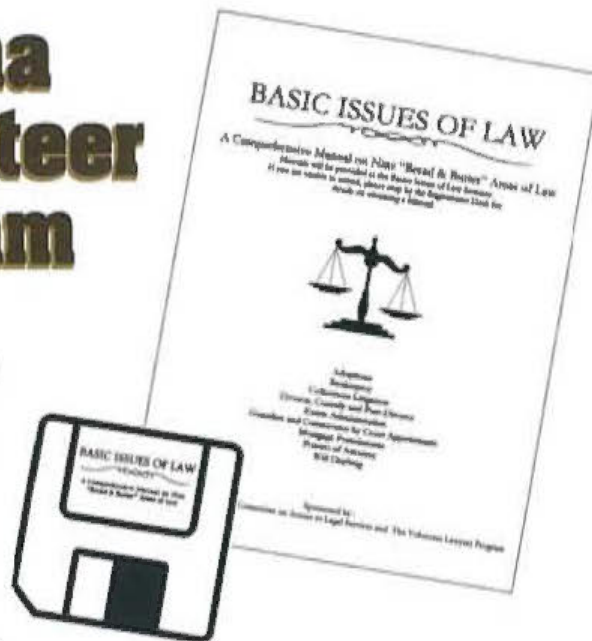
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