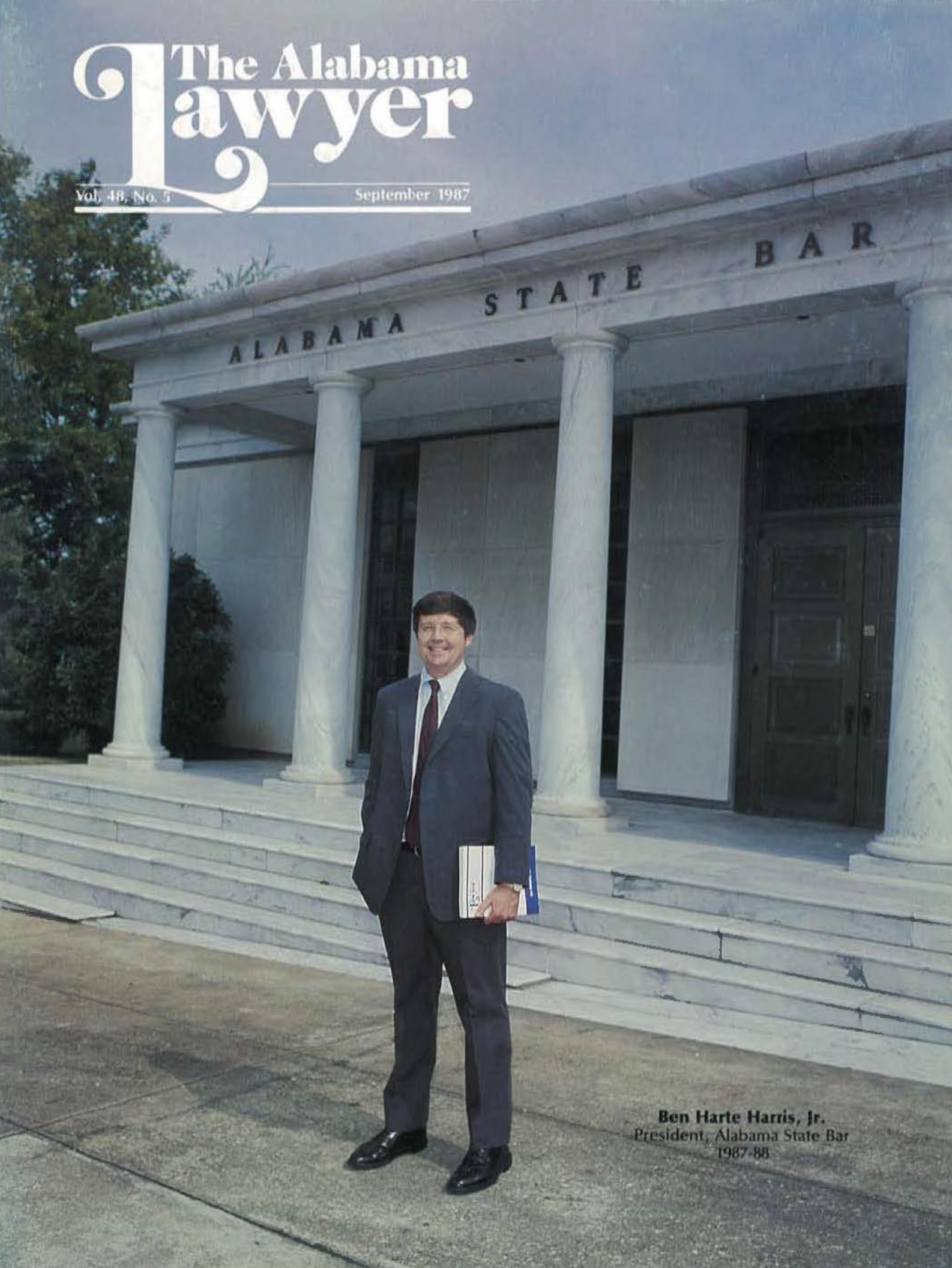
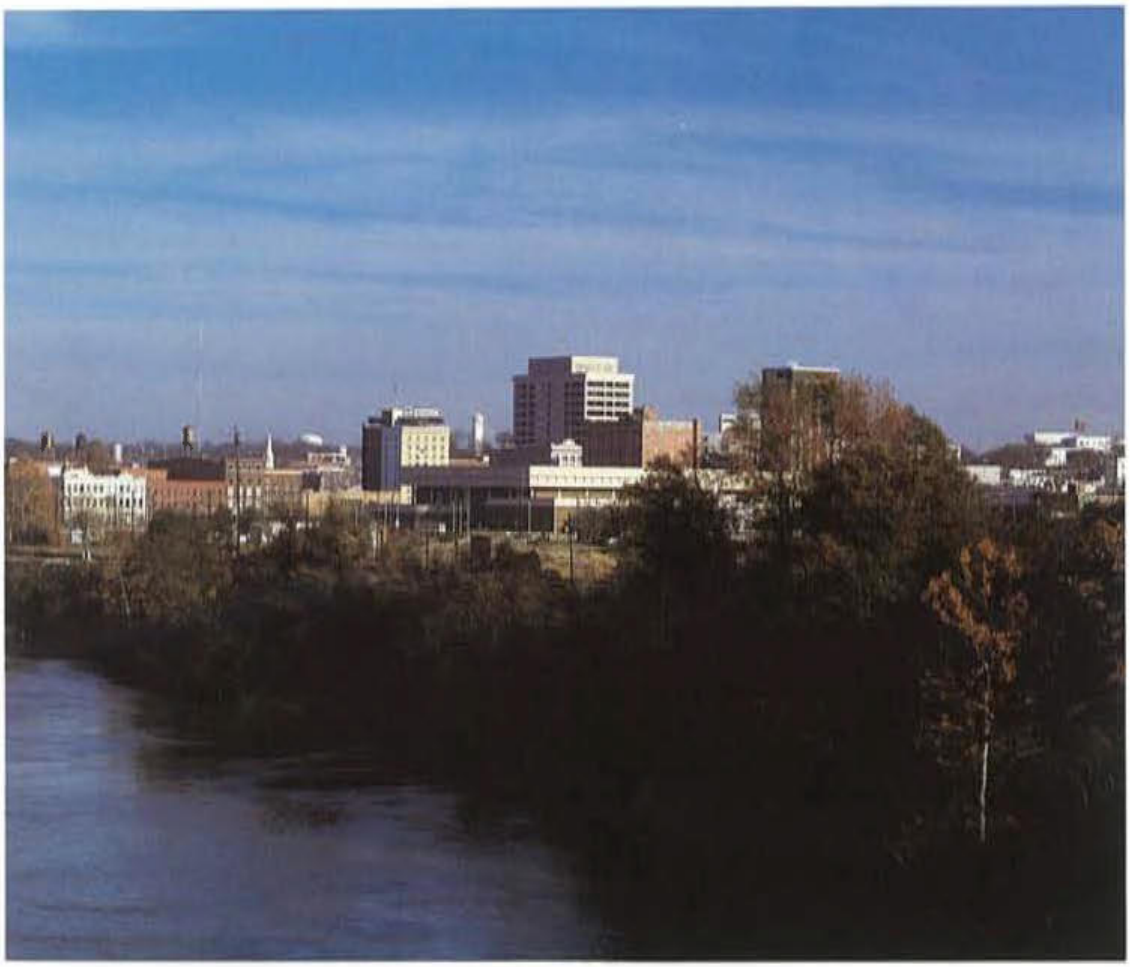
The Alabama Lawyer

Vol. 48, No. 5 September 1987



Ben Harte Harris, Jr.
President, Alabama State Bar
1987-88



The Union Bank Trust Department. Your Hometown Advantage.

Come Home To Us. **UNION BANK**

UNION BANK & TRUST CO., MONTGOMERY, ALABAMA/MEMBER FDIC

THOSE WHO AREN'T COMPETITIVE END UP HERE.

It's a fact of life, off the field as well as on. The players who are strong and skillful; those who assemble the best team reach their goal. The others watch from the sideline.

Our goal is to provide you with the very best professional liability insurance coverage. And we have the team to beat.

The Alabama State Bar. Your association, solely dedicated to serving Alabama attorneys. In touch with your needs.

Kirke-Van Orsdel Insurance Services. The nation's largest administrator of bar-sponsored liability insurance programs. Experienced. Responsive. A company built on exceptional customer service.

The Home Insurance Company. Underwriter of more professional liability insurance plans than any other. Renowned as the nation's premier liability insurance carrier.

Together, we've designed the LPL plan you've been waiting for. One of the broadest policies in the United States. Competitively priced. With the most responsive customer services anywhere.

You be the judge. Just call Kirke-Van Orsdel Insurance Services toll-free, 1-800-441-1344 to find out more about the Alabama State Bar's new Lawyers Professional Liability Plan. You'll discover that we didn't just come to play.

We came to win.

Kirke-Van Orsdel Insurance Services, Inc.
777 Third Street / Des Moines, Iowa 50309

The Alabama Lawyer

VOL. 48, NO. 5 SEPTEMBER 1987

In Brief

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

The Alabama Lawyer is published seven times a year for $15 per year in the United States and $20 outside the United States by the Alabama State Bar, 415 Dexter Avenue, Montgomery, AL 36104. Single issues are $3, plus postage for the journal, and $10, plus postage, for the directory. Second-class postage paid at Montgomery, AL.

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

On the cover—

Ben Harte Harris, Jr., of Mobile was installed at the 1987 annual meeting as the 111th president of the Alabama State Bar. He is pictured on the front steps of the bar headquarters.

Fiat Justitia Ruat Coelum—by William J. Underwood 294

For many years the trial of the "Scottsboro Boys" has remained a judicial proceeding of fascinating interest. An often forgotten figure in the saga was the trial judge—James E. Horton, Jr.

Alabama Administrative Procedure Act: the Venue Issue Resolved—by Helen Currie Foster 275

In recent decisions the appellate courts of this state have clarified the venue provisions and other operative features of the Administrative Procedure Act.

IRS Reporting of Real Estate Transactions—by E. Lanny Crane . 303

Attorneys engaged in real estate practice should be aware of recent reporting requirements mandated by the Internal Revenue Service.

INSIDE THIS ISSUE

President's Page

(The following is Ben Harris' first contribution to the **Lawyer** *as 1987-88 president of the Alabama State Bar.)*

HARRIS

As the Alabama State Bar embarks upon a new year, we can do so with eagerness and confidence because of the fine example of my predecessor, Bill Scruggs. As a bar commissioner, I had the privilege of serving under nine state bar presidents, all of whom served with honor and distinction, but by any standard, Bill Scruggs faced the most difficult challenges and successfully met them all.

When I assumed this office, I asked you, in this the year of the bicentennial of the Constitution, to join me in setting a course to rekindle the spirit of professionalism in the bar. In serving as your president-elect and in the process of preparing to take office, I attended many meetings in several sections of the country, and in each instance, I noted a concern of lawyers about professionalism and one of its key ingredients, lawyer competency.

We all have definitions of professionalism. Certainly, it involves the relationship among the members of the bar, and the relationship between the bar and the public. It includes a sense of self-worth and professional integrity.

Our *Code of Professional Responsibility* is a distinguishing factor. It keeps our eye on the goal—the ultimate goal that we exist to render services. It makes us focus on causes which transcend self-interest. We can permit no compromise because therein lies the greatness and strength of our profession. Not every situation which a lawyer may face can be foreseen, but fundamental ethical principles, as developed in our *Code*, furnish us with an effective guide. However, rules of professional conduct are minimum standards, and higher standards are enforceable, not by formal discipline but by the expectations peers hold for one another.

In a recent report, the Minnesota Task Force on Professionalism said of professionalism:

> "It is integrity in competence, integrity in ethics, integrity in aspiration: a constant challenge to attain and retain the highest standards."

Our profession at its best affords the most noble employment in which anyone could engage. A person can be of no greater service to mankind than in the foremost ranks of the bar where we are sworn to aid in the administration of justice and maintain and defend those inalienable rights of life, liberty and property upon which depends the strength and very fabric of our society.

We must maintain a pervasive sense of mission, strong sense of community and unswerving pursuit of excellence. If we are so committed, I am confident we will continue to have lawyers espousing our noblest aspirations and shaping our legal system to the best interest of society.

We exist not to serve our members but to enlist them to serve others. The objects of this service are the people of this state and the administration of justice for their sake, and the better job we do in recognizing that, the more nearly we obtain the high goal of being a true professional.

I know to all of us the practice of law is more than a means of support. Let us exemplify our mission and make it clear, by our actions to people in the courtroom, in conference rooms, in our offices and to our clients and friends. In so doing, we will take a large step forward in rekindling the spirit of professionalism. Let us each strive to be an example of integrity in competence, in ethics and in aspiration.

I can think of no better goal for this bar in this bicentennial year than to remember the honor the law has bestowed upon each of us, and in so doing, recommit ourselves to bringing honor to the law. I issue a call to each of you to join me in making that pledge to ourselves, our profession and the public whom we serve.

In order to maintain our focus on this effort, I asked your president-elect, Gary Huckaby, to head an action group on professionalism and report to the bar commission during this bar year.

Again, I thank you for giving me this opportunity to be of service to our profession. ■

Executive Director's Report

HAMNER

The fifth of May is special

May 5 has special significance in my life for it was on that day in 1965 that I was admitted to practice law in Alabama. May 5, 1987, was doubly special because on that day the Supreme Court of Alabama entered orders establishing a Client Security Fund and creating an Interest on Lawyers' Trust Accounts program (IOLTA). Both of these programs have been goals I have held for our state bar and the State of Alabama.

Client Security Fund

Client security funds are not new in the legal world. Several states established such funds in 1960. Alabama, in fact, established one in 1970-71. Claims actually were paid to clients who were injured by lawyers' misdeeds and/or dishonesty. The initial fund was begun with a $10,000 grant from the Alabama State Bar Foundation, Inc.

In its infancy, we quickly realized that our initial Client Security Fund was underfunded. Even though payments were a matter of grace, potential claims would have depleted the fund if good faith payments of claims were made. When it was determined that the foundation no longer could legally fund this initial effort, it was discontinued. For over 15 years, funding was the big impediment to a viable Alabama program. We have not had a client security fund for over ten years, and have been one of only four state bars without such a fund.

Twenty-four unified state bars with client security funds maintain them through mandatory contributions from each lawyer licensed in the jurisdictions. Twenty-two voluntary jurisdictions allocate a portion of their dues for a funding base. In some states it is a direct assessment, while in others it is a specified percentage of the annual dues. Our dues are legislatively mandated and it was not politically feasible to seek a legislative solution to this problem. Certain aspects of a legislative solution could have presented a legal problem.

Our Client Security Fund Committee and your board of commissioners asked the supreme court to establish a fund, supported through a mandatory assessment of each lawyer admitted in Alabama. The court's order does this with a maximum assessment of $100 and assessments of no more than $25 in any fiscal year. The committee will monitor claims activity to insure only the minimum funds necessary to maintain a viable fund are assessed from the membership. The state bar will send statements to *all* lawyers admitted to practice in Alabama to collect the initial $25 assessment for the 1987-88 year.

Alabama's client security fund, the nation's 47th, becomes operational October 1, 1987. Approximately six million dollars in claims were paid by existing funds through 1986.

IOLTA

The other order of May 5, 1987, provides for the implementation of an IOLTA program, to be administered through our new tax-exempt 501(c)(3) entity, the Alabama Law Foundation, Inc. Again, Alabama joins 45 other states and the District of Columbia in implementing this progressive means of funding legal needs in our state with otherwise idle funds.

In the regular course of business, attorneys often receive funds from their clients to be held in trust for some future transaction. When such are significant in size or expected to be held for a lengthy period of time, the attorney customarily deposits the funds in an interest-bearing account for the benefit of the client. However, when the funds entrusted to the attorney are small in amount or expected to be held only a short time, it is both impractical and uneconomical for the attorney to establish an individual interest-bearing account for the client.

With the amendments to DR 9-102 of the *Code of Professional Responsibility* and the addition of EC 9-7 to the same code, a mechanism is in place to utilize this idle money within the profession. An attorney or firm now will be allowed to transfer the funds to a negotiable order of withdrawal ("NOW") checking account which bears a fixed rate of interest. The financial institution is notified by the attorney that all of the interest generated by the NOW account is to be paid to the

Alabama Law Foundation, Inc., which then will distribute the pooled interest income generated by the NOW accounts deposits to various law-related projects or programs. The board of trustees of the foundation will make grants to support projects by the legal profession for the administration of justice.

Alabama's plan will be an "opt out" program. A lawyer or firm must affirmatively opt out, that is, state their desire not to participate in the program, by September 1 each year, or participation during the fiscal year commencing October 1 of that year will be required.

In those states with IOLTA programs, Florida having established the first IOLTA program in the United States September 1981, to date $110,000,000 has been generated for use in support of the administration of justice. Of this amount, over $45,000,000 has come from California, which has a mandatory program under which all lawyers and law firms must deposit their trust accounts in interest-bearing NOW accounts when the amount is not readily and economically identifiable to a particular client. Most state programs generate less than $1,000,000 annually, and in many jurisdictions where start-up is still in its initial phases, anticipated revenue during the first year will be significantly less than this amount.

Rowena M. Teague and James S. Ward, both of the Birmingham bar, chaired the committees that developed the IOLTA and Client Security Funds, respectively. These efforts have extended over several years, with the initial appointments made in 1983 by then-president Bill Hairston. Each successive administration has encouraged the development of these programs. Teague and Ward were presented the state bar's 1987 Award of Merit for their splendid leadership and service to the bar in bringing these programs to fruition.

The implementing orders for the client security fund and the IOLTA program are printed elsewhere in this issue of *The Alabama Lawyer.* You should carefully review them. As with mandatory continuing legal education, while we were not among the first jurisdictions to embrace these programs, it is hoped we have profitted from the collective experiences in those other jurisdictions and these new vistas will reflect further credit on the Alabama State Bar.

May 5 is a very good day, indeed. ■

—Reginald T. Hamner

Annual License—Special Membership Dues • Due October 1, 1987

Huntingdon College
cordially invites you to attend
its Seventh Annual Benefit Banquet
featuring
former Chief Justice Warren Burger
at seven-thirty in the evening
on Monday, October the twelfth
Grand Hall, Montgomery Civic Center

Subscription:
One Hundred Dollars, individual.
One Thousand Dollars, reserved table of eight.

For ticket information, call or write
Dr. David K. Morris
Huntingdon College
1500 East Fairview Avenue
Montgomery, Alabama 36194-6201
(205) 265-0511

Important Notice

Governor Hunt has signed into law Act 87-186 in the legislative package generally referred to as the "tort reform packages." Your attention is directed to this particular act.

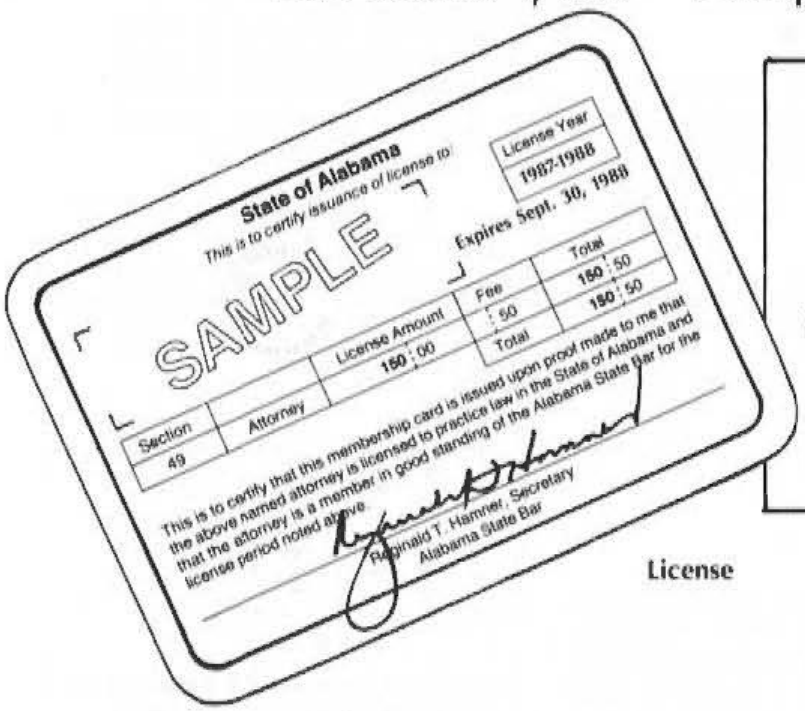
This act allows the court which was assigned the case to assess court costs and attorney fees against a party or his attorney if the court determines that the case or appeal lacks substantial justification. The act also establishes guidelines for the court to use in determining whether a lawsuit or a certain claim against a party is frivolous.

The act applies to suits, claims, defenses or appeals filed after its effective date and also to suits, claims, defenses or appeals filed prior to the effective date which are not dismissed within 180 days after it becomes law.

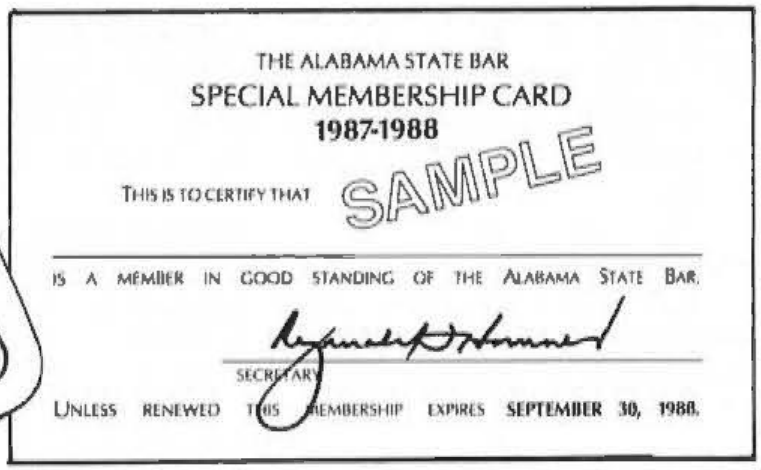
ALABAMA STATE BAR
1987-1988 DUES NOTICE

(All Alabama attorney occupational licenses and special memberships expire September 30, 1987.)

Annual License—Special Membership Dues
Due October 1, 1987 ★ Delinquent After October 31, 1987



License



Special Member

If you are admitted to the Alabama State Bar and engaged in the practice of law, you are required to purchase an annual occupational license. *Section 40-12-49, Code of Alabama (1975), as amended* This license gives you the right to practice law in the state of Alabama through September 30, 1988. The cost of the license is $150, plus the nominal issuance fee, and may be purchased from the probate judge or license commissioner (where applicable) in the county in which you primarily practice. In addition to the state license, all practicing attorneys should check with their municipal revenue departments to be sure that the licensing requirements of the city or town also are being met. By sending the Alabama State Bar a copy of the license when it is purchased, you will receive a wallet-size duplicate of your license (pictured above) for identification purposes during the 1987-88 license year.

Special membership status is acquired pursuant to Section 34-3-17 or Section 34-3-18, *Code of Alabama* (1975). Federal and state judges, district attorneys, United States attorneys and other government attorneys who are prohibited from practicing privately by virtue of their positions are eligible for this membership status. Likewise, persons admitted to the bar of Alabama who are not engaged in the practice of law or are employed in a position not otherwise requiring a license are eligible to be special members. Attorneys admitted to the bar of Alabama who reside outside the state of Alabama who do not practice in the state of Alabama also are eligible for this status. With the exception of state attorneys and district attorneys, special members are exempt from mandatory continuing legal education requirements; however, this annual exemption must be claimed on the reporting form. Special membership dues are paid directly to the Alabama State Bar. Membership cards, as shown in the sample above, are issued upon receipt of the dues and good for the license year.

Dues include a $15 annual subscription to The Alabama Lawyer.

If you have any questions regarding your proper membership status or dues payment, please contact Alice Jo Hendrix, Membership Services Director, at (205) 269-1515 or 1-800-392-5660 (in-state WATS).

About Members, Among Firms

ABOUT MEMBERS

M. Bradshaw Darnall, III, has been promoted to assistant vice president, legal affairs, for **Service Merchandise Company, Inc.,** which does business in 36 states and is headquartered in Nashville, Tennessee. He has been with Service Merchandise for four years, and formerly was senior corporate attorney for Genesco, Inc. He is a 1967 graduate of Cumberland School of Law.

■

V. Lee Pelfrey announces the relocation of his law offices to 519-C South Brundidge Street, P.O. Box 253, Troy, Alabama 36081. Phone (205) 566-1965.

■

Kenneth R. Jones announces the opening of his office for the general practice of law. The mailing address is P.O. Box 157, Georgiana, Alabama 36033. Phone (205) 376-2225.

■

Thomas H. Brown announces the opening of his office at One Independence Plaza Executive Building, Suite 410, Birmingham, Alabama. Phone (205) 879-1200.

■

Dorothy F. Norwood, formerly deputy clerk of the Supreme Court of Alabama, now has joined **Attorney General Don Siegelman's staff** as an assistant attorney general in the appeals division. Her office address is 401-I Alabama State House, 11 S. Union Street, Montgomery, Alabama 36130. Phone (205) 261-7378.

■

D. Dawn Lankford, formerly in the enforcement division of the Atlanta Regional Office of the Securities and Exchange Commission, now is an associate with the Atlanta law firm of **Harkleroad & Hermance.** Offices are located at 2500 Cain Tower-Peachtree Center, 229 Peachtree Street, N.E., Atlanta, Georgia 30043. Phone (404) 588-9211.

■

Howard C. Alexander announces his retirement from the practice of law effective September 1, 1987. Please direct future correspondence and inquiries to 2021 Fernway Drive, Montgomery, Alabama 36111. Phone (205) 281-2937.

■

Domingo Soto announces his admission to the Texas State Bar. The firm office of Madden & Soto is located at 465 Dauphin Street, Mobile, Alabama 36602. Phone (205) 432-0380.

AMONG FIRMS

The firm of **Corley, Moncus, Bynum & DeBuys, P.C.** announces that **Steven C. Pearson** has become an associate of the firm, with offices at 2100 16th Avenue, South, Ash Place, Birmingham, Alabama 35205. Phone (205) 939-0811.

■

Alice M. Meadows announces that her daughter, **Sandra K. Meadows,** has joined her in the general practice of law. Offices are located at Suite 103, Forwood Building, 955 Downtowner Boulevard, Mobile, Alabama 36609. Phone (205) 343-7717.

■

The firm of **Vickers, Riis, Murray and Curran,** First Alabama Bank Building, Mobile, Alabama, announces that **J. Marshall Gardner** has become a member of the firm, and that **Marion R. Vickers** has retired from the practice of law.

■

Webb, Crumpton, McGregor, Sasser, Davis & Alley announce the removal of their offices to the Colonial Financial Center, Suite 700, One Commerce Street, P.O. Box 238, Montgomery, Alabama 36101. Phone (205) 834-3176.

■

The Birmingham law firm of **Clark and Scott, P.A.,** announces that **Carroll H. Sullivan** and **Patricia K. Rea** have become members of the firm, and **Larry Bradford, Anthony N. Fox** and **Michael E. Henderson** have become associates of the firm.

The firm also announces the opening of its Mobile office at 56 St. Joseph Street, First Alabama Bank Building, P.O. Box 1034, Mobile, Alabama 36633. Phone (205) 433-1346.

■

Peter F. Burns announces that **Candis A. McGowan** now is associated with the firm, with offices located at 60 St. Emanuel Street, P.O. Box 1583, Mobile, Alabama. Phone (205) 432-0612.

■

J. Gordon House, Jr., and **Jack W. Morgan** announce their association for the general practice of law, with offices located at 2651-F Cameron Street, P.O. Box 7145, Mobile, Alabama 36607. Phone (205) 478-6600.

■

The firm of **Springfield & Beckham** announces the relocation of their office to Suite 360 East, Kovach Centre, 2700 Highway 280, South, Birmingham, Alabama. Phone (205) 879-0500.

■

McDavid, Noblin & West announces that **John L. Moore, IV,** formerly staff attorney to Judge Sam Taylor of the Alabama Court of Criminal Appeals, and law clerk to Justice Reneau P. Almon of the Alabama Supreme Court, has become an associate with the firm, with offices located at Suite 1000, Security Centre North, 200 South Lamar Street, Jackson, Mississippi 39201. Phone (601) 948-3305.

■

The firm of **L. Dan Turberville and Associates** announces that **Sharon W. Woodruff** has become associated with the firm and that **Lillian V. Garcia** has left the firm. Offices are located at 2900 Linden Avenue, Birmingham, Alabama 36209. Phone (205) 879-0000.

■

The firm of **King and King** announces that **Stephen L. Sexton** has become an associate of the firm, with offices located at The King Professional Building, 713 South 27th Street, P.O. Box 10224, Birmingham, Alabama 35202-0224. Phone (205) 324-2701.

■

Kaufman, Rothfeder & Blitz, P.C., announces that **Hense R. Ellis, II,** has become associated with the firm, with offices located at One Court Square, Montgomery, Alabama 36104. Phone (205) 834-1111.

■

Ralph E. Slate of Decatur, Alabama, announces that **Billy E. Cook, Jr.,** has joined him in the general practice of law, with offices located on the fourth floor of the First Federal Savings Bank, 405 Grant Street, P.O. Box 1344, Decatur, Alabama 35602. Phone (205) 353-7912.

■

The firm of **Hubbard, Waldrop, Reynolds, Davis & McIlwain** announces that **Carole W. Delchamps** has become associated with the firm with offices at 808 Lurleen Wallace Boulevard, North, Tuscaloosa, Alabama 35401. Phone (205) 345-6789.

■

Billy F. Foxworth, Bob E. Allen, Arthur E. Elsner and **Eugene P. White** announce the relocation of their offices from 138 Adams Avenue, Suite 1, Montgomery, Alabama 36104, to 640 South McDonough Street, Montgomery, Alabama 36104. Phone (205) 264-0012.

■

Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves announces that **Dabney Bragg Foshee** and **Edward A. Dean** have become members of the firm, and **W. Steele Holman, II, D. Brent Baker, Richard E. Jesmonth** and **J. Wesley Sowell** have become associated with the firm. Offices are located at 1300 AmSouth Center, P.O. Box 290, Mobile, Alabama 36601.

■

James Patton and **William Goodwyn** announce the opening of a new office at the following address: 22 Inverness Center Parkway, Suite 610, Birmingham, Alabama 35243. Phone (205) 995-9501. The address of the main office remains: 2074 East Lake Boulevard, Birmingham, Alabama 35217. Phone (205) 841-6234.

■

The firm of **Prince, McGuire & Coogler, P.C.,** announces that **Richard M. Nolen** has become associated with the firm with offices located at 2501 6th Street, P.O. Box 128, Tuscaloosa, Alabama 35402. Phone (205) 345-1105.

■

J. Ronald Boyd, J. Gary Pate, Rick Fernambucq and **George C. Douglas, Jr.,** announce that they have formed the law firm of **Boyd, Pate, Fernambucq & Douglas,** and **Robin Vittingl Sparks** is an associate of the firm. The firm's offices are located at Suite 302, 2801 University Boulevard, Birmingham, Alabama 35205. Phone (205) 930-9000.

■

Joseph D. Whitehead, P.A., announces the relocation of its Daleville office from 230 North Daleville Avenue, Daleville, Alabama 36322, to 238 North Daleville Avenue, Daleville, Alabama 36322. Phone (205) 598-3486.

■

HELP!

by J. Michael Williams, vice chairman, LRS board of trustees

You would not be a lawyer if you did not care about helping your fellow citizen. The state bar and your profession have provided you with an excellent means of earning a living, and the citizens of Alabama have provided you with courthouse facilities in a unified judicial system and a manner by which you may practice that profession. Former bar president Bill Hairston, Jr., once described a professional as "one who puts in more than he takes out." The Lawyer Referral Service Board of Trustees is calling for you to pay your "civic rent" and put more time and effort into serving the profession.

The LRS program began in 1978 under former president Sonny Hornsby and grew with enthusiastic support of the bar, yet, over the past several years, participation in the program has declined considerably and there are a number of counties with no participants at all. The service needs members from every county, but particularly from these: Autauga, Bibb, Blount, Bullock, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Cullman, Dallas, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lawrence, Limestone, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Morgan, Pickens, Randolph, Russell, St. Clair, Sumter, Talladega, Walker, Washington and Wilcox. (There are no participants in the underlined counties). The exceptions to this particular call for assistance are Jefferson, Madison and Mobile counties, whose local bar associations operate their own referral services, however, it is certain they also could use additional members.

It is hard to believe that LRS is having a problem with participation. There have been large numbers of new lawyers entering the bar each year, with 32 percent of our membership entering the bar since 1981 and 69 percent since 1971. According to the recent survey in *The Alabama Lawyer*, May 1987, 47 percent of the bar reported an income of less than $50,000 per year and 62 percent reported an income of less than $60,000. It certainly appears there is a substantial number of attorneys who should be available to pay their "civic rent." I continually hear a number of attorneys discussing the economics of law practice. Why not participate in LRS and considerably increase your client base?

What do you do? First, call LRS and **ask for Joy Meininger, 1-800-392-5660,** to express your interest. You pay $37.50 per year to participate and help cover the overhead of the program, and you must provide proof of professional responsibility insurance with coverage of $100,000/$300,000. You then sign up for a maximum of ten areas of your legal expertise. You are referred only cases in the particular areas you have designated. For instance, if you only do tax or corporate work then you will not be referred a D.U.I. or criminal case.

I accept referrals in the maximum number of areas available to me and have participated in the program since entering the bar. It has been a good foundation on which to build a practice, and I receive an average of one referral per working day. In fact, from June 1986-April 1987, there were 9,414 referrals made by LRS. There is a great demand and need for legal services.

Those who go through the LRS are not very different from other clients who seek your services through other channels. Some clients referred to you will never contact you, but most will. Some will not show up for their appointment, but most will. You may not insist on the $20 consultation fee, but most will pay it if you make it a policy to collect this fee. I generally charge the consultation fee because it is a professional way to establish a legal relationship, and you certainly "weed out" the non-serious client. If a problem is not worth the payment of $20 for advice, the client probably did not have a very serious problem.

Most of my referrals do require further legal services. About 70 percent of those requiring further service ultimately pay between $100-$500 and approximately 30 percent result in fees of more than $500. Almost all my successful social security disability and worker's compensation cases result in fees of over $1,000. Some of these cases also lead to substantial personal injury cases. The largest fee I received through a LRS referral was approximately $18,000. Our executive director tells of one referral case resulting in a $500,000 fee.

Please participate in this worthwhile program. We do need you and you will be pleasantly surprised with the business these referrals will develop for you. The greater reward of this service is that you will be helping your fellow citizen. Most referral clients have never contacted a lawyer, and they will have a problem or concern that is foremost on their minds. Your counseling may be all that is needed to ease their concerns or there may be further services necessary. No matter what the outcome of the initial consultation, though, the next time they or their friends or family need a lawyer, they will come directly to you. Your volunteer service to the bar will have created many new clients and is not that the way we build our practices? ■

J. Michael Williams, Sr., is a 1977 graduate of Jones Law Institute. He is a sole practitioner in Auburn, Alabama, and serves as vice chairman of the Lawyer Referral Service Board of Trustees. His report is the first of several to be published in this journal.

Riding the Circuits

Blount County Bar Association

The Blount County Bar Association elected officers for the year of July 1, 1987, through June 30, 1988, as follows:

President: Michael E. Criswell, Oneonta
Vice-president: John R. Huthnance, Oneonta
Secretary/treasurer: Herbert B. Sparks, Jr., Oneonta

Jackson County Bar Association

Newly-elected officers of the Jackson County Bar Association are:

President: Wallace W. Haralson, Scottsboro
Vice-president: Ronald Drummond, Scottsboro
Secretary/treasurer: Jenifer Holt, Scottsboro

Sumter, Greene and Marengo Counties Bar Association

The bar association of the 17th Judicial Circuit, composed of Sumter, Greene and Marengo counties, met May 11 and elected the following officers:

President: William T. Coplin, Jr., Demopolis
Vice-president: Nathan G. Watkins, Jr., Livingston
Secretary/treasurer: Patta Steele, Eutaw

State Senator and bar association member Rick Manley was the featured speaker. Senator Manley reviewed the current legislative session with special emphasis on the tort reform package.

■

Consultant's Corner

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

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

Office automation—investment or expense

One thousand dollars for an IBM System 32? Two thousand dollars (if you are lucky) for a 34? Four hundred dollars for a Displaywriter? Many owners of this (and other vendors' equipment) are first shocked, then quickly angered to find out what used hardware will bring in today's market. "What happened to my investment?" is a common complaint and an understandable one. The answer, although it may appear argumentative, is: "Hardware is an expense. Software, and its files of text and data laboriously accumulated, are the investment."

The answer will not make it past your accountant or tax advisor, but it is the reality. In fact, the tax law generally treats hardware as an investment, to be depreciated, and software as a cost, to be expensed.

The expense

Computers, their peripheral attachments and the maintenance costs thereof are an expense. Bluntly stated, they offer no return nor do they appreciate in value. In fact, they do little more than use a bit of electricity to process data and text more rapidly than a manual system. Like an automobile they eventually wear out and/or become prohibitively expensive to maintain. Likewise, their value drops precipitously with age.

BORNSTEIN

If you insist on viewing them as investments at least acknowledge they are among the worst you can make. That said, why consider an automation solution at all if it does not produce a decent return?

The investment

Automation can be a sound investment, and does yield a decent return, provided you view it as a trinity of hardware, software (designed for law firms) and a supportive, legal-specific vendor. It is the latter two components of an automation system, software and vendor, that truly constitute the investment. Properly selected, nurtured and managed, they can yield a handsome return.

Good, legal-specific software can make a significant contribution to the productivity of a law firm, and not just to secretaries. Special applications, such as conflict-of-interest checking, docket control, case management and litigation support, are available to increase the productivity of the legal practitioner. A decently computerized billing program, with or without an integrated general ledger, easily can increase billable hours by 15 minutes a day. (Extend that by 250 days a year, at $80 per hour, for a surprise.)

Specialized software exists to sharpen the completeness of charge accumulation and billing for long distance telephone tolls, postage, copies and laser printing. There are outside data bases that increase professional productivity, such as legal research (Lexis and Westlaw) and ABANET.

A knowledgeable vendor who understands your practice can be worth his or her weight in precedents. A competent vendor should be able to offer a complete array of legal-specific products, integrated where necessary and installed by people who understand law firm operations.

Strategy

Your investment "strategy," when it comes to law firm automation, should parallel that of securities investments:

- define your investment objectives (what you are attempting to accomplish);
- find a broker with whom you are comfortable, i.e. a vendor;
- accept his or her recommendations, i.e. invest in software;
- pay his or her fee, i.e. buy the necessary hardware.

■

Principal Address by Secretary of Transportation Elizabeth Dole

Elizabeth Hanford Dole delivered the principal address during the Saturday morning convocation of the 1987 Alabama State Bar annual meeting. For those unable to attend her address, or those who did and wanted to enjoy it again, the following is a copy of her remarks.

Alabama State Bar
Mobile, Alabama
July 18, 1987

Let me say at the outset that I feel deeply honored to stand before this distinguished meeting of the Alabama Bar Association. Since its birth in 1879 the Alabama Bar has produced some of the greatest legal minds on both sides of the Mason-Dixon line. This bar is synonymous with personal achievement and public service from Thomas Goode Jones, former governor, former U.S. District Judge and author of the first code of professional ethics—which was used throughout the nation until the 1969 American Bar Association code—to those of you who stood four-square for the modern judicial article in the Alabama Constitution. And depending upon whose history book you read—Alabama's or North Dakota's—you have the first unified bar in the nation, and your association as an agency of the state government does an outstanding job as licensor and regulator.

I also add my personal congratulations to Bill Scruggs on an outstanding year of leadership of this association. I'll tell you how distinguished your outgoing president is. When Bill Scruggs speaks, people listen. And the "Alabama" group sings. I was delighted when Reggie Hamner invited me here today.

DOLE

And one has only to look out at the female faces in our audience to realize in this 200th year of our Constitution how much has changed—just in the past two decades. Thirteen percent of the lawyers at the bar in this state are women, and 42 percent of the freshman law class at the University of Alabama are women.

I remember well my first day at Harvard Law School, one of 25 women in a class of 550 eager students. I'll never forget being accosted by a male classmate who demanded to know what I was doing there.

"Don't you realize," he said in tones of moral outrage, "that there are men who'd give their right arm to be in this law school? Men who would use their legal education?" Obviously, he felt I was taking the place of a man. And come to think of it, some may have felt that way when I became Secretary of Transportation.

It's been said that the lawyer's trade consists of questioning everything, yielding nothing and talking by the hour. Today, I promise to try to disprove that adage. I am reminded of a famous story about Ben Franklin at the final session of the Constitutional Convention in Philadelphia. The great sage was unwell, afflicted with gout and suffering anxiety over the future of his country. He pointed at the chair occupied by presiding officer George Washington and the sunburst that was carved into its frame. He had often noticed the design, said Dr. Franklin—but only now, with their work done and the historic document itself ready for submission to the states, could he conclusively say that it was a rising, not a setting, sun that he saw.

Today I think it is important to put our observance into perspective. The Constitution is not merely an artifact, to be saluted like the passing flags on the Fourth of July, or sealed under glass in a marble shrine. It is the American—in 1987 as much as in the tense and uncertain summer of 1787.

Two hundred years ago, 55 men gathered in what was then known as the Pennsylvania State House to consider alternatives to the existing Articles of Confederation. History tells us that what we know as the Constitutional Convention didn't get under way on time. In fact, it started two weeks later—because the roads to Philadelphia were so bad! It took George Washington four days to travel by carriage from Mt. Vernon to Philadelphia. Today, that same trip on the Metroliner takes one hour and 37 minutes. Of course, if the convention were held today, there'd not only be men representing the colonies, but women as well.

Two hundred years later, we pause to remember the men of Philadelphia. We may remember little of their day-to-day deliberations. And most of the individual signers may be lost to the mists of time.

But the idea that brought them together—that seminal concept of self-government and shared responsibility—of individual opportunity wedded to social responsibility—this idea lives on in our fluid, dynamic, highly competitive yet deeply compassionate society. It lives on in the law. It lives on in the arena of politics. It lives on where anyone holds to a faith in the power of seemingly ordinary men and women to accomplish extraordinary things, for themselves, their country and their posterity.

Madison and the rest of the founding fathers diffused authority among us, the people, in order to prevent too great a centralized authority from encroaching upon our individual liberties. Yet for such a system to work, the people must accept their own obligation to control government and contribute their personal talents to the betterment of all.

One recalls the words of a great jurist, Robert H. Jackson, who wrote in 1950, "It is not the function of our government to keep the citizens from falling into error, it is the function of the citizens to keep the government from falling into error."

That is the challenge and the glory, not only of democracy but of the legal profession itself. It is the answer to those cynics who dismiss our profession as an exercise in self-enrichment, and it remains the central dilemma facing the people of this country in 1987.

In the decade of the '70s, many Americans felt that as individuals they couldn't make a difference. Yet, if we stop believing in ourselves, then how could we believe in Madison's carefully designed system of self-government?

WE WANT *YOU* TO JOIN OUR SPEAKERS BUREAU!

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

SPEAKER'S BUREAU APPLICATION

Name _____

Firm Name (if applicable) _____

Address _____

City _____ **State** _____ **Zip** _____

Telephone _____

Please list subjects on which you are willing to speak:

1) _____

2) _____

3) _____

As people turned inward, it came as no surprise that writer Thomas Wolfe dubbed the 1970s the "Me Decade."

Happily, in recent years, the "Me Decade" has been replaced by the "We Decade," as citizens all across the country have regained confidence in themselves and in this country's mission to serve as a beacon of hope on an oppressed planet.

Today we are witnessing nothing less than an American renaissance, a grassroots revival of those fundamental principles that give character to our land and reality to our dreams. We are renewing the ancient ideals of hard work, pride of family, love of freedom and trust in God. We have rediscovered our roots—and we are reaching for the stars.

For 55 consecutive months Americans have enjoyed the benefits of economic growth. During that time, productivity has risen. Inflation had declined to its lowest level in a quarter-century. Unemployment is at a seven-year low, and over 13 million new jobs have been created.

Simultaneously, we are called on to meet the challenge of defending freedom in a dangerous, sometimes desperate, era. Since taking office, President Reagan has made significant headway in rebuilding our defenses and making America more secure. This is no time to rest on our laurels, or let down our guard. Skimping on defense now could undo all we have achieved since 1980. It could undermine not only our own security, but that of our closest friends.

History reminds us that there is nothing new to cries for less defense and more domestic spending. During one debate in the Constitutional Convention, a delegate rose to his feet and moved that "the standing army be restricted to 5,000 at any time." This prompted George Washington, as presiding officer, to suggest an amendment of his own—to prohibit any foreign enemy from invading the American soil with more than 3,000 troops!

But what are we defending? We defend more than factories—more than shopping malls—more than territory. We defend the values that have blessed this land and set it apart in the family of nations. And the record of the Constitutional Convention leaves no doubt that our nation's founders were sustained by their faith in God. As George Washington once said, "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."

This morning, I am looking at America's first and ultimate line of defense. For surely we share the belief that the source of all our national strength lies in that inner strength that forms our attitudes, shapes our ambitions and nurtures our loved ones.

But it is not enough to be a passive observer of the times, or to toss your hat in the air when the parade goes by. In the words of that greatest of American individualists, Ralph Waldo Emerson, "No man can have society upon his own terms. If he seeks it, he must serve it, too."

Each of us is called upon to render service in one form or another. In this land of opportunity, that is the corresponding obligation. In my own life, I have tried to make a contribution through public service. In my view, there is no greater satisfaction than grappling with issues and forging policies that can make a positive difference in the lives of millions of one's countrymen.

For the past four years, I've had the rare privilege of directing national transportation policy. It's interesting to note that to reach the Constitutional Convention, our founding fathers traveled by foot, by horseback and by boat. Getting there in less than a month's time—that was the real "miracle at Philadelphia!"

To the men and women of 1787, the internal combustion engine was as exotic a pipe-dream as moving pictures or the voyager aircraft. Today transportation is an $800 billion industry that is constantly reshaped by technological breakthroughs. We travel at great speeds to places undreamed of by our forefathers by land, sea, air and, now, space.

The challenges posed by such an intricate and sophisticated system have been to me a source of unparalleled intellectual exhilaration and deep personal satisfaction. Recently, a most exciting event of my life was standing on the floor of the New York Stock Exchange as eager investors bought every last share of the government's stock in Conrail, our freight railroad. In four years, I had witnessed a sickly ward of the state transformed into a $1.88 billion publicly-traded, privately-owned railroad.

At the same time, we finally transferred the only two federally-owned airports—Washington National and Dulles—to a regional authority. Eight previous attempts had been made since 1949. I've fought attempts to roll back economic deregulation of the nation's transportation industries—a reform that has saved American consumers and producers literally billions of dollars in reduced travel and shipping costs.

We have saved lives through grassroots campaigns to get drunk drivers off our roads and highways. DOT is the first, outside of the military, to come forth with a comprehensive drug abuse program, one that involves random drug testing, insures the safety of the traveling public and safeguards constitutional protections. It hasn't made me the most popular person around the ACLU, but I am committed to ensuring that the American public has what it demands and deserves—a drug-free transportation system.

As I reflect on the challenges that still lie ahead, I'm reminded of a famous story about Justice Oliver Wendell Holmes, who once found himself on a train, but couldn't locate his ticket.

While the conductor watched, smiling, the 88-year-old Justice Holmes searched through all of his pockets without success. Of course, the conductor recognized the distinguished justice, so he said, "Mr. Holmes, don't worry. You don't need your ticket. You will probably find it when you get off the train and I'm sure the Pennsylvania Railroad will trust you to mail it back later."

The justice looked up at the conductor with some irritation and said, "My dear man, that is not the problem at all. The problem is not where is my ticket. The problem is where am I going?"

Where, indeed. Where are we going? My fellow Americans, in this bicentennial year of the Constitution, let us remember that the decisions we make today can affect the lives of other people as dramatically as the founding fathers' have affected us.

Having lived with Constitutional freedom for two centuries, we can all too easily forget how precious and rare that freedom is. Our ultimate obligation, then, is to protect the opportunity that our constitution makes possible. It is an obligation we owe not only to ourselves, but to the framers who risked everything for freedom, and to countless men and women of bravery and vision who have bonded this nation with their blood and toil and sacrifice.

In closing, let me share with you an experience that Bob and I had when we visited the Soviet Union a few years ago for the U.S.-U.S.S.R. Trade Conference—an experience I will never forget.

At our embassy in Moscow, I talked to members of two families from Siberia, who had sought asylum from the religious persecution they had encountered in their own mother country.

In attempting to reach our embassy's gates, one of the young sons was caught by Russian guards, beaten in full sight of the two families and then dragged away. Three weeks later, they learned that he had been thrown on a train back to Siberia. It was nearly five years—separated from their friends and family and living in the basement of that embassy—before the Soviet government allowed those families to emigrate to Israel.

As we drove up to the airport to begin our long trip home and I looked at that airplane sitting on the runway with "United States of America" emblazoned on its side, I thanked God I could come home to a country where freedom and democracy are more than just hollow spaces.

Every citizen has a stake in government that lives up to its noblest promises. Each one of us is obliged to pass on to our children the freedoms that the men of Philadelphia entrusted to us. They created something unique in the annals of history. Let us not only preserve their past—let us make certain that the present is worthy of preservation, so that in another 200 years, our descendants can say as proudly as we do today, "I am an American."

Biographical Information

On February 7, 1983, Elizabeth Hanford Dole took the oath of office as the eighth Secretary of Transportation of the United States. After more than four years in office, she is the longest serving secretary of transportation since the department was created in 1967.

As secretary, Dole heads a department with 100,000 employees and a budget of approximately $28 billion. She sets policy direction for the nation's aviation, highway, railroad, mass transit and maritime resources, and is the first woman to head a branch of the armed services—the U.S. Coast Guard, a leader in the nation's drug interdiction effort. Secretary Dole serves on the National Drug Enforcement Policy Board, and President Reagan appointed her to serve on the vice president's Task Force on Terrorism.

Secretary Dole has been a leading advocate of economic deregulation of transportation industries and currently is urging Congress to complete deregulation of the trucking industry. She also has been in the forefront of privatization, with the sale of Conrail, the government's freight railroad, and the transfer of federal airports already completed under her stewardship. The Conrail sale was the largest initial industrial public offering in U.S. history, netting $1.88 billion for the federal treasury, helping to reduce the federal deficit. Her department now is leading the government's efforts in the privatization of commercial space transportation.

Dole has accomplished major economic and safety reforms across all modes of transportation. With safety as a top priority, Secretary Dole created the Safety Review Task Force to conduct in-depth reviews of all transportation safety programs and led efforts to improve the security and safety of international air service.

Prior to joining President Reagan's cabinet, she was assistant to the President for public liaison at the White House. From 1973 until 1979, she served as a member of the Federal Trade Commission. Her public service also has included presidential appointments as executive director of the president's Committee on Consumer Interests and deputy special assistant to the president for Consumer Affairs. Dole graduated with distinction in political science from Duke University. She was president of the student body and elected to Phi Beta Kappa. Duke honored Secretary Dole with its Distinguished Alumna Award in 1985. She received her law degree from Harvard Law School and a master's degree in education and government from Harvard University.

The secretary is a former member of the board of trustees of Duke University and currently serves as a member of the board of visitors for the Duke University School of Business. She also is honorary chairman of the board of overseers at the Duke Comprehensive Cancer Center. She is a member of the Visiting Committee of Harvard University's John F. Kennedy School of Government. She recently received the Humanitarian Award from the National Commission Against Drunk Driving.

A native of Salisbury, North Carolina, the secretary is married to Senate Republican Leader Robert Dole, the senior United States Senator from Kansas. ■

ORDER

WHEREAS, the Board of Commissioners of the Alabama State Bar has recommended that the Court establish a Client Security Fund in the State of Alabama; and

WHEREAS, the Court has considered the recommendation and considers the recommendation, with modifications, appropriate;

IT IS, THEREFORE, ORDERED that the "Alabama State Bar Client Security Fund Rules" be adopted effective October 1, 1987, and shall read in accordance with the appendix to this order.

IT IS FURTHER ORDERED that any interested persons shall have until September 1, 1987, to submit to the clerk of the Supreme Court, P. O. Box 157, Montgomery, Alabama 36101, written objections or comments concerning these rules.

APPENDIX
ALABAMA STATE BAR
CLIENT SECURITY FUND RULES

I. SCOPE

These rules shall govern proceedings conducted upon applications for reimbursement from the Client Security Fund of the State Bar established pursuant to Rule of the Alabama Supreme Court.

II. DEFINITIONS

For purposes of these Rules, the following definitions shall apply:

A. The "Committee" shall mean the Client Security Fund Committee.

B. The "Fund" shall mean the Client Security Fund of the Alabama State Bar.

C. A "Lawyer" shall mean one who, at the time of the act complained of, was a member of the Alabama State Bar, was domiciled in the State of Alabama, and was actually engaged in the practice of law in the State of Alabama.

The fact that the act complained of took place outside of the State of Alabama does not necessarily mean that the lawyer was not engaged in the practice of law in Alabama.

D. "Reimbursable Losses" are only those losses of money or other property of clients of lawyers which meet the following tests:

(a) The dishonest conduct which occasioned the loss occurred on or after the effective date of these rules; and

(b) The loss was caused by the dishonest conduct of a lawyer acting either as an attorney or as a fiduciary in the matter in which the loss arose; and

(c) The lawyer shall have died; been adjudicated a bankrupt; been adjudicated an incompetent; been disbarred or suspended from the practice of law; voluntarily resigned from the practice of law; left the jurisdiction or cannot be found; become a judgment debtor of the claimant, or shall have been adjudged guilty of a crime, which judgment or judgments shall have been predicated upon the dishonest conduct of the lawyer; or the Committee shall have determined that the claim is an appropriate case for consideration for reimbursement because the loss was caused by the dishonest conduct of a member of the Alabama State Bar.

E. "Non-reimbursable losses" are as follows:

(a) Losses of a spouse, child, parent, grandparent, sibling, partner, associate or employee of the attorney(s) causing the losses.

(b) Losses covered by any bond, surety agreement or insurance contract to the extent covered thereby, including any loss to which any bondsman or surety or insurer is subrogated to the extent of that subrogation interest.

(c) Losses of any financial institution which could only be recoverable under a "banker's blanket bond" or similar insurance or surety contract, whether or not the institution had such bond or contract in force.

(d) Losses which are recoverable from some other source.

(e) Losses barred under any applicable statute of limitations.

F. "Dishonest Conduct" shall mean wrongful acts committed by a lawyer against a person in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value.

G. "Claimant" means a person who has applied to the fund for reimbursement.

H. "Client" means a person engaging the professional legal services of a lawyer or for whose benefit the lawyer is acting in a fiduciary capacity.

III. APPLICATIONS FOR REIMBURSEMENT

A. The Committee shall prepare a form of application for reimbursement.

B. The form shall be sworn to and executed under penalty of perjury and shall require, as minimum information:

(a) The name and address of the lawyer.

(b) The amount of the alleged loss.

(c) The date or period or time during which the alleged loss incurred.

(d) The date upon which the alleged loss was discovered.

(e) The name and address of the applicant.

(f) A general statement of facts relative to the application.

(g) A statement that the applicant has read these Rules and agrees to be bound by them.

(h) A statement that the loss was not covered by any insurance, indemnity or bond, or if so

covered, the name and address of the insurance or bonding company, if known, and the extent of such coverage and the amount of payment, if any, made.

(i) A statement that the applicant agrees that the result of the investigation together with all evidence in connection therewith shall remain confidential except as otherwise provided herein.

(j) Said application shall either be typewritten or printed. If not legible, it shall be forthwith returned to the applicant.

(k) The form or application shall contain the following statement in bold type:
"IN ESTABLISHING THE CLIENT SECURITY FUND, THE ALABAMA STATE BAR DID NOT CREATE NOR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES BY THE CLIENT SECURITY FUND SHALL BE A MATTER OF GRACE IN THE SOLE DISCRETION OF THE COMMITTEE ADMINISTERING THE FUND AND NOT AS A MATTER OF RIGHT. NO CLIENT OR MEMBER OF THE PUBLIC SHALL HAVE ANY RIGHT IN THE CLIENT SECURITY FUND AS A THIRD PARTY BENEFICIARY OR OTHERWISE."

C. Applications shall be addressed to the office of the Alabama State Bar located at P.O. Box 671, Montgomery, Alabama 36101 and shall forthwith be transmitted by such office to the Chairman of the Committee.

D. All applications shall be filed no later than three (3) years after the claimant knew or should have known of the reimbursable loss as defined.

E. The Chairman shall cause a copy of the application to be served upon the lawyer or his personal representative, in the event the attorney is deceased, by certified mail, return receipt requested.

IV. MEMBERS

A. The Committee shall consist of seven (7) members of the Alabama State Bar. The Chairman of the Committee shall be the President-elect of the Alabama State Bar. The remaining six (6) members of the Committee shall be appointed by the President of the Alabama State Bar for initial terms as follows:

two lawyers for two years;
two lawyers for three years;
and two lawyers for four years.

The Chairman shall vote only in the event of a tie. Subsequent appointments by the President of the Alabama State Bar shall be for terms of three (3) years.

B. No appointee who has served two (2) full terms of three (3) years shall be eligible for reappointment to the Committee until three (3) years after the termination of the most recent term.

C. Vacancies shall be filled by appointment of the President of the Alabama State Bar for the unexpired term.

D. The Committee shall select a Secretary.

E. The Chairman and the members of the Committee shall serve without compensation but shall be entitled to reimbursement of all their expenses reasonably incurred in the performance of their duties.

V. MEETING OF THE COMMITTEE

A. The Committee shall meet from time to time upon call of the Chairman provided that the Chairman shall call a meeting at any reasonable time at the request of at least three (3) members of the Committee.

B. The Chairman shall give the members reasonable notice of the time and place of each meeting.

C. A quorum at any meeting of the Committee shall be a majority of the full Committee. No action shall be taken by the Committee in the absence of a quorum.

D. Written reports or minutes of each meeting shall be prepared and permanently maintained.

VI. DUTIES AND RESPONSIBILITIES OF THE COMMITTEE

The Committee shall have the following duties and responsibilities:

A. To receive, evaluate, determine and pay claims;

B. To promulgate rules of procedure not inconsistent with these Rules;

C. To provide a full report at least annually to the bar association and make other reports and publicize its activities as the Committee may deem advisable;

D. To employ and compensate consultants, agents, legal counsel and other persons as necessary;

E. To prosecute claims for restitution to which the Fund is entitled; and

F. To take whatever action is necessary to carry out the provisions of these rules.

VII. PROCESSING APPLICATIONS

A. Preliminary Consideration

(1) Whenever the Committee receives an application, it may, in its absolute discretion, after investigation, require exhaustion of some or all civil remedies before processing or adjudicating the application or paying claims.

(2) If the accused lawyer shall be a member in good standing of the State Bar of Alabama, the applicant's cooperation in grievance proceedings by the Bar against such lawyer shall be a prerequisite to the granting of relief to such applicant from the Fund. The Committee may require that an applicant prosecute or cooperate in appropriate civil proceedings against the accused lawyer as a prerequisite to the granting of relief to such applicant from the Fund.

B. The Committee will hold such meetings and conduct such investigations or review as seem necessary or desirable in order

to determine whether the claim is for a reimbursable loss, and to guide the Committee in determining the extent, if any, to which the claim shall be reimbursed. (If the Committee determines that the claim is clearly not for a reimbursable loss, no further investigation need be conducted and such determination shall constitute a rejection of the application.) If the Committee determines that it is necessary to hear the claimant and the attorney or to receive other evidence on behalf of the claimant, then and in that event the Committee shall request the appearance of such individuals and the receipt of such additional evidence as may be required. In all cases, the lawyer charged shall be given an opportunity to be heard by the Committee if he so requests.

C. The Committee, in its sole discretion, shall determine the amount of loss, if any, which any client shall be reimbursed from the Fund. In making such determination, the Committee shall consider, *inter alia*, the following:
   (a) The negligence, if any, of the client which contributed to the loss.
   (b) The comparative hardship of the client suffered by the loss.
   (c) The total amount of reimbursable losses in the previous years for which total reimbursement has not been made and the total assets of the Fund.
   (d) The total amount of reimbursable losses of the clients of any one lawyer or association of lawyers.
   (e) The Committee may, in its sole discretion, allow further reimbursement of a reimbursable loss allowed by it at a prior time with respect to a loss which has not been fully reimbursed; provided such further reimbursement would not be inconsistent or in conflict with any previous determination with respect to such a loss.
   (f) No reimbursement shall be made to any client unless said reimbursement is approved by a majority vote of the Committee at a duly held meeting at which a quorum is present.

D. In determining whether or not any payment will be made on a claim, the Committee may consider:
   (a) The condition of the Fund.
   (b) The nature and size of the claim presented.
   (c) Such other factors as the Committee may deem just and proper.

E. Notice of the action taken by the Committee on any claim shall be transmitted by certified mail to all parties in interest.

VIII. The Alabama State Bar is authorized to assess each lawyer licensed to practice in the state an annual fee of $25. The $25 fee may be assessed for as many as four years, i.e., for a maximum of $100 per lawyer. This fee shall be used to fund the Client Security Fund.

IX. LIMITATION ON PAYMENT

A. All payments from the Fund shall be a matter of grace and not of right and shall be in the sole discretion of the Committee. No client or member of the public shall have any right in the Fund as a third-party beneficiary or otherwise.

B. The maximum amount which

any one claimant may recover from the Fund arising from an instance or course of dishonest conduct is Ten Thousand Dollars ($10,000.00).

C. The aggregate maximum amount which all claimants may recover arising from an instance or course of dishonest conduct is Twenty Thousand Dollars ($20,000.00).

X. SUBROGATION

A. If reimbursement is made, the Fund shall be subrogated in the amount of the reimbursement and the Committee may bring such action as is deemed advisable against the lawyer or the lawyer's estate. Such action may be brought either in the name of the claimant, or in the name of the committee. Prior to payment of the claim, the claimant shall be required to execute a subrogation agreement. Upon commencement of an action by the Committee, pursuant to its subrogation rights, it shall advise the claimant, who may then join in such action to recover losses in excess of the amount of the reimbursement from the Fund.

B. Should the claimant bring an action for recovery of unreimbursed losses directly against the lawyer, or the lawyer's estate, the claimant shall notify the Committee of such action.

C. The claimant is expected to cooperate in any effort the Committee undertakes to achieve reimbursement for the Fund.

XI. CONFIDENTIALITY

A. Applications, proceedings, and reports involving applications for reimbursement are confidential until the Committee authorizes reimbursement of the claimant, except as provided below.

B. If the lawyer whose alleged conduct gave rise to the claim requests that the matter be made public, the requirement of confidentiality is waived.

C. Section A shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Committee shall authorize, or the release of statistical information which does not disclose the identity of the lawyer or the parties.

D. Both the claimant and the lawyer shall be advised of the status of the Committee's consideration of the claim and shall be informed of the final determination.

XII. ATTORNEY'S FEES

No attorney representing a claimant shall be compensated from any source for his or her services.

XIII. CONFLICT OF INTEREST

A member of the Committee who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving the claimant or lawyer.

XIV. IMMUNITY

The members of the Committee and staff persons assisting those members are absolutely immune from civil liability for all acts in the course of their official duties.

XV. GENERAL PROVISIONS

A. The Executive Director of the Alabama State Bar shall act as the Treasurer of the Committee and shall be an *ex officio* member of the Committee.

B. The Committee shall not consider granting reimbursement for loss or damage resulting from incompetence or malpractice, but only for loss sustained by reason of dishonest acts.

C. The Client Security Fund Committee shall not reimburse any person, firm, or association (such as a bonding company, for example) for any loss where such person, firm, or association has been compensated for assuming a risk of loss.

XVI. SEVERABILITY

These Rules are severable. If any rule or any part thereof is declared invalid or unconstitutional, such declaration shall not affect the rules or portions thereof which remain. ■

ORDER

WHEREAS, the Board of Bar Commissioners of the Alabama State Bar has recommended to this Court that DR 9-102 of the *Code of Professional Responsibility* of the Alabama State Bar be amended, and EC 9-7 be added to the *Code of Professional Responsibility* of the Alabama State Bar; and

WHEREAS, the Court has considered the recommended amendment and the recommended addition and deems it appropriate to adopt the amendment and the addition;

NOW, THEREFORE, IT IS HEREBY ORDERED that DR 9-102 of the *Code of Professional Responsibility* of the Alabama State Bar be, and it hereby is, amended, and EC 9-7 be, and it hereby is, added to the *Code of Professional Responsibility* of the Alabama State Bar, to read in accordance with those appendices A and B, respectively, which appendices are attached to this order and made a part thereof.

IT IS FURTHER ORDERED that these amendments shall become effective October 1, 1987, so that those lawyers or law firms that do not advise the Executive Director pursuant to DR 9-102(D)(3) by September I, 1988, of an election not to maintain a pooled interest bearing insured depository trust account must maintain such an account for the fiscal year beginning October 1, 1988.

IT IS FURTHER ORDERED that any interested persons shall have until September 1, 1987, to submit to the Clerk of the Supreme Court, P.O. Box 157, Montgomery, Alabama 36101, written objections or comments concerning this amendment and addition.

APPENDIX A
CODE OF PROFESSIONAL RESPONSIBILITY OF THE ALABAMA STATE BAR

DR 9-102 Preserving Identity of Funds and Property of a Client

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable insured depository trust accounts maintained in the state in which the law office is situated. For purposes of this rule, "insured depository trust accounts" shall mean government insured accounts at a regulated financial institution on which withdrawals or transfers can be made on demand, subject only to such notice period which the institution is required to reserve by law or regulation. No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay service charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipts of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Not misappropriate the funds of his client, either by failing promptly to pay over money collected by him for his client or by appropriating to his own use funds entrusted to his keeping.

(5) Not make disbursements of a client's funds from trust accounts containing the funds of more than one client unless the client's funds are collected funds. Provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at his own risk, disburse uncollected client's funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of noncollection, replace such funds to the trust account.

(C) Funds received directly or indirectly under an approved credit card plan shall be subject to all of the requirements of this disciplinary rule.

(D) (1) Except as may be authorized by DR 9-102(D)(2) and (D)(3), interest earned on insured depository trust accounts in which the funds of clients are deposited (less any deduction for service charges, fees of the depository institution, and taxes collected with respect to the deposited funds) shall belong to the clients whose funds are deposited and the lawyer or law firm shall have no right or claim to such interest.

(2) Unless an election not to do so is submitted in accordance with the procedure set forth in DR 9-102 (D)(3), a lawyer or law firm with which he is associated who receives client funds shall maintain a pooled interest-bearing insured depository trust account for deposit of client funds that are nominal in amount or expected to be held for a short period. Such an account shall comply with the following provisions:

(a) The account shall only include clients' funds which are nominal in amount or are expected to be held for a short period of time.

(b) No interest from such an account shall be made available to a lawyer or law firm.

(c) Lawyers or law firms depositing client funds in an interest-bearing insured depository trust account under this paragraph (D)(2) shall direct the deposit institution:

(i) To remit interest, net any service charges or fees, as computed in accordance with the institution's standard accounting practice, at least quarterly, to the Alabama Law Foundation; and

(ii) To transmit with each remittance to the Alabama Law Foundation a statement showing the name of the lawyer or law firm on whose account the remittance is sent and the rate of interest applied, with a copy of such statement to be transmitted to the lawyer or the law firm.

(d) All interest transmitted to the Alabama Law Foundation shall be distributed by that entity for the following purposes:

(i) To provide legal aid to the poor;

(ii) To provide law student loans;

(iii) To provide for the administration of justice;

(iv) To provide law-related educational programs to the public;

(v) To help maintain public law libraries;

(vi) To help maintain a client security fund;

(vii) To help maintain an inquiry tribunal; and

(viii) For such other programs for the benefit of the public as are specifically approved by the Supreme Court of the State of Alabama from time to time.

(3) Lawyers or law firms that do not wish to maintain accounts described in DR 9-102(D)(2) for any fiscal year must so advise the Executive Director of the Alabama State Bar in writing on or before September 1 of the preceding fiscal year. Law firms that do not so advise the Executive Director within any such period shall be required during the ensuing year to maintain such accounts in accordance with DR 9-102(D)(2).

APPENDIX B
CODE OF PROFESSIONAL RESPONSIBILITY OF THE ALABAMA STATE BAR
EC 9-7

As to insured depository trust accounts, a lawyer should exercise good faith judgment in determining initially whether funds of a client are of such nominal amount or are expected to be held by the lawyer for such a short period of time that the funds should not be placed in an interest bearing insured depository trust account for the benefit of the client. The lawyer should also consider such other factors as:

(a) The cost of establishing and maintaining the account, service charges, accounting fees, and tax reporting procedures;

(b) The nature of the transaction(s) involved; and

(c) The likelihood of delay in the relevant proceedings.

A lawyer should review at reasonable intervals whether changed circumstances require further action respecting the deposit of client funds. ■

Alabama Administrative Procedure Act: The Venue Issue Resolved

By Helen Currie Foster

In 1981, the Alabama Legislature enacted the Alabama Administrative Procedure Act ("AAPA"), *Ala. Code* §41-22-1 *et seq.* (1975). As could be expected, the first decisions involving the AAPA centered on conflicts between the AAPA and existing statutes governing state agencies, particularly as they applied to procedures for appeals from agency decisions. In a December 17, 1986, decision, the Alabama Court of Civil Appeals (the "appeals court") cleared up serious confusion over applicable procedures between the AAPA and existing statutes governing appeals from state agencies. *Ex parte State Health Planning & Development Agency*, 500 So. 2d 1149 (Ala. Civ. App. 1986), *denying petition for mandamus in AMI Brookwood Medical Center v. State Health Planning & Development Agency* (hereafter called *"Brookwood"*)

In *Brookwood*, the State Health Planning Agency ("SHPA")[1] unsuccessfully attempted to dodge the AAPA venue provision which subjected it to suit in counties other than Montgomery County, where it maintains its headquarters. The appeals court resolved the issue of proper venue for aggrieved persons appealing agency actions by establishing the primacy of the AAPA over prior "general rules" of venue, and also priority as to venue between the AAPA and specific agency statutes. Earlier appeals court decisions construing the AAPA had left uncertain not only the question of proper venue, but even whether the AAPA gave any new appeal rights to an aggrieved person who had participated in agency proceedings but who was not entitled to appeal under a specific agency statute.

The background of the case was this: After the Certificate of Need Review Board of SHPA voted to grant the Lloyd Noland Foundation a certificate of need ("CON") to build a new hospital in the South Jefferson-North Shelby County area, five area hospitals (the "Hospitals") filed five appeals. Two of the hospitals filed in the circuit court of Jefferson County, Bessemer division; three filed in Montgomery County. All appellants then were made parties to the appeal filed by AMI Brookwood Medical Center ("Brookwood") in Bessemer, by motion of Brookwood, and were ordered not to pursue other appeals. None of the hospitals objected to the Bessemer venue.

The attorney for SHPA filed a motion asking the Bessemer court to transfer the Bessemer appeal to Montgomery County on grounds of improper venue. At the same time the SHPA attorney also filed a petition for writ of mandamus in the appeals court to move the case to Montgomery County (which the appeals court refused to decide until after the Bessemer circuit judge ruled on the transfer motion).

After the Bessemer circuit judge denied the transfer motion, the appeals court denied SHPA's mandamus petition. In holding that the circuit judge indeed had discretion to deny SHPA's motion to transfer for improper venue, the appeals court rejected SHPA's alternative arguments that the SHPA statute, *Ala. Code* §22-21-260 *et seq.* (1975), not the AAPA, controlled venue, or that the "general rule of venue" for actions against state agencies required that appeals be filed in Montgomery County, the county of SHPA's headquarters, regardless of what the AAPA provides. Perhaps most importantly, the court rejected SHPA's arguments that the AAPA was intended to provide only "minimal procedure,"[2] as opposed to at least the "minimum procedure" mentioned in the act itself, and that the AAPA venue provision, by requiring SHPA to defend its actions in a county other than Montgomery County, created a "burden" on the agency which would justify the court's ignoring the AAPA venue.

The specific agency statute governing judicial review of SHPA action, *Ala. Code* §22-21-275(14) (1975), provides only for appeals from "any adverse decision," first through appeal via a fair hearing, then by appeal to the circuit court:

> "The decision of the appeals agency shall be considered the final decision of the state agency; provided, that the

Helen Currie Foster received her undergraduate degree from Wellesley College, master's from the University of Texas and law degree, magna cum laude, from the University of Michigan. She served as an adjunct professor of law with the University of Alabama's School of Law in 1985 and currently is an associate with the Birmingham firm of Cabaniss, Johnston, Gardner, Dumas & O'Neal.

applicant may appeal the decision to the circuit court of the county in which the applicant resides or of the county in which the applicant is situated." (emphasis added)

The SHPA statute contains no provision for appeal by non-applicants, such as the hospitals. The AAPA review provision, on the other hand, extends review rights to any "aggrieved" person. Section 41-22-10(a) provides:

> (a) "A person who has exhausted all administrative remedies available within the agency (other than rehearing) and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."

While the AAPA does not define "aggrieved," it does define "person" broadly in §41-22-3, and also provides that any "interested person" may intervene in a contested case under §41-22-14. Nothing in the AAPA suggests that the legislature intended to limit the right to appeal more rigorously than the right to intervene.

Brookwood clarifies several key issues. First, the appeals court held the hospitals were entitled to their choice of the venues provided by the AAPA, because the SHPA statute did not expressly provide that a non-applicant could appeal at all, and hence its venue provision was inapplicable. Second, *Brookwood* makes it clear that the prior "general rule of venue," enunciated by cases holding that, absent specific statutes, state agencies were subject to suit in the counties of their headquarters, has been superseded by the 1981 enactment of the AAPA. Third, this decision makes it clear that the "minimum procedure" available under the AAPA now is available to appellants who might have lacked standing under a specific agency statute (i.e. non-applicants); AAPA standing (i.e. "aggrieved person") now controls.

To see how *Brookwood* clarifies standing and venue under the AAPA requires a look at recent AAPA decisions by the appeals court.[3] Oddly, SHPA is the agency spawning the largest number of reported decisions construing the AAPA to date.

Prior Decisions

I. The *Mobile Infirmary* decision

The appeals court had left doubts as to the extent of the availability of AAPA venue by holding in July 1985 that an applicant hospital could appeal a CON decision under only the SHPA statute, not the AAPA, and hence was limited to the venue permitted by the SHPA statute. *Mobile Infirmary Ass'n. v. Emfinger*, 474 So. 2d 731 (Ala. Civ. App. 1985) Mobile Infirmary had appealed SHPA's decision to grant a CON to Springhill Memorial Hospital to acquire a lithotripter. Mobile Infirmary had applied for a CON for the same equipment, but SHPA apparently did not act on the application. Mobile Infirmary filed its appeal in Montgomery County Circuit Court, which dismissed for lack of jurisdiction. The appeals court affirmed, since, under the SHPA statute, as an applicant the plaintiff could file only in the county of its principal place of business, Mobile County. In denying the plaintiff's claim that under §41-22-10(b) of the AAPA, the court focused on the introductory language of §41-22-10(b), which provides:

> (b) *"Except in matters for which judicial review is otherwise provided for by law,* all proceedings for review shall be instituted by filing of notice of appeal or review and, where required by statute, a cost bond with the agency. A petition shall be filed in the circuit court of the county in which the agency maintains its headquarters, or unless otherwise specifically provided by statute, where a party (other than an intervenor) resides or if a party (other than an intervenor), is a corporation . . . then in the county of [its] registered office or principal place of business . . . ."

474 So. 2d at 732 (emphasis the court's)

According to the appeals court, the phrase "Except in matters for which judicial review is otherwise provided for by law" meant that, since the SHPA statute does provide for judicial review for applicants, the SHPA statute controlled over the AAPA. In denying that the more liberal filing provisions of the AAPA governed, the court in *Mobile Infirmary* allowed the single introductory phrase of §41-22-20(b) to control over other AAPA language, specifically §§41-22-2 and 41-22-25. For example, the court quoted §41-22-25(a) in part:

> (a) "This chapter shall be construed broadly to effectuate its purposes. Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in addition to those created or imposed by every other statute in existence on the date of the passage of this chapter or thereafter enacted. If any other statute in existence on the date of the passage of this chapter or thereafter enacted diminishes any right conferred upon a person by this chapter or diminishes any requirement imposed upon an agency by this chapter, this chapter shall take precedence unless the other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter."

At 733 (emphasis the court's)

The appeals court relied on the emphasized language as referring back to the introductory clause of §41-22-20(b), and refused to be moved by the otherwise broad language of §41-22-25(a), stating:

> "But for the above emphasized language in §41-22-25(a), one could conclude that the more liberal filing requirements for judicial review under the AAPA may be followed in addition to those of §22-21-275(14). This introductory clause, however, specifically excepts those matters where the AAPA itself states an exception to its requirements. Such is the case with §41-22-20(b). This statute specifically exempts from its judicial review filing provisions those matters for which judicial review is provided by other law."

Id.

The appeals court's position in *Mobile Infirmary* is hard to justify given other language in the AAPA. The court mentioned but failed to discuss §41-22-2, in which the legislature stated that the purposes of the AAPA are to increase agency accountability and simplify the process of judicial review and increase, not decrease, its ease and availability. The

court apparently did not even consider another AAPA provision, §41-22-26; that provision repeals prior inconsistent statutes and agency rules and arguably operates to repeal any provisions of the SHPA judicial review procedures, as well as provisions in other agency statutes, which conflict with the AAPA:

> "It is the express intent of the legislature to replace all provisions in statutes of this state relating to rulemaking, agency orders, administrative adjudication, *or judicial review thereof* that are inconsistent with the provisions of this chapter. Therefore, all laws or parts of laws that conflict with this chapter are hereby repealed on October 1, 1982 . . . " (emphasis added)

Moreover, another provision, §41-22-27, suggests that except for adjudicative proceedings which were ongoing on the effective date of the AAPA, future adjudicative proceedings must follow AAPA provisions. Section 41-22-27 provides that any contested cases which were being conducted prior to October 1, 1983, under the provisions of specific agency statutes may continue under those provisions; however, contested cases which had not reached the hearing stage by October 1, 1983, are to be conducted in accordance with AAPA provisions, if all consent. The implication is that contested cases beginning *after* October 1, 1982, will be governed by AAPA procedures. Finally, according to the commentary to §41-22-27, that section is intended to allow "the procedural protections intended to be provided by this act [to] be fully taken advantage of at the earliest opportunity." Arguably such "procedural protections" include availability of AAPA venue, contrary to the appeals court's interpretation.

The appeals court's reliance in *Mobile Infirmary* on the solitary introductory phrase of §41-22-20(b) thus appeared to contradict the express intent of the legislature in §41-22-2 to simplify and *increase* availability of review; it made nugatory the legislature's express intent in §41-22-26 to repeal inconsistent provisions in other agency statutes, specifically including provisions for judicial review. Moreover, the court seemed unjustified in placing such overwhelming emphasis on the single introductory phrase in §41-22-20(b), since it certainly could be argued that the phrase applies only to the first sentence, concerning the initial filing of notice of appeal with the agency itself, and was not intended to affect the venue provisions set out in succeeding sentences of subsection (b):

> "Except in matters for which judicial review is otherwise provided by law, all proceedings for review shall be instituted by filing of notice of appeal or review and, where required by statute, a cost bond, with the agency."

Nonetheless, the upshot of *Mobile Infirmary* was that an aggrieved CON applicant was limited to seeking judicial review only in its county of residence, as provided in the SHPA statute and, therefore, where an agency statute provided for appeal in a particular jurisdiction, no other jurisdiction was available.

II. The *Druid City* decision

Only three months after issuing its opinion in *Mobile Infirmary*, the appeals court once again affirmed a Montgomery County Circuit Court's dismissal of an appeal of a SHPA decision. *Druid City Health Care v. Ala. State Health Planning & Development Agency*, 482 So. 2d (Ala. Civ. App. 1985), *cert. denied*, No. 85-255 (Ala. Jan. 31, 1986) As in *Mobile Infirmary*, the appellant in *Druid City* was a competitor of the hospital which had received a CON, but this time was not an applicant.

The appeals court cited its decision in *Mobile Infirmary* in upholding dismissal of the appeal, filed not in the county of the appellant's principal place of business, Tuscaloosa County, but in Montgomery County:

> "This conclusion is in line with the well-recognized principle noted by this court in *Mobile Infirmary* that 'where a special statutory provision is provided as an exclusive method of review for a particular type case, 'no other statutory review is available.'"

482 So. 2d at 1223

The court further stated, *in dictum*, that since the plaintiff was not an applicant, and the SHPA statute gave only applicants the right to judicial review, the plaintiff lacked even standing to appeal:

> "We note, however, that it appears to this court that, in view of our rationale expressed in *Ex parte State Health Planning and Development Agency*, 443 So. 2d 1239 (Ala. Civ. App. 1983), the circuit court would appear to be correct in concluding that Druid City lacked standing."

Id. at 1224

That dictum, had it not been erased by the recent *Brookwood* decision, effectively would have negated the entire AAPA, and defeated the purpose of the AAPA, to increase ease and availability of judicial review. First, under this rationale, if an agency statute grants any judicial review and designates venue, the AAPA venue provision does not apply, but if the agency provision limits availability of review and excludes the appellant, the AAPA still does not apply! The hapless plaintiff in *Druid City* could file only in Tuscaloosa County, under the SHPA statute, and possibly not even there, given lack of standing under *Druid City*.

As precedent for its dictum in *Druid City* the appeals court cited not only *Mobile Infirmary* but also a pre-AAPA case, *Ex parte State Health Planning and Development Agency, supra*. That case had held that non-applicant hospitals lacked standing to protest a CON deci-

sion involving another hospital, a holding which should have been legislatively overruled by the enactment of the AAPA.

The appeals court also relied on a case which presented a more serious challenge to the AAPA, *Moore v. State Department of Revenue*, 447 So. 2d 744 (Ala. Civ. App. 1983), *cert. denied*, 447 So. 2d 747 (Ala. 1984). *Moore*, which involved appeal of a final assessment of personal income tax, was initiated before the effective date of the AAPA. The appeals court correctly ruled that AAPA filing provisions were inapplicable. The court went on, however, to state *in dictum* that the special statutory procedure provided for appeals of final tax assessments was exclusive, and that the plaintiffs could not "circumvent" that provision by invoking the AAPA. The court cited that dictum in *Mobile Infirmary*:

> "This interpretation of §41-22-20(b) is in accord with the longstanding rule that where a special statutory provision is provided as an exclusive method of review for a particular type case, no other statutory review is available.' *Parsons v. State Board of Registration*, 416 So. 2d 1031, 1033 (Ala. Civ. App.), *cert. denied*, (Ala. 1982). *Moore v. State Department of Revenue*, 447 So. 2d 744, 746 (Ala. Civ. App. 1983), *cert. denied*, 477 So. 2d 747 (Ala. 1984). The above stated rule was noted by this court in *Moore in dicta* specifically addressed to the question of whether the liberal judicial review provisions of the AAPA could be used to circumvent the requirements of the specific statute governing appeals of final tax assessments of the State Department of Revenue. We concluded that it could not be so used."

Mobile Infirmary, at 732-733

The flaw in the *Moore* dictum on exclusivity of appeal procedures under an agency statute is clear if one looks at §41-22-27(f) of the AAPA, which expressly names one agency, the Alabama Department of Environmental Management, as exempt from certain AAPA provisions, but fails to exempt SHPA or any other agency. The implication is that agencies not named in the exemption are covered. Further, the legislature's 1986 amendment of §41-22-20, the appeal provision of the AAPA, specifically affecting the scope of review of certain *tax appeals* (including the type of appeal filed in *Moore*) strongly suggests that the legislature does intend for AAPA procedures to govern tax cases. The *Moore* dictum, in combination with *Druid City's* holding on venue and dictum on standing, would have essentially defeated the purpose of the AAPA, and would have conceivably limited its field of operation to situations where an existing agency statute did not provide for review at all. Left intact, *Druid City* would have left the AAPA of no help to interested persons who were affected by an agency decision, but who lacked standing under an agency statute providing only a limited right of review. Fortunately *Brookwood* repairs the damage.

III. The *Brookwood* decision

In the December 1986 *Brookwood* decision, the appeals court ignored its dictum in *Druid City* and correctly applied the AAPA to establish that non-applicant hospitals indeed had AAPA standing to protest SHPA's decision to grant a CON to an applicant hospital. Further, the panel said, non-applicants were entitled to AAPA venue and hence could file in the counties of their principal place of business as provided by the AAPA.

Procedurally, as the appeals court stated, "The sole issue before us now is whether the Jefferson County Circuit Court abused its discretion in denying [SHPA's] motion to transfer Brookwood's appeal to Montgomery County Circuit Court." But the court first decided that Brookwood indeed had standing—*under the AAPA*:

> "It appears to this court that Brookwood was *entitled* to appeal [SHPA's] decision, pursuant to the . . . AAPA . . ." *Brookwood*, at 3 (emphasis added)

The panel distinguished *Mobile Infirmary* as involving an appeal filed by an *applicant* hospital for which appeal procedure was already "otherwise provided by law" in the SHPA Statute. As to *Mobile Infirmary*, the court stated:

> "Under a specific [SHPA] statute, however, appeal from [SHPA's] ruling on a CON application can be brought only in the county where the CON *applicant* resides or is located. Ala. Code (1975), §22-21-275(14). The result was the dismissal of the *applicant's* appeal.
>
> "In this case, however, we are not dealing with an applicant's appeal. Rather, Brookwood and the other appellants are intervenors opposed to the granting of a CON application by [SHPA]. There being no statute providing for non-applicant's appeal of [SHPA's] actions, the procedures provided by the AAPA, including venue, are applicable here."

At 5

As a result of *Brookwood*, aggrieved persons who are entitled under the AAPA to file an appeal, though not under a specific agency statute, now are entitled to the full panoply of AAPA procedures. Ironically, however, an appellant entitled to file under an agency statute remains limited by the filing procedures of that statute, as a result of *Brookwood*. Arguably this aspect of *Brookwood* is incorrect, since the AAPA expressly provides that while an agency can provide more liberal review provisions than the AAPA, it cannot provide less: the legislature intended the AAPA at least "a minimum procedural code for the operation of all state agencies." Section 41-22-2(a) *Brookwood* creates an anomalous situation where an aggrieved non-applicant party has access to several venues in which to appeal a SHPA decision, while a CON applicant hospital is limited to one. That aspect of *Mobile Infirmary* survives after *Brookwood*.

Now it is at least clear that where a person has AAPA standing to appeal an agency decision, that person may file as provided by §41-22-20 of the AAPA even if the agency statute did not provide a right of appeal. However, if the person could have filed an appeal under the agency statute, the agency statute will control filing of the appeal.

IV. Rules of evidence and scope of review

Venue aside, it now is apparent the AAPA will govern other aspects of judicial review of agency decisions, including applicable rules of evidence and the standard of review. These two questions arose in another case decided by the ap-

peals court, again involving competing hospitals and the SHPA statute. *Regional Dialysis of Anniston v. Northeast Alabama Kidney Clinic, Inc.*, 480 So. 2d 1226 (Ala. Civ. App. 1985), involved two hospitals competing for CONs for a dialysis facility. (Both CONs were approved; each hospital disputed the award to the other.)

On the issue of scope of review, the appeals court elaborated on the nature of "review on the record":

"We review to determine whether from the record, there was a proper finding of facts and whether, under the Administrative Procedures Act, the law was properly applied to those facts. We review the circuit court judgment without any presumption of correctness, since the court was in no better position to review the order of the Board than we are . . . "

Regional Dialysis, at 1227

The appeals court stated that the *ore tenus* rule does not apply in a review of circuit court decision: since circuit court review is on the record of the administrative proceeding below, the circuit judge has no advantage over the appellate court.

The AAPA itself sets out the standards for judicial review. Under §41-22-20(k), a court may reverse or modify an agency decision if the agency action was:

(1) in violation of constitutional or statutory provisions;
(2) in excess of the statutory authority of the agency;
(3) in violation of any pertinent agency rule;
(4) made upon unlawful procedure;
(5) affected by earlier law;
(6) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
(7) unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

In other words, the reviewing court may reverse or modify for errors of law; for agency action which was arbitrary or capricious or an abuse of discretion; or where the agency decision was clearly erroneous in that it was not based on substantial evidence in the record as a whole. *Regional Dialysis* places the AAPA in the mainstream of administrative law with regard to the scope of "review on the record." See, e.g.

In *Regional Dialysis* the appeals court also addressed the change in rules of evidence dictated by the AAPA:

"While administrative agencies have not previously been restricted to the legal rules of evidence used in courts of law, *Estes v. Board of Funeral Services*, 409 So. 2d 803 (Ala. 1982), the Administrative Procedure Act specifically provides that the rules of evidence are to be followed in contested cases." §41-22-13, Code 1975

Regional Dialysis, at 1228

Here, however, the result may have overly restricted administrative flexibility with regard to evidence. The appeals court had stated:

"There were no affidavits, depositions or documents supporting *Regional's* allegations. As such, *Regional* did not show 'good cause' . . . "

Id.

The SHPA statute provided that the basis for reconsideration was "written presentation of evidence of 'good cause.'" Thus, the appeals court looked to the agency's pre-AAPA rules, and applied to the agency situation essentially the evidentiary standards for summary judgment in the judicial situation—i.e., mere allegations were not enough without the type of supporting documentation required for a motion for summary judgment. On certiorari, the supreme court agreed with the appeals court that by failing to submit sufficient evidence, the plaintiff had failed to show "good cause" for its reconsideration request (though the supreme court did note that under the AAPA an agency is not necessarily restricted to evidence admissible under the rules of evidence: see §41-22-13).

The *Regional Dialysis* holding on rules of evidence was not clearly mandated by the AAPA. Its result was to impose judicially a standard for an application for rehearing which was arguably stiffer than either the agency's own rules, or the AAPA standard for reconsideration, found in §41-22-17, which requires "authorities" and a detailed explanation but does not require summary judgment-type documentation. Furthermore, the decision cuts against the basic principle of the AAPA, that agencies may provide more liberal review than the AAPA, but not less. Nonetheless, appellants are now on notice that while Alabama courts work through the notion that the purpose of the AAPA is to standardize and simplify review procedures and increase the ease and availability of judicial review, the safer course for the present is to comply with whichever provision is the more stringent, whether AAPA or agency.

FOOTNOTES

[1]While the SHPA statute, *Ala. Code* §22-21-260 *et seq.*, describes the agency as the "State Health Planning and Development Agency," the agency is now known as the State Health Planning Agency. See Rule 410-1-1-.01 of the Rules and Regulations of the State Health Planning Agency.

[2]SHPA's Brief in Support of Petition for Mandamus, at 5. The supreme court used the term "minimal procedure" in *Benton v. Alabama Board of Medical Examiners*, discussed in n.3 below.

[3]As yet, the Alabama Supreme Court has construed the AAPA only a few times. In *Benton v. Alabama Board of Medical Examiners*, 467 So. 2d 234 (Ala. 1985), the supreme court held it was reversible error for a lower court to review an agency decision only on the record, as the AAPA generally provides, where an agency statute provides for trial *de novo*. As the court noted, where an agency provides greater procedural due process than the AAPA, the agency statute controls. (The case was easy in that the agency statute involved expressly stated that it superseded the AAPA; also, the case involved denial of a property right—medical licensure.) The 1986 amendments to §41-22-20 clarify issues of scope of review and use of the record raised in Justice Torbert's dissent. Unfortunately, two other supreme court decisions unnecessarily restrict the flexibility of AAPA procedures. *Regional Dialysis of Anniston v. Northeast Alabama Kidney Clinic, Inc.*, 480 So. 2d 1229 (Ala. 1985), affirmed the appeals court's decision restricting the evidence admissible in contested cases, in a case of the same name, 480 So. 2d 1226.

More recently the supreme court held that before invoking §41-22-10 of the AAPA, which on its face authorizes an affected person to bring an action for declaratory judgment as to the "validity or applicability" of an agency rule, or for an injunction against enforcement of the rule, a plaintiff must exhaust the remedy provided by another AAPA provision, §41-22-11. *Stuart, et al. v. Historic Warehouse, Inc.*, 21 A.B.R. 1511 (December 19, 1986) Section 41-21-11 permits a person to petition an agency for a declaratory ruling on the validity or applicability of a rule. As Justice Maddox persuasively argues in his dissent, the majority, by an unnecessarily broad decision, has foreclosed an important remedy created by the legislature. The majority failed to discuss the circumstances expressly delineated in §41-21-10: that the Circuit Court of Montgomery County can grant declaratory or injunctive relief, "if the rule, or its threatened application, interferes with or impairs . . . the legal rights . . . of the plaintiff . . . (emphasis added) The result may have been correct on the facts of *Stuart*, where no serious immediate impairment of plaintiffs' rights was obvious and where a prior determination by the agency on the issue would be helpful to the reviewing court. However, §41-21-10 evidently was intended to provide emergency relief; an exhaustion requirement obviously would limit its usefulness in such circumstances. The court did not suggest any exceptions to its exhaustion requirement; it is to be hoped that at some future date in an appropriate case the court will modify its holding in *Stuart*. ■

Alabama State Bar 1987 Annual Meeting

1 *Mobile Bar Association president Marshall DeMouy welcomed the state bar to Mobile.*

2 *Vice president Phillip Adams, Opelika, responded for the ASB.*

3 *Bench and Bar luncheon speaker Stephen Sachs was presented a specially inscribed copy of the book* ***Alabama.***

4 *Harold Apolinsky, Birmingham, received the Judge Walter P. Gewin CLE award presented by Steven C. Emens, director, Alabama Bar Institute for CLE.*

5 *Rowena Teague, Birmingham, received the ASB Award of Merit for her leadership of the IOLTA committee.*

6 *Among the speakers for Thursday's section meetings was past president William B. Hairston, Jr., Birmingham, who spoke to the Bankruptcy and Commercial Law Section.*

7 *Incoming YLS president Charles R. Mixon, Jr., Mobile, expressed the section's appreciation to outgoing president Claire Black, Tuscaloosa.*

8 *Among the hosts for Thursday evening's membership reception was past president E.T. Brown, Birmingham, shown here with ASB staff members Margaret Boone (left) and Diane Weldon (right).*

9 *President Scruggs, his wife, Kay, and their daughter, Shannon, enjoyed the hospitality . . .*

10 *. . . as did ASB Board of Bar Examiners Chairman David Boyd, Montgomery, and his wife, Gretchen.*

11 *Claire Black and Sid Jackson were among the young lawyers partying on the USS Alabama.*

12 *Friday morning, ASB past presidents enjoyed their traditional breakfast . . .*

13 *. . . as the Alabama Law Foundation Board of Trustees conducted a meeting.*

15 *. . . David Byrne, Montgomery, on recent criminal decisions . . .*

16 *. . . Wendell Mitchell, Luverne, on legislative developments . . .*

14 *Over 700 members came to "Update '87" to hear such speakers as . . .*

17 . . . and Gary Huckaby, Huntsville, on lawyer ethics.

18 Chief Justice C.C. "Bo" Torbert chatted with President Scruggs.

19 Spouses boarded the bus for transportation to their luncheon at the Mobile Country Club.

20 Spann Milner, president, Insurance Specialists, Inc., hosted Friday night's reception.

21 A wide array of treats was spread for the dessert party . . .

22 . . . where Birmingham's "Three on a String" entertained.

23 U.S. Department of Transportation Secretary Elizabeth Dole was Saturday's keynote speaker, introduced by former Congressman Jack Edwards (not pictured).

24 The secretary caught the president off-guard when she hugged him.

25 Jim Ward, Birmingham, received the other ASB award of merit for his service as chairman of the Client Security Fund Committee.

26 W.N. "Rocky" Watson, Fort Payne, was among the outgoing board members who received commemorative medallions . . .

27 . . . as was Edward Boswell, Geneva.

28 *Richard Dorman, Mobile, and other outgoing bar examiners received tokens of appreciation for their service.*

29 *Immediate past president James L. North, Birmingham, presented the Scruggs family with the traditional silver president's plaque.*

30 *Another past president, William B. Hairston, Jr., Birmingham, recognized President Scruggs' efforts in tort reform by presenting the first "David and Goliath Award."*

31 *President Scruggs recited Gary Huckaby's qualifications to serve as president-elect 1987-88.*

32 *New president Ben H. Harris, Jr., posed with president-elect Huckaby and past president Scruggs . . .*

33 *. . . and then with his parents, Mr. and Mrs. Ben H. Harris, Sr., wife Martha, son Ben H. Harris, III, and mother-in-law Martha Lambeth.*

34 *President Harris then presided over his first board meeting and another enjoyable annual meeting came to a close.*

cle opportunities

17 thursday

EVIDENCE
Ramada Civic Center Plaza, Birmingham
Cumberland Institute for CLE
Credits: 6.6 Cost: $115
(205) 870-2865

FAMILY LAW
Civic Center, Montgomery
Alabama Bar Institute for CLE
Credits: 7.2 Cost: $85
(205) 348-6230

18 friday

CRIMINAL DISTRICT COURT—THE BASICS
Criminal Justice Center, Birmingham
Birmingham Bar Association
Credits: 3.2 Cost: $15
(205) 251-8006

ESTATE TAXES
Harbert Center, Birmingham
Birmingham Bar Association
Credits: 1.0 Cost: $10
(205) 251-8006

FAMILY LAW
Civic Center, Birmingham
Alabama Bar Institute for CLE
Credits: 7.2 Cost: $85
(205) 348-6230

ESTATE PLANNING UNDER TAX REFORM ACT OF 1986
Ramada Civic Center Plaza, Birmingham
Cumberland Institute for CLE
Cost: $90
(205) 870-2865

TORT REFORM
Riverview Plaza Hotel, Mobile
Mobile Bar Association
Credits: 3.0 Cost: $25
(205) 433-9790

24 thursday

TORTS
Von Braun Civic Center, Huntsville
Alabama Bar Institute for CLE
Credits: 7.5 Cost: $85
(205) 348-6230

ESTATE PLANNING UNDER TAX REFORM ACT OF 1986
Sheraton Riverfront, Montgomery
Cumberland Institute for CLE
Cost: $90
(205) 870-2865

25 friday

EQUITY PRACTICE
Harbert Center, Birmingham
Birmingham Bar Association
Credits: 3.2 Cost: $25
(205) 251-8006

TORTS
Civic Center, Birmingham
Alabama Bar Institute for CLE
Credits: 7.5 Cost: $85
(205) 348-6230

ESTATE PLANNING UNDER TAX REFORM ACT OF 1986
Admiral Semmes, Mobile
Cumberland Institute for CLE
Cost: $90
(205) 870-2865

DRUG TESTING: THE LEGAL ISSUES
Wynfrey Hotel, Birmingham
Irwin Associates, Inc.
Credits: 7.8 Cost: $150
(919) 229-9134

1 thursday

TORTS
Ramada Inn, Mobile
Alabama Bar Institute for CLE
Credits: 7.5 Cost: $85
(205) 348-6230

2 friday

TORTS
Civic Center, Montgomery
Alabama Bar Institute for CLE
Credits: 7.5 Cost: $75
(205) 348-6230

2-3

MINERAL LAW
Hyatt Regency, Lexington
University of Kentucky College of Law Continuing Legal Education
(606) 257-2921

8 thursday

CRIMINAL LAW
Civic Center, Montgomery
Alabama Bar Institute for CLE
Credits: 7.2 Cost: $85
(205) 348-6230

8-10

TRIAL EVIDENCE, CIVIL PRACTICE & EFFECTIVE LITIGATION
Mills House Hotel, Charleston
American Law Institute-American Bar Association
Credits: 23.9 Cost: $495
(215) 243-1600

9 friday

SCHOOL LAW
Birmingham
Alabama Bar Institute for CLE
Credits: 7.5 Cost: $85
(205) 348-6230

CRIMINAL LAW
Wynfrey Hotel, Birmingham
Alabama Bar Institute for CLE
Credits: 7.2 Cost: $85
(205) 348-6230

15 thursday

PROBATE AND ADMINISTRATION OF ESTATES
Civic Center, Birmingham
Alabama Bar Institute for CLE
Credits: 7.1 Cost: $115
(205) 348-6230

15-16

CONDOMINIUM AND CLUSTER DEVELOPMENTS
Miami Beach
Miami Law Center
Credits: 16.2
(305) 284-4762

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

16 friday

PROBATE AND ADMINISTRATION OF ESTATES
Civic Center, Montgomery
Alabama Bar Institute for CLE
Credits: 7.1 Cost: $115

RULE 11 AND OTHER SANCTIONS
Hotel Meridien, San Francisco
Practising Law Institute
Credits: 6.6 Cost: $275
(212) 765-5700

18-23

EVIDENTIARY PROBLEMS IN JUVENILE & FAMILY COURT
Reno
National College of Juvenile Justice
(702) 784-6012

21-23

NEGOTIATIONS
University of North Carolina, Chapel Hill
National Institute for Trial Advocacy
Credits: 17.0 Cost: $650
(800) 225-6482

22 thursday

DUI
Sheraton Riverfront, Montgomery
Cumberland Institute for CLE
Credits: 7.2 Cost: $90
(205) 870-2865

ADMINISTRATIVE LAW
Civic Center, Montgomery
Alabama Bar Institute for CLE
Credits: 7.2 Cost: $85

23 friday

HOW TORT REFORM AFFECTS YOUR PRACTICE
Birmingham
Birmingham Bar Association
Credits: 3.2 Cost: $25
(205) 251-8006

WORKER'S COMPENSATION
Ramada Civic Center Plaza, Birmingham
Cumberland Institute for CLE
Cost: $90
(205) 870-2865

CURRENT PROBLEMS IN BANKRUPTCY
Holiday Inn, Jackson
Mississippi Center for Continuing Legal Education
Credits: 7.2 Cost: $100
(601) 982-6590

DUI
Admiral Semmes, Mobile
Cumberland Institute for CLE
Credits: 7.2 Cost: $90
(205) 870-2865

23-24

EVIDENCE
Civic Center, Birmingham
Alabama Bar Institute for CLE
Credits: 12.0 Cost: $140
(205) 348-6230

29 thursday

INSURANCE
Von Braun Civic Center, Huntsville
Alabama Bar Institute for CLE
Credits: 6.8 Cost: $85
(205) 348-6230

30 friday

INSURANCE
Civic Center, Birmingham
Alabama Bar Institute for CLE
Credits: 6.8 Cost: $85
(205) 348-6230

DUI
Ramada Civic Center Plaza, Birmingham
Cumberland Institute for CLE
Credits: 7.2 Cost: $90
(205) 348-6230

cle opportunities

5 thursday

INSURANCE
Ramada Inn Airport, Mobile
Alabama Bar Institute for CLE
Credits: 6.8 Cost: $85
(205) 348-6230

WORKER'S COMPENSATION
Sheraton Riverfront, Montgomery
Cumberland Institute for CLE
Cost: $90
(205) 870-2865

6 friday

INSURANCE
Civic Center, Montgomery
Alabama Bar Institute for CLE
Credits: 6.8 Cost: $85
(205) 348-6230

CHARITABLE GIVING AND YEAR-END TAX PLANNING
Ramada Civic Center Plaza, Birmingham
Cumberland Institute for CLE
Cost: $90
(205) 870-2865

WORKER'S COMPENSATION
Admiral Semmes, Mobile
Cumberland Institute for CLE
Cost: $90
(205) 870-2865

12 thursday

CIVIL PROCEDURE
Civic Center, Montgomery
Alabama Bar Institute for CLE
Credits: 6.3 Cost: $85
(205) 348-6230

13 friday

CIVIL PROCEDURE
Civic Center, Birmingham
Alabama Bar Institute for CLE
Credits: 6.3 Cost: $85
(205) 348-6230

15-19

PROSECUTION OF VIOLENT CRIME
The Monteleone Hotel, New Orleans
National College of District Attorneys
(713) 749-1571

Committees and Action Groups of the Alabama State Bar

1987-88

Committees:

Committee on Lawyer Advertising and Solicitation

Chairman:
Glenda G. Cochran—Birmingham

Vice Chairman:
Gregory D. Cotton—Birmingham

Members:
Stanley E. Munsey— Tuscumbia
Richard A. Thigpen—Tuscaloosa
Thomas A. Carraway—Birmingham
Thomas D. McDonald—Huntsville
Andrew W. Bolt, II—Anniston
Vreeland G. Johnson—Andalusia
Booker T. Forte, Jr.—Eutaw
Patricia M. Smith—Columbiana
Judy A. Newcomb—Spanish Fort
Edward Ashton Hill, III—Mobile
George M. Higginbotham—Bessemer
Larry Clinton Odom—Lipscomb
A. Allen Ramsey—Birmingham

YLS Representative:
John Terrell McElheny—Birmingham

Staff Liaison:
Alex W. Jackson—Montgomery

Editorial Board, *The Alabama Lawyer*

Chairman and Editor:
Robert A. Huffaker—Montgomery

Associate Editor:
Carol Ann Smith—Birmingham

Members:
Gregory H. Hawley—Birmingham
James N. Brown, III—Birmingham
W. Greg Ward—Lanett
Keith B. Norman—Montgomery
Grover S. McLeod—Birmingham
Patrick H. Graves, Jr.—Huntsville
Champ Lyons, Jr.—Mobile
Julia Smeds Stewart—Birmingham
Frank B. Potts—Florence
Susan Shirock DePaola—Montgomery
Samuel N. Crosby—Bay Minette
Robert P. Denniston—Mobile

Staff Liaison and Managing Editor:
Margaret Lacey—Montgomery

Committee on Access to Legal Services

Chairman:
Anne W. Mitchell — Birmingham

Vice Chairman:
R. Preston Bolt, Jr.—Mobile

Members:
Ruth Elizabeth Flanders—Gadsden
Kearney Dee Hutsler, III—Birmingham
Margaret M. Edwards—Birmingham
J. T. Simonetti, Jr.—Homewood
Robert L. Gonce—Florence
Mary Dixon Torbert—Mobile
Freddi L. Aronov—Birmingham
Katherine Elise Moss—Huntsville
Robert M. Weinberg—Tuscaloosa
Tamara Young Lee—Montgomery
J. Wilson Mitchell—Florence
Gary P. Wilkinson—Florence
Rebecca L. Shows—Montgomery
Cecilia J. Collins—Mobile
W. Thomas Gaither—Eufaula
Gilbert B. Laden—Mobile
J. David Jordan—Mobile
Gene M. Hamby, Jr.—Sheffield
Carol J. Wallace—Tuscaloosa
Nancy S. Martin—Bessemer

YLS Representative:
Frederick T. Kuykendall, III—Birmingham

Staff Liaison:
Mary Lyn Pike—Montgomery

Advisory Committee to the Board of Bar Examiners

Chairman:
John E. Chason—Bay Minette

Members:
A. J. Coleman—Decatur
Phillip A. Laird—Jasper

Staff Liaison:
Reginald T. Hamner—Montgomery

The Alabama Lawyer Bar Directory Committee

Chairman and Assistant Editor:
Richard E. Flowers—Columbus, Ga.

Members:
Paul A. Pate—Huntsville
Edgar C. Gentle—Birmingham
Susan B. Bevill—Birmingham
Brenda Smith Stedham—Anniston
Michael L. Brownfield—Fort Payne
Edward H. Stevens—Tuscaloosa
Mary Beth Mantiply—Mobile
Laurie Newman Smith—Huntsville
Donald R. Harris—Birmingham
Laura Ann Calloway—Montgomery
Romaine S. Scott, III—Birmingham

YLS Representative:
Rebecca L. Shows—Montgomery

Staff Liaison:
Margaret Lacey—Montgomery

Character and Fitness Committee

PANEL I Chairman:
Wanda D. Devereaux—Montgomery

Members:
Howard A. Mandell—Montgomery
Thomas A. Smith—Cullman

PANEL II Chairman:
James Jerry Wood—Montgomery

Members:
P. Richard Hartley—Greenville
Robert E. Moorer—Birmingham

PANEL III Chairman:
Caroline Wells Hinds—Mobile

Members:
Robert W. Barr—Troy
David B. Byrne, Jr.—Montgomery

Alternates — Panels I, II and III:
John B. Scott, Jr.—Montgomery
E. Ashton Hill, III—Mobile

Staff Liaison:
Norma Jean Robbins—Montgomery

Committee on Correctional Institutions and Procedures

Chairman:
Frank R. Parsons—Birmingham

Chairman Emeritus:
John C. Watkins—University

Vice Chairman:
Abigail Turner—Mobile

Members:
Charles R. Gaddy—Millbrook
Sydney Albert Smith—Elba
Mary Dixon Torbert—Mobile
Mary Kay Laumer—Lafayette
Gregg B. Everett—Montgomery
William J. Samford—Mt. Meigs
Mervyn Michael—Decatur
John T. Harmon—Montgomery
William A. Kimbrough, Jr.—Mobile
J. Norman Bradley, Jr.—Huntsville

YLS Representative:
Ronald C. Forehand—Montgomery

Staff Liaison:
Mary Lyn Pike—Montgomery

Committee on Continuity, Program and Priorities

Chairman:
Jon H. Moores—Decatur

Co-Chairman:
Thad G. Long—Birmingham

Members:
Wayne L. Williams—Tuscaloosa
Mac B. Greaves—Birmingham
L. Bruce Ables—Huntsville
Winston V. Legge, Jr.—Athens
Clarence L. McDorman, Jr.—Birmingham
William E. Shinn, Jr.—Decatur

YLS Representative:
Charles R. Mixon, Jr.—Mobile

Staff Liaison:
Reginald T. Hamner—Montgomery

Committee on a Client Security Fund

Chairman:
James S. Ward—Birmingham

Vice Chairman:
Lowell A. Womack—Tuscaloosa

Members:
Susan B. Mitchell—Birmingham
Marvin L. Stewart, Jr.—Birmingham
Michael E. Ballard—Mobile
Lee H. Copeland—Montgomery

Staff Liaison:
Reginald T. Hamner—Montgomery

Ethics Education Committee

Chairman:
Ernest L. Potter—Huntsville

Vice Chairman:
Jacquelyn E. Shaia—Birmingham

Members:
Oliver P. Head—Columbiana
Daniel E. Morris—Anniston
Sara Dominick Clark—Birmingham
Frank O. House—Birmingham
Richard A. Thigpen—Tuscaloosa
Lynn W. Jinks, III—Union Springs
Annetta F. Arnold—Birmingham
William B. Lloyd—Birmingham
John D. Clements—Birmingham
Fred G. Collins—Mobile
Phillip Ted Colquitt—Montgomery
Dorothy F. Norwood—Montgomery

Ex Officio:
Wilbur G. Silberman—Birmingham

YLS Representative:
Stephen A. Rowe—Birmingham

Staff Liaison:
Alex W. Jackson—Montgomery

Finance Committee

Chairman:
Gary C. Huckaby, president-elect—Huntsville

Vice Chairman:
P. Richard Hartley—Greenville

Members:
Frederick G. Helmsing—Mobile
Cheryl L. Price—Montgomery
Terry D. Gillis—Fort Payne
James C. Barton, Jr.—Birmingham
Henry B. Hardegree—Montgomery
Forest Douglas Herrington—Huntsville
Richard S. Manley—Demopolis

YLS Representative:
Charles R. Mixon, Jr.—Mobile

Staff Liaison:
Reginald T. Hamner—Montgomery

Federal Tax Clinic Committee

Daniel H. Markstein, III—Birmingham
James T. Jackson—Montgomery
Jerome D. Smith—Montgomery
Andrea L. Witcher—Birmingham
Ray D. Gibbons—Birmingham
L. Lister Hill—Montgomery
Robert C. Tanner—Tuscaloosa
Jackson P. Burwell—Huntsville
L. B. Feld—Birmingham
Zebulon M. P. Inge—Mobile

Staff Liaison:
Mary Lyn Pike—Montgomery

Future of the Profession Committee

Chairman:
Bryan E. Morgan—Montgomery

Vice Chairman:
Ann English Taylor—Mobile

Members:
Thomas M. Goggans—Montgomery
R. McKim Norris, Jr.—Birmingham
R. B. McKenzie, III—Montgomery
James T. Sasser—Montgomery
Gordon O. Tanner—Mobile
Vanzetta Penn McPherson—Montgomery
Charles L. Sparks—Birmingham
John D. Saxon—Washington, D.C.
L. Virginia McCorkle—Birmingham
Bradley R. Byrne—Mobile
Schuyler H. Richardson, III—Huntsville
Gregg B. Everett—Montgomery

YLS Representative:
George Warren Laird, II—Jasper

Staff Liaison:
Mary Lyn Pike—Montgomery

Indigent Defense Committee

Chairman:
Dennis N. Balske—Montgomery

Vice Chairman:
Joel L. Sogol—Tuscaloosa

Members:
George Albert Nassaney, Jr.—Tuscaloosa
Paul D. Brown—Mobile
Kim Rosenfield—Birmingham
William R. Blanchard, Jr.—Montgomery
Rick Harris—Montgomery
Daniel R. Farnell, Jr.—Birmingham
Eugene P. Whitt, Jr.—Montgomery
John E. Rochester—Ashland
E. Hampton Brown—Birmingham
Nancy S. Martin—Birmingham
James E. Williams—Montgomery

YLS Representative:
John M. Plunk—Athens

Staff Liaison:
Mary Lyn Pike—Montgomery

Insurance Programs Committee

Chairman:
Henry Thomas Henzel—Birmingham

Vice Chairman:
Cathy S. Wright—Birmingham

Members:
George R. Copeland, Jr.—Mobile
Cooper C. Thurber—Mobile
Charles H. Moses, III—Birmingham

J. Bentley Owens, III—Birmingham
Karon O. Bowdre—Birmingham
John T. Mooresmith—Mobile
Edward S. Sledge, III—Mobile
Thomas E. Ellis—Birmingham
Marion F. Walker—Birmingham
Kathy Long Skipper—Birmingham
James R. Seale—Montgomery
Richard W. Vollmer, III—Mobile
Tazewell T. Shepard, III—Huntsville
William Collins Knight, Jr.—Birmingham
Stanley D. Bynum—Birmingham

Ex Officio:
Phillip Stano—Washington, D.C.

Staff Liaison:
Reginald T. Hamner—Montgomery

Judicial Conference for the State of Alabama

Fournier J. Gale, III—Birmingham
John F. Proctor—Scottsboro
David A. Bagwell—Mobile

Committee on Local Bar Activities and Services

Chairman:
J. Thomas King, Jr.—Birmingham

Vice Chairman:
Jack Drake—Tuscaloosa

Members:
Ralph A. Ferguson, Jr.—Birmingham
Carolyn B. Nelson—Birmingham
Laura A. Calloway—Montgomery
Jack W. Selden—Birmingham
William E. Siniard, Jr.—Birmingham
Carol Ann Smith—Birmingham
D. Taylor Flowers—Dothan
Robert D. Segall—Montgomery
William G. Gantt—Birmingham
Charles E. Richardson, III—Huntsville
Loring S. Jones, III—Vestavia Hills
James H. Frost—Mobile

YLS Representative:
H. Thomas Heflin, Jr.—Birmingham

Staff Liaison:
Mary Lyn Pike—Montgomery

Law Day Committee

Chairman:
Carol Sue Nelson—Birmingham

Vice Chairman:
H. E. Nix, Jr.—Montgomery

Members:
Charles Reeder—Mobile
Denise Boone Azar—Montgomery
Robert P. MacKenzie, III—Birmingham
James M. Proctor, II—Birmingham
Gregory J. McKay—Birmingham
Mark E. Spear—Mobile
Walter E. McGowan—Tuskegee
Joanna S. Ellis—Montgomery
Michael S. Jackson—Montgomery
Laura Crum—Montgomery
Alva C. Caine—Birmingham

YLS Representative:
Rebecca L. Shows—Montgomery

Staff Liaison:
Mary Lyn Pike—Montgomery

Legislative Liaison Committee

Chairman:
Dexter Hobbs—Montgomery

Vice Chairman and Young Lawyers' Representative:
James T. Sasser—Montgomery

Members:
Thomas T. Gallion, III—Montgomery
Drayton N. Hamilton—Montgomery
James L. North—Birmingham
Richard Izzi—Birmingham
William M. Beck, Sr.—Fort Payne
Atley A. Kitchings—Birmingham
George B. Azar—Montgomery
Walter R. Byars—Montgomery
D. Patrick Harris—Montgomery
John B. Givhan—Andalusia
W. Clark Watson—Birmingham
Edwin K. Livingston—Montgomery
Alyce Manley Spruell—Tuscaloosa
E. Hamilton Wilson, Jr.—Montgomery

Staff Liaison:
Reginald T. Hamner—Montgomery

Alabama Lawyer Referral Service Board of Trustees

Chairman:
M. Douglas Ghee—Anniston

Vice Chairman:
J. Michael Williams, Sr.—Auburn

Board Members:
S. Wayne Fuller—Cullman
Gary W. Lackey—Scottsboro
J. Anthony McLain—Montgomery
R. Larry Bradford—Tuscaloosa
Joseph E. Carr, IV—Mobile
Daniel E. Morris—Anniston
Julian L. McPhillips, Jr.—Montgomery
Tommy R. Dobson—Sylacauga
Robert L. Gonce—Florence
Robert Shannon Paden—Tuscaloosa
John Andrew Caddell, Jr.—Decatur
James E. Davis, Jr.—Huntsville
Phillip Laird—Jasper
John Frank Head—Columbiana
Terry L. Mock—Tuscumbia
Walter W. Kennedy, III—Oneonta
William D. Owings—Centreville
Marion Everette Wynne, Jr.—Fairhope
Joel W. Ramsey—Dothan
Margaret Harris Dabbs—Jasper
Winfred N. Watson—Fort Payne

Staff Liaison:
Mary Lyn Pike—Montgomery

Secretary, Lawyer Referral Service:
Joy Meininger—Montgomery

Military Law Committee

Chairman:
Thomas R. Elliott, Jr.—Birmingham

Vice Chairman:
Edwin K. Livingston—Montgomery

Members:
William C. Tucker, Jr.—Birmingham
William G. Stevens—Montgomery
John Oliver Cameron—Montgomery
James S. Witcher, Jr.—Birmingham
Patrick H. Tate—Fort Payne
William V. Neville, Jr.—Eufaula
William A. Short, Jr.—Bessemer
Albert C. Bulls, III—Tuskegee Inst.
James R. Clifton—Andalusia
Milton C. Davis—Tuskegee
Charles P. Hollifield—Montgomery
John C. Fox—Birmingham
A. Neil Hudgens—Mobile
William B. Woodward, Jr.—Columbia, SC
Ira DeMent—Montgomery

Staff Liaison:
Reginald T. Hamner—Montgomery

President's Advisory Committee

Chairman:
Thomas S. Lawson, Jr.—Montgomery

Secretary:
William H. Albritton, IV—Andalusia

Members:
Richard A. Thigpen—Tuscaloosa
Alex W. Newton—Birmingham
Robert W. O'Neill—Birmingham
Jon H. Moores—Decatur
Fred D. Gray—Tuskegee
Harry W. Gamble, Jr.—Selma
Jere C. Segrest—Dothan
P. Richard Hartley—Greenville
G. Hamp Uzzelle, III—Mobile
Mitchell G. Lattof—Mobile
Warren B. Lightfoot—Birmingham
Caroline Wells Hinds—Mobile

Staff Liaison:
Reginald T. Hamner—Montgomery

Permanent Code Commission (*Code of Professional Responsibility*)

Chairman:
Wilbur G. Silberman—Birmingham

Vice Chairman:
Lewis W. Page, Jr.—Birmingham

Members:
Wade H. Morton, Jr.—Columbiana
William B. Hairston, III—Birmingham
J. William Rose, Jr.—Birmingham
William C. Wood—Birmingham
Hugh A. Nash—Oneonta
Richard A. Thigpen—Tuscaloosa
Lynn R. Jackson—Clayton
William I. Hill, II—Montgomery
Oliver P. Head—Columbiana
John F. Proctor—Scottsboro
Benjamin T. Rowe—Mobile

Staff Liaison:
Alex W. Jackson—Montgomery

Professional Economics Committee

Chairman:
Conrad M. Fowler, Jr.—Columbiana

Vice Chairman:
Daniel E. Drennen, II—Mobile

Members:
Charlie D. Waldrep—Birmingham
V. Lee Pelfrey—Troy
James E. Turnbach—Gadsden
David R. Arendall—Birmingham
Cheryl L. Price—Montgomery
Byron Lassiter—Fairhope
William T. Coplin, Jr.—Demopolis
William H. Hardie, Jr.—Mobile
Ray O. Noojin, Jr.—Birmingham

YLS Representative:
J. Terry McElheny—Birmingham

Staff Liaison:
Mary Lyn Pike—Montgomery

Prepaid Legal Services Committee

Chairman:
Jack Wayne Morgan—Mobile

Members:
Robert E. Sasser—Montgomery
Jack G. Paden—Bessemer
William S. Halsey—Anniston
William L. Chenault, III—Decatur
Mark E. Martin—Birmingham
Thomas M. Semmes—Anniston

YLS Representative:
D. Patrick Harris—Montgomery

Staff Liaison:
Reginald T. Hamner—Montgomery

Committee on Lawyer Public Relations, Information and Media Relations

Chairman:
Anthony L. Cicio—Birmingham

Vice Chairman:
Byrd R. Latham—Athens

Members:
John M. Fraley—Birmingham
John E. Enslen—Wetumpka
Thomas D. McDonald—Huntsville
J. Perry Morgan—Birmingham
Dick D. Nave, Jr.—Birmingham
John H. Lavette—Birmingham
Kay K. Bains—Birmingham
Edwin A. Strickland—Birmingham
J. Richard Hynds—Birmingham
C. MacLeod Fuller—Mobile
Joe E. Cook—Birmingham
Mary Beth Mantiply—Mobile

YLS Representative:
Walter Percy Badham, III—Birmingham

Staff Liaison:
Margaret Lacey—Montgomery

Committee on Substance Abuse

Chairman:
Walter J. Price, Jr.—Huntsville

Co-chairman:
J. Michael Conaway—Dothan

Chairman Emeritus:
Val L. McGee—Ozark

Members:
Carolyn B. Nelson—Birmingham
Jane C. Little—Birmingham
Dorothy F. Norwood—Montgomery
John S. Gonas, Jr.—Mobile
Carlton Terrell Wynn—Birmingham
Albert D. Lipscomb—Bessemer
Charles J. Fleming—Mobile
James J. Thompson, Jr.—Birmingham

Staff Liaison:
Mary Lyn Pike—Montgomery

The Alabama State Bar Commissioners' Supreme Court Liaison Committee

Chairman:
W. Harold Albritton, III—Andalusia

Committee Members:
Phillip E. Adams, Jr.—Opelika
William D. Scruggs, Jr.—Fort Payne

Staff Liaison:
Reginald T. Hamner—Montgomery

Special Liaison Tax Committee for the Southeast Region

Chairman:
Norman W. Harris, Jr.—Decatur

Members:
Robert C. Walthall—Birmingham
David M. Wooldridge—Birmingham

Unauthorized Practice of Law Committee

Chairman:
H. Dwight McInish—Dothan

Vice Chairman:
B. Vaughan Drinkard, Jr.—Mobile

Subcommittees:

North Alabama
H. Harold Stephens—Huntsville
Braxton A. Ashe—Tuscumbia

YLS Representative:
Amy A. Slayden—Huntsville

North Central Alabama:
William H. Kennedy—Tuscaloosa
Milton E. Barker, Jr.—Birmingham
Melinda L. Denham—Birmingham
Donald Blair Boggan—Birmingham

Middle Alabama:
Cleveland Poole—Greenville
Ralph Michael Raiford—Phenix City
W. Harold Albritton, IV—Andalusia
Hoyt W. Hill—Opelika
Fred W. Tyson—Montgomery

South Alabama:
Joseph Daniel Whitehead—Daleville
M. Dale Marsh—Enterprise

Action Groups

Action Group on Alternative Methods of Dispute Resolution

Chairman:
G. Wayne Ashbee—Mobile

Vice Chairman:
Cleophus Thomas, Jr.—Anniston

Members:
Don B. Long, Jr.—Birmingham
Rodney A. Max—Birmingham
James L. Wright—Dothan
Pete Partin—Birmingham
Lynda Flynt—Montgomery
William Douglas Wise—Birmingham
Paul S. Conger, Jr.—Tuscaloosa
Sandra Jo Grisham—Mobile
Anne Laura Parker—Ozark
Mary Lee Stapp—Montgomery
Jerrilee Sutherlin—Huntsville
Pamela Willis Baschab—Foley
Jacquelyn S. Shaia—Birmingham

YLS Representative:
Cecilia J. Collins—Mobile

Staff Liaison:
Mary Lyn Pike—Montgomery

Action Group on Establishment of an Agricultural Law Section of the Alabama State Bar

Chairman:
Von G. Memory—Montgomery

Vice Chairman:
Patricia Allen Conover—Montgomery

Members:
Harry P. Long—Anniston
Thomas J. Knight—Anniston
George A. Monk—Anniston
James S. Hubbard—Anniston
Harvey B. Campbell, Jr.—Talladega
Robert D. McWhorter, Jr.—Centre
Stephen P. Bussman—Fort Payne
James S. Sledge—Gadsden
Warren G. Sarrell, Jr.—Heflin
William S. Poole, Jr.—Demopolis
John B. Scott, Jr.—Montgomery
Earl Gillian, Jr.—Montgomery
E. Terry Brown—Montgomery
Collier H. Espy, Jr.—Dothan
Mary J. Camp—Opelika
Walter P. Crownover—Tuscaloosa
Sarah B. Mooneyham—Montgomery
Ruth S. Sullivan—Dadeville
Joe B. Thompson, Jr.—Brewton

Staff Liaison:
Mary Lyn Pike—Montgomery

Action Group to Consider Possible Restructuring of Alabama's Appellate Courts

Chairman:
Robert H. Harris—Decatur

Vice Chairman:
James D. Pruett—Gadsden

Members:
Ernest C. Hornsby—Tallassee
Alex W. Newton—Birmingham
Beth Marietta—Mobile
Jerry M. White—Dothan
Jerome A. Hoffman—University
John F. Proctor—Scottsboro
Wayman G. Sherrer—Oneonta
William N. Clark—Birmingham
Charles D. Rosser—Tuscumbia
M. R. Nachman—Montgomery
Charles Cleveland—Birmingham
Robert O. Cox—Florence
David R. Boyd—Montgomery
G. Sage Lyons—Mobile
Robert G. Esdale—Montgomery
Fournier J. Gale, III—Birmingham
Joseph A. Colquitt—Tuscaloosa

Staff Liaison:
Mary Lyn Pike—Montgomery

BE A BUDDY

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

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

Local Bar Activities and Services Buddy Program Application

Name _____

Firm Name (if applicable) _____

Address _____

City _____ **State** _____ **Zip** _____

Telephone _____

☐ New Lawyer ☐ Experienced Lawyer

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

Action Group on the Bicentennial of the U.S. Constitution

Chairman:
Emily Gassenheimer—Montgomery
Vice Chairman:
Charles D. Cole—Birmingham
Members:
Frank S. James, III—Tuscaloosa
John Nathaniel Bryan, III—Birmingham
Edwin K. Livingston—Montgomery
YLS Representative:
Charles R. Mixon, Jr.—Mobile
Staff Liaison:
Reginald T. Hamner—Montgomery

Action Group on Citizenship Education

Chairman:
Chris S. Christ—Birmingham
Vice Chairman:
John J. Coleman, III—Birmingham
Members:
Frank S. James, III—Tuscaloosa
John R. Lavette—Birmingham
Robert D. McWhorter, Jr.—Centre
Carney H. Dobbs—Birmingham
Michael L. Odom—Montgomery
Steven Allan Thomas—Jasper
James H. Starnes—Birmingham
Carol Ann Rasmussen—Birmingham
Bryan K. Parker—Birmingham
Walter Franklin McArdle—Montgomery
YLS Representative:
Richard E. Fikes—Jasper
Staff Liaison:
Mary Lyn Pike—Montgomery

Action Group to Evaluate Proposed Revisions of the Alabama Constitution of 1901

Chairman:
Charles D. Cole—Birmingham
Vice Chairman:
Edmon L. Rinehart—Montgomery
Members:
John P. Adams—Birmingham
Joseph H. Calvin—Decatur
James M. Campbell—Anniston
R. David Christy—Montgomery
Lawrence Dumas, Jr.—Birmingham
Conrad M. Fowler—West Point, GA
Joseph H. Johnson, Jr.—Birmingham
Joseph F. Johnston—Birmingham
Richard S. Manley—Demopolis
Robert L. McCurley—Tuscaloosa
William H. Mills—Birmingham
M. Camper O'Neal—Birmingham
James D. Pruett—Gadsden
Yetta G. Samford, Jr.—Opelika
Staff Liaison:
Mary Lyn Pike—Montgomery

Action Group on Establishment of Alabama State Bar IOLTA (Interest on Lawyers' Trust Accounts) Program

Chairman:
Rowena M. Teague—Birmingham
Vice Chairman:
Jack Drake—Tuscaloosa
Members:
James M. Gaines—Huntsville
Kirk C. Shaw—Mobile
David P. Broome—Mobile
George B. White—Gadsden
Martha Jane Patton—Birmingham
Stanley Weissman—Montgomery
William C. Younger—Montgomery
A. Lamar Reid—Birmingham
Robert P. Lane—Phenix City
Lawrence B. Voit—Mobile
Ronald P. Davis—Mobile
Robert L. McCurley—Tuscaloosa
J. Knox Argo—Montgomery
George P. Walthall, Jr.—Prattville
Robert E. Steiner, III—Montgomery
YLS Representative:
Laura L. Crum—Montgomery
Staff Liaison:
Reginald T. Hamner—Montgomery

Action Group on Proposed Judicial Building

Chairman:
Maury D. Smith—Montgomery
Vice Chairman:
G. Sage Lyons—Mobile
Members:
Robert M. Hill, Jr.—Florence
Fred D. Gray—Tuskegee
J. Lister Hubbard—Montgomery
Judith S. Crittenden—Birmingham
Charles B. Arendall—Mobile
Thomas N. Carruthers—Birmingham
William H. Albritton, III—Andalusia
Robert E. Steiner, III—Montgomery
Ex Officio:
John A. Caddell—Decatur
YLS Representative:
James H. Anderson—Montgomery
Staff Liaison:
Mary Lyn Pike—Montgomery

Professional Discipline Action Group

Chairman:
Oliver P. Head—Columbiana
Members:
Carol Jean Smith—Montgomery
Paul E. Skidmore—Tuscaloosa
Gary C. Huckaby—Huntsville
John F. Proctor—Scottsboro
Wilbur Silberman—Birmingham
Lewis W. Page, Jr.—Birmingham
Staff Liaison:
Alex W. Jackson—Montgomery

■

NOTICE

Beginning January 1, 1988, a new certificate of divorce will be required by the State of Alabama. Also effective this date, all attorneys will be required to file this completed certificate with the petition for divorce.

The Bureau of Vital Statistics will not accept the new certificates of divorce unless all items are complete, including the confidential section.

Forest E. Ludden, Ed.D., M.P.H.
State Registrar and Director
Bureau of Vital Statistics

FIAT JUSTITIA RUAT COELUM

("Let justice be done though the heavens may fall")

by William J. Underwood

How many times has learned trial counsel sat in court after his argument in favor of a motion and known the judge would allow him to prove his point at the appellate level rather than the circuit court level? President John Kennedy wrote a book called *Profiles in Courage*. Kennedy's theme in the book concerned elected officials making decisions that were unpopular and certain to hurt their political careers. Alabama is very fortunate to have had a man who meets the qualifications of *Profiles*, James Edward Horton, Jr.

Horton was the son of James Edwin Horton, Sr., and Emily Donelson Horton, born in Limestone County, Alabama, January 4, 1878. He received his law degree from Cumberland University in Lebanon, Tennessee, in 1899. An ironic twist of fate and cataclysmic social upheaval of national and world proportions would thrust Horton into the center of a vortex called the Scottsboro trials.

On March 25, 1931, a Memphis and Charleston Railroad freight train from Chattanooga to Memphis had, as unauthorized riders, Victoria Price, Ruby Bates, an unknown number of hobos and nine black youths who later would be arrested for the rape of Price and Bates. The young black men were Charlie Weems, age 20; Ozie Powell, Clarence Norris, Haywood Patterson and Andy Wright, all 19; Willie Roberson, (who had contracted syphillis and gonorrhea a year before this incident), 18; Olen Montgomery (blind in his left eye), 17; and Eugene Williams and Leroy Wright, (brother to Andy Wright), both 13.

Near Stevenson, Alabama, the white males on the freight train startled the station master and told him they had been beaten up and thrown off the train by a bunch of blacks. The next stop, Paint Rock, over 42 miles away, was notified and Deputy Sheriff Charlie Latham met the train there with ten to 15 men specially deputized for the occasion.

Latham and his posse searched the 42-car train and found one white boy, two white girls (Bates and Price) and the nine blacks. Twenty minutes after the train stopped Ruby Bates told Latham she and Price had been raped by the blacks.

Three days later Judge Alred E. Hawkins of Scottsboro reconvened a grand jury and indictments were handed down against the nine blacks on Tuesday, the 31st of March, 1931. The grand jury convened Monday, the 30th, and voted to indict the youths but failed to get the proper legal identification of all the participants. Judge Hawkins immediately appointed the entire (seven) Scottsboro bar as defense counsel. Six of the seven reported conflicts, such as D.P. Wimberly who, with tongue in cheek, maintained he represented the Alabama Power Company and they stood to gain if the boys were electrocuted.

Milo Moody, age 69, and Stephen Roddy, a Chattanooga real estate attorney, represented the group, and the trial began on the 6th of April, 1931, with legal arguments about a change in venue and prejudice of the jury lists. At the trial, Moody and Roddy did not make closing arguments for Clarence Norris and Charles Weems. They were convicted the 7th of April, 1931. Haywood Patterson went on trial immediately after the Norris and Weems jury had been given its jury instructions. Roddy asked for a mistrial on Patterson because the over-3,700 onlookers inside and outside the courthouse gave out a thunderous roar and applause when the guilty verdict was announced in the Norris and Weems case. Patterson's jury was out only 25 minutes before convicting him April 9.

Powell, Roberson, Montgomery, Wright and Williams were all convicted the 10th of April, and Roy Wright's trial ended in a mistrial because seven jurors wanted the death penalty and five life in prison, even though the state had argued for Roy Wright to receive a life sentence. Therefore, eight young men stood condemned to die by electrocution and one was to be retried. The appeals were taken and the United States Supreme Court overturned on ineffective defense counsel. *Powell v. Alabama*, 287 U.S. 56, (1932) This was a landmark decision because for the first time it applied the 6th Amendment via the 14th Amendment due process clause to the states.

William J. Underwood received his undergraduate degree from the University of Alabama and law degree from the Delaware Law School, where he was a member of the **Delaware Law Review, Journal of Corporate Law.** *He is in private practice in Tuscumbia, Alabama.*

Judge James E. Horton, Jr., at his home, Macedon Farms, in Madison, Alabama

Judge Edward Hawkins, not wishing to retry the cases, granted a change in venue March 7, 1933, and Judge Edward Horton of Decatur, Alabama, was assigned to them. They would be tried in the Eighth Judicial Circuit Court in Decatur, Alabama.

Horton won the immediate respect of the prosecution and defense counsels. Standing over six feet tall and armed with an unflappable nature, he was a commanding figure.

The state now was represented by Thomas Knight. At 34 years of age, Knight was one of the youngest men to hold the office of attorney general in Alabama, and he had his eyes on a higher office.

The nine blacks were represented by Samuel Liebowitz, a Brooklyn attorney provided by the International Labor Defense, an organization with known communist sympathies. Liebowitz also was backed, reluctantly, by the NAACP.

Horton's first order of business March 27, 1933, was to decide if the selective jury system in Alabama was prejudicial. Judge Horton, at the initial court proceedings, called to the bench three Decatur youths and strongly lectured them for passing out leaflets at the trial which forecasted death to the defendants. The trial was a media extravaganza with over 100 newspeople in attendance.

The Birmingham News, in its March 28 edition, stated, "Horton is taking an unusually tolerant attitude toward the quibbling of opposing attorneys and the bustings of newspaper men. His manner is easy and he speaks in a slow soft voice." Horton had his office mail special press passes to black reporter Bernard Young of the *Norfolk Journal and Guide*. Young reported in his newspaper of April 8, 1933, that Judge Horton gave him a warm handshake at the beginning of trial that day, much to the obvious dismay of some white Morgan County onlookers.

Horton, although overruling defense motions to quash the jury venire lists because of racial exclusion, opined that the defense had shown a *prima facia* case of exclusion, thus making a conviction an axiomatic reversal by this finding on

appeal. Judge Horton also allowed defense counsel to represent evidence that Victoria Price had been found guilty of adultery and fornication in Huntsville, Alabama, 60 days prior to the alleged rape by the Scottsboro boys. The evidence had been kept out at the first trial of Haywood Patterson. The judge, however, did sustain the state's objection that the jury disregard the conviction portion of the testimony as being irrelevant.

On April 4, 1933, Horton faced his first catharsis of the trial. Dr. R.R. Bridges gave unremarkable testimony about motile sperm and the little amount of sperm inside the women even though they had been raped six times. Attorney General Knight then asked Horton and Liebowitz, during a recess in court, to allow the state to dismiss as a witness Dr. Marvin Lynch because his testimony would be redundant to that of Bridges. This was agreed to by all parties.

Lynch, after the attorneys had left, asked Horton to talk to him in private. The conversation was held in the courthouse restroom where Lynch told Horton the two women had not been raped. Lynch noted that he and Bridges had extreme difficulty in finding any sperm inside the women even though they had been raped six times. Horton asked the doctor to testify, but was told that it was impossible given the social climate and community feelings at this time.

Horton confided in an interview on April 9, 1966, with Dan T. Carter, author of the book *Scottsboro*, that he thought about ordering a mistrial, but because of the conflicting testimony given by Price, statements of Bridges and his personal knowledge of the 12 jurors, he felt an acquittal would be the best remedy. Horton further wished to protect the reputation of Lynch. Lynch, later in an interview with Carter in October 1967, denied making those statements to Horton. Judge Horton had kept the above account private until Carter had interviewed him.

Ruby Bates later testified at the trial for the defendants. She completely refuted her original testimony given at the first trial in 1931. Bates, dressed stylishly, recanted that she had never been attacked by the blacks and insisted the whole fiasco was a fabrication made up by Victoria Price.

Attorney General Knight, in heated cross-examination, tried to have Bates admit that she had been bought off by the liberal New York clergy and the defense. His cross-examination, in some newspaper reports, completely destroyed Bates' testimony.

Liebowitz had a particular style which made him an inviting target to the local citizenry. Horton repeatedly had to go on the record and instruct the courtroom visitors and others that he would not tolerate any punitive action against the fiery defense counsel and to cool the tempers of the southern gentlemen onlookers.

He informed everyone that the court not only protected the prisoners but the defense counsel, as well. One of the most important witnesses for the defense in the trial was Dr. Edward A. Reisman, a 48-year-old Chattanooga gynecologist. Reisman testified that six healthy men would have had to leave a large quantity of motile sperm in a woman if they had raped her in as short a span of time as had been admitted at trial.

Reisman had no explanation as to why the state witness, Bridges, could only find a trace of sperm in Bates and Price. In his expert opinion, the Price story would have been untrue because of the lack of sperm found in her.

The trial ended April 9, 1933, with defense counsel alone taking over four and one-half hours to summarize his case. The jury took one day to deliberate the case, and on Sunday, April 9, 1933, they returned with a verdict of guilty, with the penalty being death in the electric chair.

The Birmingham Post, five days after the conviction, took a brave stand and demanded that the conviction of Haywood Patterson be reversed. Judge Horton immediately was faced with a defense motion for a new trial. He studied this motion and even approached Attorney General Knight about *"nolle prosequi"* the cases of the remaining eight.

Horton also asked Knight to consider pardoning Patterson; all queries by the judge were refused. Horton's overtures

rankled the powers that be, and he immediately started receiving calls telling him he would be finished politically if he let the Patterson boy go free.

The 22nd of June, 1933, proved to be an interesting day for the defense, for on this day Judge James Edward Horton, Jr., made a decision that shook the establishment of the state. Stating that he felt the conviction was not based on sufficient credible evidence, Horton ordered a new trial. His brief was over 26 pages long and cited key testimony of each witness and gave the judge's analysis of each individual's testimony. Horton hoped to make such a record as to forestall any further trials on the Scottsboro nine. But the bottom line in all 26 pages of the judge's brief was the unsworn-to conversation of Marvin Lynch in the restroom of the Morgan County Courthouse. This conversation never appeared in Horton's 26-page brief, but Lynch's unsworn testimony was corroborated by defense and prosecution witnesses.

The reaction statewide was exact and concise, a total sense of outrage that permeated the populace. Except for the *Birmingham Post*, which supported Horton's decision, the criticism of Horton's ruling received frontpage billing. Letters to the editors in the state's dailies stung Horton for allowing a circus to take place in his courtroom. Politicians of statewide notoriety lined up to heap abuse on Horton and promised to do everything in their power to remove Horton from any further Scottsboro cases. Much of U.S. Senator Thomas "Cotton Tom" Heflin's rhetoric against Horton could be attributed to the capitalization by him of the resentment in the state over the ruling.

It should be of no surprise that Alabama Supreme Court Justice John C. Anderson ordered Horton to recuse himself from any further cases because of his bias. They were reassigned to Judge William Callahan in the same district.

Horton decided to run for re-election in 1934. He believed that the people would see his point in reversing the Patterson verdict. He was sadly wrong and trounced in the Democratic runoff election that fall. Attorney General Thomas Knight was elected to lieutenant governor, propelled by the publicity of the trials.

Haywood Patterson was tried and convicted two more times, but eventually the Scottsboro boys had the cases dismissed against them or were allowed to plead to lesser offenses and be paroled for time served.

Horton went into private practice and worked for the Tennessee Valley Authority.

Horton never again offered himself for political office although he had a distinguished career representing Limestone County as a state representative and later as a state senator before being elected to his judgeship. He never held any bad feelings toward the people of his district for not re-electing him to the judgeship. Horton stayed active in his civic organizations and farmed, raising purebred Aberdeen Angus Cattle at his Macedon Farm. His philosophy throughout the rest of his life was "fiat justitia ruat coelum", "let justice be done though the heavens may fall." ■

Bar Briefs

New officers for association

The Alabama Trial Lawyers Association recently announced the selection of L. Andrew Hollis, Jr., of Hardin and Hollis, as president for 1987-88.

Hollis obtained a law degree in 1968 from the University of Alabama and has authored numerous, published legal articles. Hollis is a member of the Alabama State Bar, the American Trial Lawyers Association, Birmingham Trial Lawyers Association and the President's Council of the American Trial Lawyers Association, and is certified as a civil trial advocate by the National Board of Trial Advocacy.

Hollis was one of seven officers selected for the new term. Others include Larry W. Morris of Alexander City as president-elect, C. Delaine Mountain of Tuscaloosa as first vice-president, Lloyd Gathings, II, of Birmingham as secretary, John Higginbotham of Florence as treasurer and M. Clay Alspaugh of Birmingham as immediate past president.

The Alabama Trial Lawyers Association consists of attorneys throughout the state dedicated to preserving the existing adversary system and protecting the rights of individuals.

Godbold selected director of Federal Judicial Center

Circuit Judge John C. Godbold of the United States Court of Appeals for the Eleventh Circuit, has been named the new director of the Federal Judicial Center in Washington.

Godbold's appointment was announced by Chief Justice William H. Rehnquist, chairman of the center's governing board.

Godbold will succeed A. Leo Levin, who retired July 31 after more than a decade as the center's director.

Godbold, who lives in Montgomery, was appointed judge of the United States Court of Appeals for the Fifth Circuit in 1966. He served as chief judge of that circuit for most of 1981, and later that year became the first chief judge of the newly-created Eleventh Circuit, serving in that position until September 1986.

Prior to his appointment to the bench, Judge Godbold was in private practice in Montgomery for 18 years. Two of his former law partners also have served as federal judges: Judge Richard T. Rives, who served as a judge of the Fifth Circuit Court of Appeals, and later of the Eleventh Circuit Court of Appeals, from 1951 until his death in 1982, and Judge Truman M. Hobbs, who was appointed to the bench in 1980 and currently is chief judge of the Middle District of Alabama.

Godbold is a graduate of Auburn University and Harvard Law School. His law school career was interrupted by military service during World War II in the United States Army. In 1982, he received the Auburn University Alumni Award for Achievement in the Humanities.

Sirote, Permutt donation provides computer lab

A $45,000 gift from a Birmingham law firm has made possible a computer laboratory at Cumberland School of Law; the new facilities were opened officially April 16, 1987.

The Sirote, Permutt, McDermott, Slepian, Friend, Friedman, Held and Apolinsky Computer Laboratory, named for its donors, will enable the law school to develop a new area of curriculum devoted to computers and the law; the gift from the 70-member law firm was supplemented with Samford funds to equip the lab, which has a total value of $70,000.

With 16 computer terminals, video projector and accessories, the lab is the first in any law school in the southeast, according to Cumberland Dean Parham H. Williams.

The new courses made possible by the lab will review developing law affected by the increasing use of computers in society, and will help students understand the technical uses of the computer to improve their lawyering skills.

Cumberland introduced its first related course, "Computers and the Law," three years ago. Cumberland professor Alex J. Bolla will be director of the computer lab.

Johnstone, Adams establishes scholarship and awards at UA Law School

The Mobile law firm of Johnstone, Adams, Bailey, Gordon and Harris recently established a full-tuition scholarship and two academic awards at the University of Alabama School of Law.

The Johnstone Adams Scholarship for Academic Excellence will be awarded annually to an incoming first-year law student with an outstanding undergraduate academic record. Selection will be made by the office of the dean of the law school.

The firm also established the Johnstone Adams Award for Academic Excellence in Admiralty and the Johnstone Adams Award for Academic Excellence in Oil and Gas. These $500 cash awards will be presented annually to graduating law students for the best final papers in these subject areas.

PLS certification program

The National Association of Legal Secretaries offers legal secretaries the opportunity to become a Professional Legal Secretary (PLS). The term PLS is a designation which is a recognized standard of excellence among legal secretaries, and means the legal secretary possesses at least five years' experience as a legal secretary and passed a comprehensive two-day examination determining that the secretary is qualified to do work which may be required in any size law office. The PLS exam is designed to test the proficiency of legal secretaries and the only certification available to legal secretaries. Any person having five years' experience as a legal secretary and who pays the required fee may sit for the examination.

The two-day examination consists of seven parts: written communication skill and knowledge; ethics; legal secretarial procedures; legal secretarial accounting; legal terminology, techniques and pro-

cedures; exercise of judgment; and legal secretarial skills. If at least two of the seven parts are passed, the examinee may retake only the parts failed.

The PLS exam is given on the last Friday and Saturday in September and the first weekend of March in each year, and also preceding the NALS annual meeting. The permanent testing center in Alabama is Jefferson State Junior College in Birmingham. NALS provides information regarding guidelines and recommended study sources.

For further information, contact Mary Jo Dennis, PLS, PLS Chairman for the Alabama Association of Legal Secretaries, 12th Floor, Watts Building, Birmingham, Alabama 35203, (205) 252-2889.

Clark admitted to board

Robert F. Clark, a Mobile attorney, recently was admitted as a fellow of the American Board of Criminal Lawyers.

Clark received his law degree from the University of Alabama School of Law in 1970 and was admitted to the bar that same year.

The American Board of Criminal Lawyers was formed in 1978; requirements for fellowship include a minimum of seven years' experience as a criminal trial or appellate lawyer, as well as participation in at least 35 felony jury trials or the equivalent appellate experience.

Bar Commisioners elected

New bar commissioners were elected during the month of July. The following are biographical sketches and photographs of each incoming commissioner and a listing of incumbent commissioners.

10th Circuit, Place #6

OLLIE L. BLAN, JR., born May 22, 1931, Fort Smith, Arkansas; graduated, Fort Smith Junior College, 1951; received law degree from University of Arkansas, 1954. Partner, Birmingham firm of Spain, Gillon, Tate, Grooms & Blan.

Vice president, 1983-84, Alabama Defense Lawyers Association; member, Defense Research Institute, American Council of Life Insurance (legal section), American Bar Association (Litigation, Antitrust, Tort and Insurance Practice sections), International Association of Defense Counsel (chairman, Accident, Life and Health Insurance Committee).

Member, Executive Committee, Birmingham Bar Association, 1986-present; chairman, Jefferson County Historical Commission, 1987-present.

Authored articles published in *Defense Counsel Journal, the Forum, For the Defense,* Alabama and Cumberland law reviews; lecturer, cle seminars.

Blan

Bowles

19th Circuit

JAMES R. BOWLES, born October 8, 1944, Tallassee, Alabama; graduated from Auburn University, 1966, University of Alabama School of Law, 1969. Partner in Pienezza & Bowles 1971-76, sole practitioner 1977-84, partner in Bowles & Cottle, 1984-present.

Former captain, U.S. Army; Vietnam veteran. Awarded Bronze Star and Army Commendation Medal.

Past president, 1978, Elmore County Bar Association; former member, 1977, Indigent Defense Committee, and Unauthorized Practice of Law Committee, 1986. Member, American Bar Association, Alabama State Bar, Elmore County Bar Association, Alabama Trial Lawyers Association.

Married to former Joyce Perkins, Tuscaloosa; son, John Robert Bowles.

10th Circuit, Place #4

THOMAS COLEMAN, born April 11, 1918, Birmingham, Alabama; attended Birmingham Southern College; graduated from University of Alabama and University's School of Law. Partner, Birmingham firm of Whitmire, Coleman and Whitmire.

Served, U.S. Navy, four years during World War II, discharged lieutenant commander, U.S.N.R.

Served as Deputy U.S. District Attorney and special Assistant Attorney General, State of Alabama. Professor, Birmingham School of Law, over 20 years.

Married to former Una Connors; has three children: Una Connors Coleman; Lillian Lochrane Coleman Smith, alumni director, Cumberland School of Law; Thomas Coleman, Cumberland School of Law graduate.

Coleman

Crook

15th Circuit, Place #2

CHARLES M. CROOK, born July 26, 1938, reared Union Springs, Alabama; undergraduate degree from University of Alabama, 1960; law degree from University's School of Law, 1961. Began practice in 1964 with Goodwyn & Smith; 1970 became Smith, Bowman, Thagard, Crook & Culpepper; 1983 merged with Balch & Bingham of Birmingham.

Captain, U.S. Army Judge Advocate General's Corps, 1962-63; received Army Commendation Medal.

Former member, board of directors, Montgomery County Bar Association; Alabama commissioner, 1972-present, National Conference of Commissioners on Uniform State Laws.

Married to former Edith Rushton Johnston; three children.

10th Circuit, Place #7

JULIAN MASON DAVIS, born July 30, 1935, Birmingham, Alabama; graduate, 1956, Talladega College, 1959, State University of New York School of Law. Senior partner, Sirote, Permutt, McDermott, Slep-

ian, Friend, Friedman, Held & Apolinsky; adjunct professor, University of Alabama School of Law.

Member, Alabama State Bar, Birmingham Bar Association (immediate past president), National Bar Association, American Bar Association, National Insurance Association (past president).

On board of Leadership Birmingham, American Red Cross, Talladega College, Southern Economic Council, Greater Birmingham Community Service Award, Birmingham Airport Authority, Downtown Redevelopment Commission, The Relay House, WBHM Public Radio, the Salvation Army, American Lung Association of North Central Alabama, UAB Research Foundation, Inc., UAB President's Advisory Council, Birmingham Historical Society, Protective Industrial Insurance Company of Alabama, Inc. (Executive Committee, vice president/general counsel).

Secretary, state Democratic Executive Committee (Alabama Democratic Party 1978-).

Married to former June Carolyn Fox; two children, Karen Madeline Davis and Julian Mason Davis, III.

Davis

Dillard

10th Circuit, Place #5
TIMOTHY L. DILLARD, born November 11, 1946, Montgomery, Alabama; graduated, University of Alabama, 1968, Cumberland School of Law, 1971. Practices with Hampe, Dillard & Ferguson, Birmingham.

Member, Birmingham Bar Association, Alabama State Bar, American Bar Association, American Trial Lawyers Association, Alabama Trial Lawyers Association (Executive Committee).

Married to former Cece Fuller, LaFayette, Alabama; three children, Amy, Geoffrey, Mark.

10th Circuit, Place #5
MICHAEL L. EDWARDS, born September 10, 1942, Birmingham, Alabama; graduate, University of Alabama, 1964, University's School of Law, 1966; Member, Alabama Law Review, 1964-66. Captain, U.S. Army Judge Advocate General's Corps, 1966-71.

Chairman, Business Torts & Antitrust Section, Alabama State Bar, 1985-86, Grievance Committee, Birmingham Bar Association, 1986.

Practices with Balch & Bingham, Birmingham.

Edwards

Engel

13th Circuit, Place #3
MYLAN B. ENGEL, SR., born July 14, 1923, Summerdale, Alabama. Graduate, University of Alabama, 1952, and University's School of Law, 1953. *Alabama Law Review,* 1952.

Served, Alabama Legislature, 1961-70; elected state representative, 1961, to fill vacancy; re-elected 1962. Elected, State Senate, 1966.

Member, Mobile County Bar Association, Alabama State Bar, American Bar Association. President, Mobile Bar Association, 1982; Mobile Bar Association Grievance Committee (three years), Executive Committee (five years).

Served, combat infantryman, World War II, February 1944-July 1946; awarded Combat Infantryman Badge, Bronze Star, WWII Occupation Ribbon, Good Conduct Medal; honorably discharged 1946; 1946-47, War Department civilian, Vienna, Austria. Past president, Mobile Sertoma Club, Mobile County Chapter Young Democrats; past member, board of directors, Mobile Area Chamber of Commerce.

Senior member, Engel, Walsh & Zoghby, Mobile.

30th Circuit
WILLIAM E. HEREFORD, born October 17, 1939, Birmingham, Alabama. Graduate, University of Alabama, 1964; University's School of Law, 1970. Partner, Hereford, Blair & Holladay, Pell City.

Member, American Bar Association, Alabama State Bar, St. Clair County Bar Association (president 1983-84).

Married to former Paula Duncan, Washington, D.C.; two children, Gibson and William E., III.

Hereford

Higginbotham

10th Circuit, Bessemer Cut-Off
GEORGE M. HIGGINBOTHAM, born November 26, 1932, Birmingham, Alabama. Graduated, Birmingham Southern College, 1958, University of Alabama School of Law, 1961. Served four years, South Pacific, U.S. Seventh Fleet.

Licensed minister; served on Committee on Substance Abuse since inception.

Married to former Jane Custred, Birmingham; three children and three grandchildren.

Private practice, Birmingham.

Member, Sigma Delta Kappa, American Bar Association, American Trial Lawyers Association, Alabama Trial Lawyers Association, Alabama State Bar.

13th Circuit, Place #2
BROOX G. HOLMES, born November 15, 1932. Graduate, University of Alabama, 1954, University's School of Law, 1960, served in U.S. Marine Corps. Since 1960, practiced with Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves in Mobile.

Served, chairman, Alabama State Bar Grievance Committee; previous member, Judicial Inquiry Commission. Past president, Alabama Defense Lawyers Association; fellow, American College of Trial Lawyers.

Married to Laura Claire Holmes; three children.

Holmes

Lloyd

10th Circuit, Place #3
JAMES S. LLOYD, born March 2, 1948, Birmingham, Alabama. Graduated, 1970, University of Alabama, 1976, Cumberland School of Law. Naval officer, three years, Vietnam war. Began practice in Lloyd, Ennis & Lloyd, Birmingham; merged with Clark & Scott, Birmingham, 1984.

Served, president, YLD, Birmingham Bar Association, 1983; Executive committee, Birmingham Bar, 1984-86; presently, chairman, Ethics Committee, Birmingham Bar; member, Alabama State Bar Ethics Committee.

Married to former Nancy Hudson; two children, Jimmy and Lauren.

13th Circuit, Place #1
VICTOR H. LOTT, JR., born August 15, 1950, Mobile, Alabama. Graduated, *cum laude*, 1972, University of the South; 1975, University of Alabama School of Law; founding editor, *The Alabama Law and Psychology Review*, 1975. Since 1975, practiced with Lyons, Pipes & Cook, Mobile.

Member, Mobile Bar Association, Alabama State Bar, American Bar Association, Alabama Law Institute. Current chairman, state bar Section on Oil, Gas and Mineral Law; since 1984, served on Grievance Committee, Mobile Bar Association.

Served as chairman, board of directors, Downtown YMCA, 1986; currently, director, Mid-Continent Oil and Gas Association (Mississippi-Alabama Division); treasurer, Metropolitan YMCA of Mobile; member, board of directors, Boys Club of Mobile, Inc.; member, Mobile Touchdown Club, Senior Bowl Association, board of trustees of Julius T. Wright School for Girls in Mobile.

Married to former Austill Samford; two children, Mary Austill Samford and Margaret Walsh Samford.

Lott

Matthews

33rd Circuit
WILLIAM B. MATTHEWS, born February 12, 1931, Memphis, Tennessee. Graduated, 1952, University of Tennessee, 1956, Vanderbilt University School of Law. Private practice, 1956-87, Ozark, Alabama.

Served, bar commissioner, 1966-75, 1981-84; member and chairman, state bar Grievance Committee, 1977-79; Executive Committee, 1973-74, 1981-82; Finance Committee, 1984-87.

Married to former Florence Carroll; three children.

35th Circuit
WILLIAM D. MELTON, born Pine Apple, Alabama, June 30, 1943. Graduated, 1964, Auburn University, 1966, University of Alabama School of Law.

Member, editorial board, *Alabama Trial Lawyers Journal*, 1972-77, 1982-83; *The Alabama Lawyer*, 1973-76, 1982-84; House of Representatives, 1967-70; special Assistant Attorney General, 1972-79; member, Senate, 1973-75.

Member, Conecuh County Bar Association, Federal Bar Association, American Bar Association, Alabama State Bar, Alabama Trial Lawyers Association, Association of Trial Lawyers of America, American Judicature Society, International Society of Barristers, American Board of Trial Advocacy.

Member, board of directors, First Alabama Bank of Conecuh County, Eastern Sleep Corporation, Richmond, Virginia.

Private practice, Evergreen.

Married to former Nancy Miller, Brewton; two children, Dudley and Richard.

Melton

Owens

6th Circuit, Place #2
JOHN A. OWENS, born July 7, 1939, Birmingham, reared in Gordo, Alabama. Graduated, 1961, University of Alabama; U.S. Naval Reserve, three years. Graduated, 1967, University's School of Law; member, Farrah Order of Jurisprudence.

Practiced with Phelps, Owens, Jenkins, Gibson & Fowler, Tuscaloosa, since graduation.

Served as president, Tuscaloosa Rotary Club and Tuscaloosa County Arts and Humanities Council; vice president, City of Tuscaloosa Solid Waste Authority, (and secretary) Tuscaloosa Academy Board of Directors.

Member, American Bar Association, Alabama State Bar, Tuscaloosa County Bar Association.

Married to former Dorothy Terry, Red Level, Alabama; two children, Apsilah Geer Owens and Terry Elizabeth Owens.

23rd Circuit, Place #2

S. DAGNAL ROWE, born March 25, 1947, Huntsville, Alabama. Graduated, 1969, University of Alabama, 1972, University's School of Law (president, law school student body). Received L.L.M., 1973, New York University School of Law.

Practiced with Cleary, Lee, Morris, Smith, Evans & Rowe since 1973.

Former member, Alabama State Bar Board of Bar Examiners; editorial advisory board, *The Alabama Lawyer.*

Member, board of directors, Huntsville Public Library, Huntsville Board of Zoning Adjustment, Huntsville Rotary Club.

Married to former Melissa J. Holliman; two children.

Rowe

Royer

23rd Circuit, Place #1

GEORGE W. ROYER, JR., born September 23, 1947, Aruba. Moved to Alabama age 13. Graduated, 1969, University of Alabama, 1972, University's School of Law.

Served, 1972-78, Assistant Attorney General, State of Alabama. Since 1978, with Butler & Royer, Huntsville.

Married to former Susan Benson, Mobile; three children.

15th Circuit, Place #3

JAMES R. SEALE, born March 6, 1944, Selma, Alabama. Attended Emory University, Atlanta, Georgia; graduated, 1966, University of Alabama, 1969, University's School of Law. Served, 1969-72, captain, U.S. Air Force, Judge Advocate General's Corps; major, U.S. Air Force Reserve.

Practiced, 1972-April 1987, Capell, Howard, Knabe & Cobbs, Montgomery; May 1, 1987, began practice with Haskell, Slaughter & Young, partner, Montgomery office.

Served, board of directors, Montgomery County Bar Association; president of association, 1986. Member, Alabama State Bar, The Florida Bar.

Married to former Nancy Lumpkin; three children: Shelby, Brooks, Margaret.

36th Circuit

DONALD R. WHITE, born February 19, 1933, Lauderdale County, Alabama.

Seale

White

Graduated, 1959, Florence State University, 1966, Oklahoma City Law School. Inactive member, Oklahoma Bar Association; active member, Alabama State Bar.

Practiced, Florence, Alabama, ten years; Moulton, Alabama, nine years.

Married to former Verna M. Lamon, Trinity, Alabama; two children, Cindy R. White, Shane L. White. ■

Incumbent Commissioners

Circuit		Hometown
1st	Edward P. Turner, Jr. (89)	Chatom
2nd	Jerry L. Thornton (88)	Hayneville
3rd	Lynn Robertson Jackson (89)	Clayton
4th	Archie T. Reeves, Jr. (88)	Selma
5th	Lewis H. Hamner (89)	Roanoke
6th	Walter P. Crownover (89)	Tuscaloosa (place no. 1)
7th	H. Wayne Love (89)	Anniston
8th	A. J. Coleman (90)	Decatur
9th	William D. Scruggs, Jr. (88)	Fort Payne
10th	Francis H. Hare, Jr. (88)	Birmingham (place no. 1)
	Drayton N. James (88)	Birmingham (place no. 8)
11th	Robert M. Hill, Jr. (90)	Florence
12th	Joe C. Cassady (88)	Enterprise
14th	Phillip A. Laird (89)	Jasper
15th	Richard H. Gill (89)	Montgomery (place no. 1)
16th	Ludger D. Martin (88)	Gadsden
17th	Richard S. Manley (90)	Demopolis
18th	Oliver P. Head (90)	Columbiana
20th	Wade H. Baxley (88)	Dothan
22nd	W. Harold Albritton (90)	Andalusia
24th	L. E. Gosa (88)	Vernon
25th	Nelson Vinson (89)	Hamilton
26th	Bowen H. Brassell (89)	Phenix City
27th	Charles R. Hare, Jr. (88)	Albertville
28th	John Earle Chason (89)	Bay Minette
29th	B. Greg Wood (88)	Talladega
31st	Gorman R. Jones, Jr. (90)	Sheffield
32nd	John David Knight (89)	Cullman
34th	William M. Bouldin (90)	Russellville
37th	Phillip E. Adams, Jr. (89)	Opelika
38th	John F. Proctor (88)	Scottsboro
39th	Jimmy E. Alexander (88)	Athens

OF INTEREST

IRS Reporting of Real Estate Transactions

by E. Lanny Crane
Jackson Thornton & Company
Certified Public Accountants
Montgomery, Alabama

The Internal Revenue Service finally has issued the temporary regulations dealing with Code Section 6045—Returns of Brokers, to assist real estate closers in complying with the new reporting requirements for form 1099-B. The real estate requirements were added as a result of the Tax Reform Act of 1986.

The regulations indicate that only real estate closings occurring after December 31, 1986, will be subject to the reporting requirement; however, no penalty will be assessed with respect to a transaction that closed before May 4, 1987, if the new reporting requirements are not met.

The regulations for 1987 closings indicate that only certain sales or exchanges of residential real estate will be subject to the reporting requirements in the first year. It is anticipated that additional types of real estate transfers will be required to be reported in the future.

The 1987 residential real estate transfers required to be reported involve those classified as one-to-four family real estate. This includes any structure designed for the occupancy of from one to four families and any appurtenant fixtures, land and associated structures transferred with such structure, certain condominium units and appurtenant common elements and stock in a cooperative housing corporation (as defined in Section 216).

The regulations exempt certain types of transactions and transferors from the reporting requirements for 1987. Any transfer of real estate involving foreclosures and abandonments of security is exempt, along with gifts and refinancings. The reporting requirements also do not apply to corporate transferors and transferors that are governmental units.

The person responsible for making the information reports to the IRS is the "real estate broker." The real estate broker is identified as the person responsible for closing the transaction. If a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act of 1974 is used, the person listed as the settlement agent on the statement is considered the closer (broker) for reporting purposes. If a Uniform Settlement Statement is not used, then the person who prepares the closing statement or other written description of the disposition of the gross proceeds is the real estate broker. If no closing statement is prepared, the person responsible for closing the transaction is a transferee's or transferor's attorney who materially participates in the transaction.

The parties, by agreement, may designate a person as the real estate broker, assuming the person responsible for closing the transaction either is an attorney for the transferee or transferor, a title or escrow company or a mortgage lender.

The actual filing of the informational reports to the IRS of form 1099-B must be timely and in a form acceptable to the IRS. Magnetic media reporting is mandatory for 1987 with two exceptions: first, real estate brokers who reasonably expect to report fewer than 250 transactions for the 1987 calendar year may continue to file using paper documents. The second exception allowing use of paper form 1099 includes obtaining a hardship waiver. You must prove to the IRS that the magnetic media filing requirements would cause an undue hardship to you or your organization. This waiver request should be filed on form 8508 with the National Computer Center, Martinsburg, West Virginia. There is a transitional rule for 1987 that will allow filing on paper forms 1099 if a form 8508 filed in good faith indicates the real estate broker reasonably expects to file fewer than 500 returns for 1987. The waiver request must be filed by November 30, 1987, to be effective for 1987.

The forms 1099-B are due to the transferors by January 31, 1988, and to the IRS by February 29, 1988.

The information to be contained on the form 1099 includes the name, address and taxpayer identification number of the transferor; a general description of the real estate; the date of closing; the gross proceeds with respect to the transaction; a description of property or services received, or to be received, by the transferor in addition to cash in the transaction; the real estate broker's name, address and taxpayer identification number; and any other information required by the form 1099 instructions. ■

Turberville wins indigent defense award

Birmingham lawyer L. Dan Turberville, Jr., received the 1987 Clarence Darrow Award in recognition of his representation of indigent capital defendants. Established in 1986 and given during the bar's annual meeting, the award is made to a winner chosen by the Indigent Defense Committee from among several nominees.

Turberville's nomination was based on his record in each of several capital cases he handled over the last two years. Although these were court appointments, the actual cost exceeded court reimbursement. Turberville obtained two life-without-parole sentences in second trials, one remand and a new trial, and one life-without-parole sentence during a first trial.

A member of the bar since 1978, Turberville is a native of Monroe County, Alabama, a graduate of the University of Denver (B.A., history), Florida State University (M.S., rehabilitation counseling) and Miles College School of Law (J.D., 1978).

Recent Decisions

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

Recent Decisions of the Supreme Court of Alabama—Civil

Civil procedure . . . rule 54(b) discussed

Precision American Corp. v. Leasing Service, 21 ABR 2413 (March 27, 1987)—Precision leased some equipment and assigned its rights under the lease to Leasing Service Corporation (LSC) with recourse. LSC defaulted, and Precision and LSC got into a dispute over the scope of the recourse. Precision sued LSC, and LSC counterclaimed for one-half the amount of the lease and sued for possession of the equipment. LSC moved for partial summary judgment for the amount Precision claimed represented the recourse obligation, but reserved the right to proceed later on the balance of its counterclaim. The trial court granted LSC's motion for partial summary judgment and certified the judgment final under Rule 54(b) A.R.Civ.P. Precision claimed that the Rule 54 certification was improper since LSC received summary judgment only on a portion of its claim. The supreme court agreed.

The supreme court stated that Rule 54(b) certifications should be granted only in exceptional cases and not be entered routinely or as a courtesy to counsel. Rule 54(b) certification is not appropriate unless it completely disposes of a claim so as to make that judgment final. It does not authorize entry of final judgment on part of a single claim. When a plaintiff sues to vindicate one legal right and alleges several elements of damage, only one claim is presented and certification is not proper. A judgment cannot be considered final as long as it leaves open the question of additional damages. Not all of LSC's counterclaim had been adjudicated, therefore, issuance of the Rule 54(b) certification was erroneous.

Civil procedure . . . section 6-3-2(b)(1) controls when real estate involved

Ex parte: William C. Cannon, Jr. (In Re: William C. Cannon, Jr. v. The Alabaster Water and Gas Board), 21 ABR 2581 (March 27, 1987)—Petitioners, plaintiffs below, sought a *writ of mandamus* to a Jefferson County circuit judge to vacate his order transferring the case from Jefferson County to Shelby County. Petitioners alleged respondents negligently caused a sinkhole on their property, which damaged it, and also caused them to suffer distress and mental anguish. They also claimed respondents' conduct created a nuisance and amount-

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

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

ed to a trespass. In addition to damages, petitioners sought injunctive relief to prevent further damage.

All petitioners lived in Shelby County and all of the land was in that county. Some individual respondents resided in Jefferson County, and some foreign corporation respondents did business in Jefferson County. Petitioners contended venue was controlled by Section 6-3-7, *Ala. Code* 1975, where respondents claimed venue was governed by Section 6-3-2(b)(1), *Ala. Code* 1975. The trial court ruled with respondents, and the supreme court agreed.

The supreme court noted that since the lawsuit related to real estate and some of the relief claimed was of an equitable nature, i.e., injunctive relief, Section 6-3-2(b)(1) controls, and Shelby County, where the land lies, was the correct venue.

Section 6-3-2(b)(1) provides that in suits of an equitable nature against individuals, all actions involving real estate must be commenced in the county where the land lies. The supreme court said that the fact that a foreign corporation also was sued did not change venue.

Discovery . . . hospital incident report may be discoverable

Eulyn H. Sims V. Knollwood Park Hospital, 21 ABR 2540 (March 27, 1987)—Plaintiff, a patient at the hospital, fell from a chair in which she had been placed and fractured her hip. She sued the hospital for negligently allowing her to fall. A dispute arose as to whether the nurse left the plaintiff alone in the room when she fell.

The hospital prepared an incident report as was its custom and sent it to the risk manager. The plaintiff sought discovery of the report and the hospital objected on the grounds the report was "prepared in anticipation of litigation" and that there was no showing of undue hardship necessary to justify production of the report. The trial court sustained the hospital's objection. The plaintiff appealed the court's suppression of the incident report. The supreme court reversed.

The supreme court reasoned that the hospital's objection involved a two-fold analysis. The objection is not well-taken unless the document is made "in anticipation of litigation" and the document is privileged as an attorney's "work product." The supreme court noted that, if in connection with an event or accident a business entity in the ordinary course of business conducts an investigation for its own purposes, the resulting incident report is discoverable. The fact that a defendant anticipates the contingency of litigation does not automatically qualify an "in-house" report as work product. Further, the report was prepared by the hospital and contained information from its employees and was not the work product of an attorney. The fact that an attorney obtained a copy of the incident report did not render it the attorney's work product.

Domestic relations . . . mother's unsuccessful paternity suit does not bar child's subsequent paternity suit under AUPA

Ex parte: Erica Alexis Snow (In Re: State of Alabama v. Erica Alexis Snow), 21 ABR 2870 (April 24, 1987)—The child's mother instituted a paternity action in 1983 under Section 26-12-1 through 9, *Ala. Code* 1975 (deGraffenried Act). That act was repealed in 1984 and replaced by the Alabama Uniform Parentage Act, Section 26-17-1 through 21, *Ala. Code* 1975 (AUPA). Under the deGraffenried Act, the child was not authorized to file a paternity proceeding. On motion of the state, the trial court determined that the child's subsequent paternity action was barred by the previous action and the court dismissed the complaint. The supreme court granted certiorari and reversed the court of appeals and the trial court.

The supreme court stated that the child's suit was not barred by *res judicata* because the child and the mother were not substantially identical parties with an identity of interest. The child was not and could not have been a party to the previous suit. Privity for purposes of judicial finality does not normally arise from the relationship between parent and child. The child's interest in bringing suit was different from the mother's.

The supreme court held that Section 26-17-14(a), *Ala. Code* 1975, does not bar the present litigation. Since an action under AUPA is a civil action and governed by the rules of civil procedure, the concern that the putative father may be subjected to a multiplicity of lawsuits is diminished because joinder and intervention are available to bring all the parties before the court.

Worker's compensation . . . employee barred from suing employer's plant manager for failure to obtain benefits for employee

Ernest E. Garnett, Sr. v. James Lawrence Neumann, 21 ABR 2790 (April 27, 1987)—Garnett sued his employer's plant manager for his alleged failure to obtain worker's compensation benefits for Garnett. The defendant filed a motion for summary judgment, claiming that the suit was barred by the exclusivity provisions of the Workman's Compensation Act (Section 25-5-52, *Ala. Code* 1975). The supreme court agreed.

The supreme court noted it previously held that the exclusivity provisions of the Workman's Compensation Act extended to the employer, the worker's compensation carrier and the carrier's employee. The supreme court now extends the provision to the employer's employee for an alleged wrongful failure to secure worker's compensation benefits. The supreme court reviewed *Weldon v. Hartford Insurance Group*, 435 So.2d 1271 (Ala. 1983) and found that it is sound law.

Zoning—*City of Tuskegee V. Lacey* overruled

City of Fultondale v. City of Birmingham, 21 ABR 2882 (April 24, 1987)—Fultondale and Trussville commenced annexation proceedings of certain property subsequently annexed by Birmingham. To accomplish the annexation, Fultondale and Trussville had to create contiguity with their existing city limits and, therefore, they annexed portions of numerous streets and highway rights-of-way. This annexation has been called "corridor" or "strip" annexation, and such annexation was authorized in *City of Tuskegee v. Lacey*, 486 So.2d 393 (Ala. 1985).

Birmingham maintained that this corridor or strip annexation is invalid and that *Lacey* should be overruled. The supreme court agreed that the use of public road rights-of-way to create contiguity is unreasonable and invalid as a matter of law and expressly overruled *Lacey*. The supreme court, however, did not hold that corridor or strip annexation is invalid *per se*.

The supreme court recognized that most courts disfavor strip or corridor annexation approved in *City of Dothan v. Dale County*, 324 So.2d 772 (Ala. 1975). Therefore, Alabama does not require that a substantial common boundary exist between the city and the annexed territory, as other states have done. However, in this case and *Lacey*, public road rights-of-way annexed were used merely to create contiguity and, in affect, avoid the requirements of a touching at some point. This was not what the legislature intended.

Recent Decisions of the Supreme Court of the United States

Warrantless search by probation officer held "reasonable" within meaning of Fourth Amendment

Griffin v. Wisconsin, Case No. 86-5324, 55 U.S. LW 5156 (June 23, 1987) —Do probation officers need a court warrant to search the home of a person on probation? The Supreme Court, in a five-to-four decision, said no. The Court upheld a Wisconsin regulation that allows probation officers to search probationer's homes without warrants if there are "reasonable grounds" to believe the homes contain something that violates the terms of probation.

Justice Scalia held that the warrantless search of Griffin's residence was "reasonable" within the meaning of the Fourth Amendment because it was conducted pursuant to a regulation that is itself a reasonable response to the "special needs" of a probation system.

Justice Scalia's opinion upholds the Wisconsin search regulation because the "special needs" of the probation system make the warrant requirement of the Fourth Amendment impracticable and justify replacement of the probable cause standard with the regulation's "reasonable grounds" standard. The Court theorized that the warrant requirement would interfere to an appreciable degree with the probation system by setting up a magistrate rather than probation officer as the determiner of how closely the probationer must be supervised, by making it more difficult for probation officers to respond quickly to evidence of misconduct and by reducing the deterrent effect that the possibility of expeditious searches otherwise would create.

Predicate requirements for admission of co-conspirator hearsay

Bourjaily v. United States, Case No. 85-6725, 55 U.S. LW 4962 (June 23, 1987) —Must a court, in weighing whether to admit a statement as non-hearsay under Federal Rules of Evidence, 801(d)(2)(E), determine by indepenrdent evidence that a conspiracy existed and that the defendant and the declarant were members of the conspiracy? The Supreme Court, in a six-to-three opinion, said no.

Before admitting a co-conspirator's statement over an objection that does not qualify under Rule 801(d)(2)(E), a court must be satisfied that the statement actually falls within the definition of the rule. There must be evidence that there was a conspiracy involving the declarant and the non-offering party, and that the statement was made in the course and in furtherance of the conspiracy.

Led by Chief Justice Rehnquist, the Court held that when the preliminary facts relevant to the rule are in dispute, the offering party must prove then by a preponderance of the evidence and not by some higher standard.

The defendant's challenge centered on the argument that in determining whether a conspiracy exists and whether the defendant was a member of it, the court must look only to independent evidence —that is, evidence other than the statement sought to be admitted. In support of his challenge, the defendant relied upon *Glasser v. United States*, 315 U.S. 60 (1942), in which the Supreme Court first mentioned the so-called "bootstrapping rule." Various courts of appeal had widely adopted the *Glasser* view and held that in determining the preliminary facts relevant to co-conspirators' out-of-court statements, a court may not look at the hearsay statements themselves for their evidentiary value.

In rejecting the *Glasser* "bootstrapping" theory, Chief Justice Rehnquist's opinion held that:

> "To the extent that *Glasser* meant that Courts could not look to the hearsay statements themselves for any purpose, it has clearly been superseded by Rule 104(a), Federal Rules of Evidence. It is sufficient for today to hold that a Court in making a preliminary factual determination under Rule 801(d)(2)(E), may examine the hearsay statements sought to be admitted . . . . Accordingly, we hold that the Confrontation Clause does not require a Court to embark on an independent inquiry into the reliability of statements that satisfy that requirements of Rule 801(d)(2)(E)."

Mail fraud statute covers only property crimes—severe limitation to government prosecuting political corruption cases

McNally v. United States, Case No. 86-234, 55 U.S. LW 1202 (June 24, 1987) —Does Section 1341 of the Federal Mail Fraud Statute prohibit schemes to defraud citizens of their intangible rights to honest and impartial government? The Supreme Court, in a seven-to-two decision, said no.

The Federal Mail Fraud Statute, 18 U.S.C. 1341, protects only rights in money and property, not intangibles such as the right of the citizenry to good government. This decision wipes out a theory of mail and wire fraud that has been widely used by prosecutors against state and local government officials, and also against private parties.

The statute, 18 U.S.C. 1341, prohibited use of the mail to execute "any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations or promises." The federal courts of appeal had uniformly interpreted "any scheme or artifice to defraud" to include a scheme to defraud citizens of their intangible rights to honest and impartial government.

Led by Justice White, the Court reversed the mail fraud convictions of the defendant who participated in a scheme in which a state officer selected an insurance agent to provide workmen's compensation insurance for the state on condition that the agent share its commission with other named insurance agencies, one in which the state officer had an ownership interest. There was no charge that the state was defrauded of any money or property or would have paid a lower premium in the absence of the alleged scheme. Accordingly, the new rule limits the scope of §1341 to the protection of money or property rights and does not extend to the intangible right of citizens to good government.

Sentencing guidelines trigger *ex post facto* considerations

Miller v. Florida, Case No. 86-5344, 107 S.Ct. 2453 (June 15, 1987)—Does the application of a revised sentencing-guidelines law to a convicted defendant, whose crimes occurred before the law's effective date, violate the *ex post facto* clause of article 1 of the Constitution? A unanimous Supreme Court said yes.

Justice O'Connor, writing for the court, held that the revised guidelines "directly and adversely" affected the sentence the defendant had received. The revised guidelines resulted in the imposition of more onerous punishment than the law in effect at the time the crimes were actually committed.

The Court recognized that no *ex post facto* violation occurs if the change in the law is merely procedural and does not increase punishment. However, Justice O'Connor added that the change at issue, guideline sentence ranges, appears to have little about it that could be deemed procedural.

Having decided the case, Justice O'Connor went further and held that even if the revised guideline law did not "technically increase the punishment" annexed to the defendant's crime, it foreclosed his ability to challenge the imposition of a sentence longer than his presumptive sentence guidelines under the old law. Therefore, the petitioner was substantially disadvantaged by the retrospective application of the revised guidelines to his crime.

Hypnotically refreshed testimony—right to present defense

Rock v. Arkansas, Case No. 86-130, 55 U.S. LW 4925 (June 22, 1987)—Does the Arkansas rule prohibiting the admission of hypnotically refreshed testimony by a criminal defendant violate her constitutional right to testify in her own behalf? The Court, in a five-to-four decision, said yes.

Rock was charged with manslaughter for shooting her husband. In order to refresh her memory as to the precise details of the shooting, she twice underwent hypnosis by a trained neuropsychologist. These sessions were tape-recorded. After the hypnosis, Rock remembered details indicating that her gun was defective and had misfired, which was corroborated by an expert witness' testimony. However, the Arkansas trial court ruled that no hypnotically refreshed testimony could be admitted and limited Rock's testimony to a reiteration of her statements to the doctor prior to hypnosis as reported in the doctor's notes. The Arkansas Supreme Court affirmed her conviction and ruled that the limitations on her testimony did not violate her constitutional right to testify in her own behalf, under the theory that a criminal defendant's hypnotically refreshed testimony is inadmissible *per se*, because it is unreliable.

Led by Justice Blackmun, the Court said a state's legitimate interest in barring unreliable evidence does not extend to *per se* exclusions that may be reliable in an individual case. The Supreme Court overturned the Arkansas rule and also said it was not prepared to endorse, without qualifications, the use of hypnosis as an investigative tool. The Court reasoned that criminal defendants have a right to testify in their own behalf under the due process clause of the Fourteenth Amendment, the compulsory process clause of the Sixth Amendment and the Fifth Amendment's privilege against self-incrimination. Although the right to present relevant testimony is not without limitation, the Supreme Court held that the restrictions placed on a defendant's constitutional right to testify by a state's evidentiary rule may not be arbitrary or disproportionate to the purposes they are designed to serve. Specifically, the Court held that Arkansas' *per se* rule excluding all hypnotically refreshed testimony infringes impermissably on a criminal defendant's right to testify in his or her own behalf.

Right to conflict-free counsel

Burger v. Kemp, Case No. 86-5375, U.S. (June 25, 1987)—Was a convicted Georgia murderer denied a fair trial because his lawyer's partner represented a co-defendant? The Court, in a close five-to-four decision, said no.

Justice Stevens, writing for the majority, said that having law partners represent co-defendants is not a *per se* violation of the constitutional guarantee of effective assistance of counsel.

The Supreme Court also rejected the argument that Burger was entitled to a new sentencing trial because his lawyer failed to present mitigating evidence about Burger's unhappy and unstable childhood.

Justices Blackmun and Powell wrote separate dissents, which were joined by Justices Brennan and Marshall. ■

Young Lawyers' Section

Charles R. Mixon
YLS President

Young Lawyers' Section convention activities

At the Alabama State Bar Annual Meeting in Mobile, the Young Lawyers' Section concluded a busy bar year. The YLS once again co-sponsored the annual seminar entitled, "Update '87: Recent Developments in the Law." The sessions were well-attended, and all speakers did an outstanding job. The credit for this presentation goes to Steve Rowe, YLS CLE chairman, and Mary Lyn Pike of the state bar.

Thursday night, following the general membership reception, the YLS, in conjunction with the Mobile YLS, sponsored an evening of music and social activity aboard the U.S.S. Alabama. The long-awaited return to the battleship was highlighted by the performance of "Perfect Image." The evening was a huge success, drawing a large crowd, and served to get the weekend meeting off to a roaring start. A much-deserved note of appreciation should be expressed to Duane Wilson and Donald Partridge of the Mobile YLS and Sid Jackson of the Alabama State Bar YLS for their efforts arranging this event. This attraction has become a highlight of the state bar annual meeting, and everyone is looking forward to next year's party in Birmingham.

Thursday afternoon, the YLS held its annual business meeting. The following were elected for the coming year: president, Charles R. Mixon, Jr.; president-elect, N. Gunter Guy, Jr.; secretary, James H. Anderson; and treasurer, W. Percy Badham, III.

Young Lawyers serve on state bar committees

Alabama State Bar President Ben Harris has continued the tradition of requesting that young lawyers serve on the most important state bar committees. Those persons selected by him will serve as a very important link between the YLS and the state bar and, in effect, will be representing the YLS on the various committees. During the coming year, those representatives will report to the YLS Executive Committee on the activities of their state bar committees. The following appointments were made by Ben Harris for the coming year: Alternative Methods of Dispute Resolution-Celia Collins; Access to Legal Services-Rick Kuykendall; Lawyer Advertising and Solicitation-Terry McElheny; Bicentennial of the U.S. Constitution-Charlie Mixon; Bar Directory-Rebecca Shows; Correctional Institutions and Procedures-Ron Forehand; Citizenship Education-Richard Fikes; Future of the Profession-Warren Laird; Ethics Education-Steve Rowe; Proposed Judicial Building-James Anderson; Law Day-Rebecca Shows; Local Bar Activities and Services-Tom Heflin; Legislative Liaison-Jim Sasser; Indigent Defense-John Plunk; Interest on Lawyers' Trust Accounts-Laura Crum; Professional Economics-Terry McElheny; Lawyer Public Relations-Percy Badham; Prepaid Legal Services-Pat Harris; Unauthorized Practice of Law-Amy Slayden.

Executive Committee appointed

In assuming the role as YLS president, I have had the opportunity to appoint an executive committee to carry out the activities of the section. These members perform the real work of the YLS. Below are listed the names, addresses and telephone numbers of the various Executive Committee chairpersons. After reviewing the list, I urge you to contact the chairperson of any committee on which you wish to work; we are most interested in involving more young lawyers in the work of your section. I know you will find that involvement in YLS activities is a very rewarding experience.

Mr. Robert R. Baugh
CADDELL & SHANKS
Post Office Box 1727
Decatur, AL 35602
353-6401
Grants

Mr. D. Taylor Flowers
LEWIS, BRACKIN & FLOWERS
Post Office Box 1165
Dothan, AL 36302
792-5157
Local Bar Liaison-South

Mr. R. Preston Bolt, Jr.
HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
Post Office Box 123
Mobile, AL 36601
432-5511
Annual Seminar on the Gulf, Arrangements

Mr. D. Patrick Harris
HARRIS & HARRIS, P.A.
200 South Lawrence Street
Montgomery, AL 36104
265-0251
Child Advocacy

Ms. Laura Crum
HILL, HILL, CARTER, FRANCO, COLE & BLACK
Post Office Box 116
Montgomery, AL 36195
834-7600
Bar Admissions Ceremony

Mr. H. Thomas Heflin
HARE, WYNN, NEWELL & NEWTON
700 City Federal Bldg.
Birmingham, AL 35203
328-5330
Local Bar Liaison-North

Mr. Sidney W. Jackson, III
Post Office Box 894
Mobile, AL 36601
433-6699
Annual Seminar on the Gulf, Speaker and Program

Mr. James P. Rea
HOGAN, SMITH, ALSPAUGH, SAMPLES & PRATT
10th Floor, City Federal Bldg.
Birmingham, AL 35203
324-5635
Alternate Dispute Resolution

Mr. Frederick T. Kuykendall, III
COOPER, MITCH & CRAWFORD
Suite 201, 409 21st Street
Birmingham, AL 35203
328-9576
ABA/YLS Liaison
Task Force on Legal Assistance to Nonprofits and Artists

Mr. Stephen A. Rowe
LANGE, SIMPSON, ROBINSON & SOMERVILLE
1700 First Alabama Bank Bldg.
Birmingham, AL 35203
250-5000
CLE

Mr. G. Warren Laird
Post Office Box 1493
Jasper, AL 35512
221-4383
Issues

Mr. James T. Sasser
WOOD & PARNELL, P.A.
641 South Lawrence Street
Post Office Box 4189
Montgomery, AL 36103
832-4202
Senior Bar Administrative Liaison

Mr. J. Terrell McElheny
DOMINICK, FLETCHER, YEILDING, WOOD & LLOYD
Post Office Box 1387
Birmingham, AL 35201
939-0033
Meeting Arrangements

Mr. Stephen W. Shaw
REDDEN, MILLS & CLARK
940 First Alabama Bank Bldg.
Birmingham, AL 35203
322-0457
Law Week

Mr. Keith Norman
BALCH & BINGHAM
Post Office Box 78
Montgomery, AL 36101
834-6500
Youth Legislature Judicial Program

Ms. Rebecca Shows
KINDERCARE, INC.
2400 Presidents Drive
Post Office Box 2151
Montgomery, AL 36197
277-5090
Publications

Mr. John Plunk
ALEXANDER, CORDER & PLUNK
Post Office Box 809
Athens, AL 35611
232-1130
Bylaws

Ms. Amy Slayden
407 Franklin Street, Suite Two
Huntsville, AL 35801
533-7178
Constitution Bicentennial

Mr. Duane A. Wilson
COALE, HELMSING, LYONS & SIMS
Post Office Box 2767
Mobile, AL 36652
Disaster Legal Assistance

Outlook

The YLS is looking forward to a very exciting and busy year. In addition to the several CLE programs presented by our section, the bar admissions ceremonies and our honored Youth Legislature and Judicial Program, we will continue the celebration of the bicentennial of our Constitution, examine the possible institution of legal assistance programs for non-profits and artists, as well as increasing our emphasis in the area of child advocacy. We also plan to continue development of local young lawyers' sections and look forward to working with young lawyers throughout the state.

Again, I urge you to devote some of your valuable time to service to the profession. If you feel you can do so, please contact me or any of the other officers or Executive Committee members.

Finally, I add a word of thanks to Claire Black, our immediate past president. She did an outstanding job in leading our section during the past year, and everyone who was involved with YLS extends congratulations and thanks to her for her service. We look forward to Claire's continued assistance and advice during the upcoming year. ■

Legislative Wrap-up

by Robert L. McCurley, Jr.

Legislature adjourns

The Alabama legislature adjourned *sine die* Monday, August 3, 1987, after completing what is considered by many its most productive regular session in many years.

Tort reform captivated the legislature during the first third of the session; the second was as usual, while the final third was embroiled in senate filibusters, first on seat belts and finally over local funding of education, both of which failed.

Although the legislature has only a few lawyers, two of them, Senator Ryan deGraffenried, Jr., and Representative Jim Campbell, distinguished themselves as president *pro tem* of their respective houses.

Institute bills enacted

Alabama Uniform Guardianship & Protective Proceedings Act—Act No 87-590 This act revises the guardianship law by delineating the powers, duties and appointment of a "guardian" of the person and a "conservator" of the estate. This act becomes effective January 1, 1988, and was sponsored by Representatives Mike Box, Jim Campbell, Beth Marietta, Bill Slaughter and Demetrius Newton, and Senator Ryan deGraffenried, Jr.

Deeds in Lieu of Foreclosure—Senate Bill 141 This sets forth the following: (a) the transfer rights of mortgagors; (B) no effect on the mortgagee's lien which he also could foreclose; (c) no right of redemption; (d) no merger of the mortgagors and mortgagees rights; and (e) no effect on the rights of persons other than mortgagors. This act is effective immediately and was sponsored by Senator Rick Manley and Representative Jim Campbell.

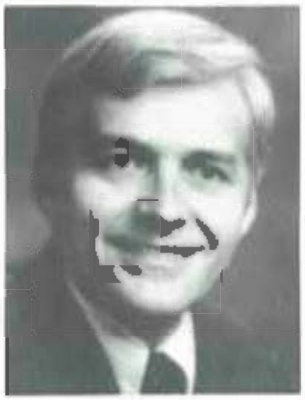
Trade Secrets—Senate Bill 83 This act defines trade secrets and describes the acts which constitute misuse. It further provides remedies for the protection of the trade secrets. This act is effective immediately and was sponsored by Senator Jim Smith and Representative Steve Hettinger.

Other bills of interest

Tort Reform—This is in addition to the ten bills that originally were a part of the tort reform package passed early in the session and signed June 11, 1987, (see *Alabama Lawyer*, July 1987, page 237). Three other bills passed the legislature which limited liability. Act 87-391 established the venue for all civil actions for damages for personal injury, death or property damage filed against a county or municipality to be in the county in which the act occurred. Other bills limited liability against educational employees, the board of podiatry and board members of volunteer organizations. Acts 87-393, 87-588 and S.B. 233, respectively

Criminal Law—Although the criminal code enumerates offenses generally, each year various groups seek to have particular crimes specifically enumerated. This year the specific crimes of charitable fraud (Act 87-605), timber theft equipment condemnation act (S.B. 203), motor vehicle assault (S.B. 212) and shining car lights on real property (Act 87-575) were passed by the legislature.

Several bills dealing with drugs have made their way into law. The most noteworthy moved the penalties for violating the drug laws from Title 20 into the criminal code (Act 87-603). Additionally, bills were passed increasing punishment for the sale of drugs on school grounds (Act 87-610), conspiracy to deal in drugs (Act 87-612) and penalties for counterfeit drugs (Act 87-603) and drug trafficking (S.B. 75). Section 15-5-8 of the code was amended to allow for nighttime search warrants in cases where the property to be seized includes a controlled substance (Act 87-611). The



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.

Opinions of the General Counsel

by William H. Morrow, Jr.

(This opinion originally appeared in the September 1986 edition of the Lawyer, but because of so many inquiries regarding the use of a disclaimer, the general counsel felt a reprint would be helpful.)

QUESTION:

"Is the disclaimer contained in Temporary 2-102(E), namely, 'No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services' required in all attorney advertisements or only in those describing a certain specific legal service or certain specific legal services?"

ANSWER:

The disclaimer is required only in attorney advertisements describing a certain specific legal service or certain specific legal services.

DISCUSSION:

Prior to October 25, 1985, Disciplinary Rule 2-102(A)(2) provided:

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

***

(2) A brief professional announcement card stating (1) new or (2) changed associations or (3) addresses, (4) change of firm name, (5) or similar matters, pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-106." (parenthetical numbers added)

Prior to January 26, 1983, Disciplinary Rule 2-102(A)(7)(f) provided:

"No advertisement shall be published unless it contains, in legible print, the following language:

"No representation is made about the quality of legal services to be performed or the expertise of the lawyer performing such services."

On January 26, 1983, Disciplinary Rule 2-102(A)(7)(f) was amended to provide:

***

"(7)***

(f) Except in an advertisement containing only that information permitted by DR 2-102(A)(2) announcing the formation or change of partnership or association or change in location of the attorney's office, no advertisement shall be published unless it contains in legible print, the following language:

'No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.'"

On October 25, 1985, the Supreme Court of Alabama rescinded Disciplinary Rules 2-101 through 2-106 and adopted Temporary Disciplinary Rules 2-101 through 2-106.

Temporary DR 2-101 in pertinent parts provides:

***

"A lawyer shall not make or cause to be made a false or misleading communication about (1) the lawyer or (2) the lawyer's services." (emphasis and parenthetical numbers added)

***

Prior to January 6, 1986, Temporary DR 2-102(E) provided:

"Any lawyer who advertises concerning legal services shall comply with the following:

(E) No communication concerning a lawyer's services shall be published or broadcast unless it contains the following language as an integral and prominent part of the presentation: 'No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.'" (emphasis added)

On January 6, 1986, the Supreme Court of Alabama amended Temporary Disciplinary Rule 2-102(E) to read as follows:

"No communication concerning a lawyer's services shall be published or broadcast unless it contains in legible and/or audible language the following: 'No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.'" (emphasis added)

The case of *Mezrano v. Alabama State Bar*, 434 So. 2d 732 (1983) involved a challenge to the constitutionality of DR 2-102(A)(7)(f) as it existed subsequent to January 26, 1983. The court held the disclaimer requirement is constitutional. The court discussed the cases of *Bates v. State Bar of Arizona*, 433 U.S. 350 and the case of *In the Matter of R.M.J.*, 455 U.S. 191. Considering the disclaimer, the court observed:

***

"The appellant lawyer in *R.M.J.* had been found guilty of violating several advertising provisions of the Missouri Canons of Professional Responsibility,

Wrap-Up

(Continued from page 310)

penalty for second degree rape was increased (Act 87-607). The liability of a spouse's signing jointly on an income tax return was limited by Senate Bill 426.

Family Law—Parents now are required to give consent before their daughter can have an abortion (Act 87-286). Section 12-15-65 has been amended to allow an out-of-court statement, made by a child under the age of 12 describing the acts of sexual conduct performed on the child, to be admissible in dependency hearings (Act 87-397).

Business—Consistent with the Interstate Banking Act which became effective this year, the Alabama Regional Reciprocal Savings Institutions Act (Act 87-152) was passed to allow interstate acquisitions by savings and loan associations. Central filing of UCC statements for farm products was established (Act 87-410) to provide that central filing will be with the secretary of state's office.

Transportation—The speed limit was raised on rural interstate highways to 65 mph (Act 87-408). The Department of Public Safety was given the authority to set penalties for the transportation of hazardous waste by regulation (Act 87-600). A change also was made to the perfection of a certificate of title of motor vehicles to extend the filing date from ten days to 30 days (Act 87-412).

Taxation—Homestead exemptions for persons over 65 were expanded (Act 87-589), while food stamp purchases were made exempt from sales tax law (Act 87-580). Two bills concerning the collection of sales tax and the payment of these taxes collected to the State of Alabama were passed on the last day (S.B. 396 and S.B. 397). Alabama income tax law was changed to mirror the federal law on deferred income tax plans (Act 87-622).

The person re-recording a mortgage to correct errors no longer has to pay the tax on the mortgage a second time (S.B. 42). There were increases in circuit and district court costs which are earmarked for the court system. The basic docket fee for district court was increased by $21 while the docket fee for cases in circuit court was increased by $40, with an additional increase of $35 when there was a jury demand.

There were numerous local bills passed. Attorneys may wish to consult with their local probate judge for a review of the local bills affecting their particular county.

Code

The legislature is not expected to return for a special session. The next regular session will convene in February 1988.

The Alabama Law Institute and Legislative Reference Service are assisting the Legislative Council in the rebidding of the *Code of Alabama*. It is not expected that there will be a change in the format of the code so as to necessitate the immediate repurchase of a new set. As we study proposals, any suggestions any bar members have would be appreciated.

Institute annual meeting

The annual meeting of the Alabama Law Institute was held July 16, 1987, in Mobile during the state bar meeting. Officers elected were President Oakley Melton, Vice president Jim Campbell and Secretary Bob McCurley. Elected to the executive committee were Chief Justice C. C. Torbert, Senator Ryan deGraffenried, Senator Rick Manley, George Maynard and Yetta Samford. ■

Opinions

(Continued from page 311)

> including a requirement that lawyer advertisements include a specified disclaimer of certification of expertise following any listing of specific areas of practice. Although no challenge was made to the constitutionality of the disclaimer requirement, the Court did note that the *Bates* decision suggested the use of disclaimer requirements to protect the public from misleading lawyer advertising. The Court noted:
>
> 'Even as to price advertising the *[Bates]* Court suggested that some regulation would be permissible. For example, . . . the bar could require disclaimers or explanations to avoid false hopes . . . *'Id., 455 U.S. at 200, 102 S.Ct. at 939, 71 L.Ed. 2d at 72, n. 11.*" emphasis added)

In the case of *Lyon and Blalock v. Alabama State Bar*, 451 So. 2d 1367 the court was called upon to rule upon the constitutionality of DR 2-102(A)(7)(f) prior to its amendment on January 26, 1983, (the amendment of January 26, 1983, made no substantive change as to the precise issue in either *Mezrano* or *Lyon and Blalock*).

In *Lyon and Blalock* the court again discussed *Bates v. State Bar of Arizona, supra*, and *In the Matter of R.M.J., supra*. The court also quoted from the case of *Central Hudson Gas v. Public Service Commission of New York*, 447 U.S. 557 as follows:

***

> "To answer that question, we turn to the test which was formulated in *Central Hudson Gas v. Public Service Commission of New York* 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed. 2d 341 (1980) quoted in *In the Matter of R.M.J.*, 455 U.S. at 203-04, 102 S.Ct. at 937-38:
>
> 'In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.'"

In ruling that the disclaimer provision is constitutional the court observed:

***

> "... it is reasonable to assume that some readers of an advertisement, such as the one presently before us, might believe that the attorney is a specialist or has greater expertise in performing the services advertised than attorneys who do not advertise. Accordingly, we upheld that disclaimer requirement in Mezrano because of the Bar's substantial interest in preventing the public from being misled. This restriction meets the requirements of Central Gas and R.M.J. because the disclaimer is directly related to that interest, and is not more extensive than necessary to serve that interest." (emphasis added)

Numerous inquiries have been directed to the office of the general counsel inquiring as to whether the disclaimer is required in certain advertisements. The disclaimer is required only in attorney advertisements describing a certain specific legal service or certain specific legal services. This opinion may serve to clarify that point. ■

MCLE News

by
Mary Lyn Pike
Assistant Executive Director

1987 compliance deadline near

December 31, 1987, is the deadline for earning 12 approved CLE credits. If there are any doubts about the accreditation of any course taken during the year, now is the time to resolve them.

Some courses are automatically, i.e., presumptively, accredited because they are conducted by approved sponsors and meet all accreditation standards. (See the list of approved sponsors and their telephone numbers.) Others must be reviewed upon application by sponsors. If an application has not been submitted or is incomplete and an attorney has not been notified of accreditation, the course probably has not yet been approved.

CLE transcript: new service to members

Throughout 1987 the MCLE Commission's secretary has been entering course registration information into the bar's computer, compiling CLE transcripts for members. The commission authorized these compilations in order to provide a service to attorneys and their secretaries. It is hoped fewer phone calls and letters will be needed this year and, to forestall some of them, here are answers to some anticipated questions.

Q: I attended a course not listed on my transcript. Will I get credit for it?

A: If the course was accredited, simply add it to your transcript. Our system still is built on individual honesty, and the commission will accept your report of attendance.

Q: I think I attended a course but I am not sure. How can I find out?

A: Call or write the sponsor of the course to confirm your attendance. If the course is not on your transcript, the commission does not have a record of your attendance but you are free to add it.

Q: I left early but you have given me credit for attendance of the whole course. What should I do?

A: Because the MCLE Commission chose not to burden sponsors and attorneys with sign-in/sign-out sheets, the only solution was to give each registered attorney credit for full attendance. If you missed part of a program, deduct one credit per 50 minutes missed and make the correction on the transcript.

Q: I taught part of one of the seminars listed. How do I figure the credits?

A: Give yourself 6.0 credits per hour of presentation, if you prepared a substantial handout, and 3.0 credits per hour if you did not do so (one or two pages do not count.) List these as teaching credits, and subtract the time spent on stage from the credits available for the course. Give yourself credit for whatever time you were in the audience.

If you were on a panel, send a copy of the program schedule to MCLE Commission Secretary Diane Weldon and she will figure the credits to which you are entitled.

Q: What attachments should accompany the transcript when I return it to the commission?

A: None—no cover letter, no certificates of attendance, no copies of brochures, no handouts. Opening, reviewing and filing over 7,500 reports per year is a very time-consuming task involving at least three staff members and costing you bar dues. Please simplify your life, our lives and your secretary's life: place the signed transcript in an envelope without any attachments or enclosures.

Q: Anything else I can do to save bar money?

A: Yes. Comply on time, give your secretary sufficient information to complete or correct your transcript, follow up to see that it is mailed and, most important, *keep a copy of the report for your records.* Your professional liability insurance carrier, the IRS, potential employers and any number of others may ask you for a copy years from now.

Last, if you receive a reminder letter from the MCLE Commission or notice from the Disciplinary Commission that your report has not been received, simply submit, or resubmit, it or go out and earn some credits and report them.

1987 Approved Sponsors

Administrative Office of Courts—Alabama Judicial College
(205) 834-7990

Alabama Bar Institute for Continuing Legal Education
(205) 348-6230

Alabama Consortium of Legal Services Programs
(205) 264-1471

Alabama Criminal Defense Lawyers Association
(205) 263-0003

Alabama Defense Lawyers Association
(205) 265-1276

Alabama District Attorneys Association
(205) 261-4191

Alabama Lawyers Association
(205) 731-0608

Alabama State Bar and bar sections
(205) 269-1515

Alabama Trial Lawyers Association
(205) 262-4974

American Bar Association and bar sections
(312) 988-5000

American College of Trial Lawyers
(213) 879-0143

American Law Institute—American Bar Association
(215) 243-1600

Association of Trial Lawyers of America
(800) 424-2725

Birmingham Bar Association
(205) 251-8006

Commercial Law League Fund for Public Education
(312) 236-1118

Cumberland Institute for Continuing Legal Education
(205) 870-2865

Defense Research Institute
(312) 944-0575

Federal Bar Association, Montgomery Chapter
(205) 567-2545

Federal Bar Association, North Alabama Chapter
(205) 876-4237

Huntsville-Madison County Bar Association
(205) 533-1666

International Association of Defense Counsel
(312) 368-1494

Library of Congress—Congressional Research Service
(202) 287-1757

Mobile Bar Association
(205) 433-9790

Montgomery County Bar Association
(205) 265-4793

Montgomery County Trial Lawyers Association
(205) 264-9900

Morgan County Bar Young Lawyers' Section
(205) 353-7826

National Association of Attorneys General
(202) 628-0435

National Association of Bond Lawyers
(312) 920-0160

National Association of Railroad Trial Counsel
(213) 459-7659

National Bar Association
(202) 797-9002

National College of District Attorneys
(713) 749-1571

National College of Juvenile Justice
(702) 784-6012

National Health Lawyers Association
(202) 393-3050

National Institute for Trial Advocacy
(800) 225-6482

National Judicial College
(702) 784-6747

National Legal Aid and Defenders Association
(202) 452-0620

National Organization of Social Security Claimants' Representatives
(800) 431-2804

National Rural Electric Cooperative Association
(202) 857-9500

Patent Resources Group, Inc.
(202) 223-1175

Practising Law Institute
(212) 765-5700

Southwestern Legal Foundation
(214) 690-2377

Transportation Lawyers Association
(303) 871-6323

Tuscaloosa County Bar Association
(205) 345-6789

Tuscaloosa Trial Lawyers Association
(205) 758-9044 ■

Classified Notices

SERVICES

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

FIRE INVESTIGATIONS for attorneys and insurance companies. Our firm specializes in fire, fraud, arson, subrogation and surveillance. Insurance background. Qualified in state and federal court. References and rates will be furnished upon request. **James E. Posey, Jr., and Linda F. Hand d/b/a Investigative Services, 4849 lOth Avenue, N., Birmingham, Alabama 35212 (205) 591-1164.**

VALUATIONS/FAIRNESS OPINIONS Closely-held Businesses, Banks, Professional Practices. For ESOPs, Gifts, Estate Planning, Shareholder Disputes, Dissolutions, Economic Loss. Experience with hundreds of cases and many industries. Litigation Support. Court Testimony. Call/write for our Newsletter. **MERCER CAPITAL MANAGEMENT, INC., 1503 UNION AVE. #201, MEMPHIS, TENNESSEE 38104 (901) 725-0352.**

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

RESEARCH/LOBBYING FIRM Assistance in dealing with Congress, Executive Branch (e.g. Depts. of Commerce, State, Defense, Treasury) and Federal Agencies. Document retrieval. Close to Federal Offices. **MARX & KRAME, Suite 900, 1101 Connecticut Ave., NW, Washington, DC 20036. Phone (202) 293-1750.**

Classified Notices

RATES: Members: No Charge, except for "positions wanted" or "positions offered" listings, which are at the nonmember rate; Nonmembers: $35 per insertion of (50) words or less. $50 per additional word. Classified copy and payment must be received according to the following publishing schedule:

Sept. '87 Issue—Deadline July 31
Nov. '87 Issue—Deadline Sept. 30

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

FOR SALE

FOR SALE: So. Dig.; Am. Jur. Proof of Facts and Am. Jur. Proof of Facts 2d; Bender, Computer Law (2 volumes); Jayson, Handling Federal Tort Claims (3 Volumes); Dixon, Drug Product Liability (2 Volumes); Rabkin and Johnson, Current Legal Forms with Tax Analysis (22 Volumes). All current and complete except Rabkin needs June '87 release. **Contact Currun C. Humphrey, 549 Quarter Mountain Road, Harvest, Alabama 35749 (near Huntsville), (205) 852-8392, but will be away Sept. 5-27, 1987.**

FOR SALE: USED LAW BOOKS Alabama Reports/Appellate Reports, Alabama Code, Southern Reporter 1st & 2d, Southern Digest and more. SAVE 30-60% We buy, sell & trade. **LAW BOOK EXCHANGE (800) 325-6012 P.O. Box 24990, Jacksonville, Florida 42241-4990.**

FOR SALE: Antique Alabama maps. Authenticity guaranteed. Excellent office decoration when framed. Write for list and photos. **Sol Miller, P.O. Box 1207, Huntsville, Alabama 35807.**

FOR SALE: Brother EM-200 Memory typewriter with disk drive and disks. In excellent condition. **Send inquiries to Bowles & Cottle, P.O. Box 704, Tallassee, Alabama 36078. Phone (205) 283-6548.**

FOR SALE: One (1) set of United States Code Service, like new, very reasonable—**phone (205) 939-1327 or write 2153 14th Avenue, South, Birmingham, Alabama 35205.**

FOR SALE: ALR Federal, all volumes up-to-date, like new—one-half price of new set. **Contact Cody Wayne Foote, 1617-B Second Avenue, Opelika, Alabama 36801. Phone (205) 745-7848.**

LAW BOOKS: ALR, 2d and ALR, 3d, complete, $995 (appraised value, $1,600); AmJur, 2d, with 1983 p.p., $395 (appraised at $890); AmJur Trials, $175 (appraised at $385); Alabama Reports, Vols. 200-295, $1,440; Alabama Reporter, Vols. Southern 331-456, $660 (44 vols.). **Contact Tom Woodard, (205) 367-8227, P.O. Box 426, Carrollton, Alabama 35447.**

FOR SALE: Alabama Reports 1-49, 281-295, 331-497; Southern Reports 1-200; Southern Reports 2d 1-200; Alabama Apps 44-57; Alabama Digest (complete and current). **Contact Howard C. Alexander (205) 281-2937.**

FOR SALE: Bender's Southeast Transaction Guide and Bender's Southeast Litigation Guide. Both sets are complete with current supplements. **Contact Johnny Langley (205) 695-9427, P.O. Box 643, Vernon, Alabama 35592.**

FOR SALE: COLLEGE LAW by Albert S. Miles, Ph.D., J.D. Just published; $27.95 hardcover; $19.95 softcover. **Order from author, 1406 University Boulevard, Tuscaloosa, Alabama 35401.**

FOR SALE: One set of Southern Reporter (1st) and the first 100 volumes of Southern Reporter (2nd). Also, current set of Code of Alabama. **Contact Marvin Rogers, 1521 13th Street, Tuscaloosa, Alabama 35401. Phone (205) 349-2852.**

JURY SELECTION BY GRAPHOANALYSIS—you can tell from handwriting whether the person is conscientious, cautious, conservative, prejudiced, generous, sympathetic, critical, independent; their goals, organizational ability and much more, totaling 36 individual categories. Instant reference. Pocket-size book. **ALT, P.O. Box 229, Independence, Missouri 64051, $15.95, plus tax and $2.00 shipping.**

POSITIONS OFFERED

ATTORNEY JOBS—National and Federal Legal Employment Report: highly regarded monthly detailed listing of hundreds of attorney and law-related jobs with U.S. Government, other public/private employers in Washington, D.C., throughout U.S. and abroad. $30—3 months; $50—6 months. **Federal Reports, 1010 Vermont Ave., N.W., #408-AB, Washington, D.C. 20005. (202) 393-3311, Visa/MC.**

ASSOCIATE POSITION in Montgomery firm. Plaintiff trial practice. Zero to three years' experience. Must be member of Alabama State Bar. Salary negotiable. Inquiries held in strictest confidence. **Please send résumés to: Attorney Applications, P.O. Box 829, Montgomery, Alabama 36101-0829.**

BIRMINGHAM LAW FIRM seeks lawyer for position in commercial and retail litigation department. Experience is preferred. Class standing in top third of class is required. **Apply in confidence to P.O. Box 55356, Birmingham, Alabama 35255.**

POSITION AVAILABLE in small law firm, one and one-half years old, for lawyer with two-four years' experience and interest in business litigation, corporate law and corporate bankruptcy. All inquiries confidential. **Send résumé to: Hiring Partner, P.O. Drawer 1865, Birmingham, Alabama 35201-1865.**

EXPANDING AV FIRM in North Alabama city seeks experienced commercial lawyer to compliment existing practice. **Apply to: P.O. Box 2008, Huntsville, Alabama 35804.**

Classified advertisements deadline, for the November 1987 issue is September 30, 1987. No exceptions will be given.

Memorials

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

Herbert I. Burson, Jr.—Montgomery
Admitted: 1949
Died: April 26, 1987

Robert Harold Freeman, Jr.—Birmingham
Admitted: 1977
Died: June 14, 1987

Elliott Graham Gibbons—Mobile
Admitted: 1952
Died: June 13, 1987

Marion Lewis Gwaltney—Montgomery
Admitted: 1942
Died: June 25, 1987

Reuben Kyle King—Montgomery
Admitted: 1957
Died: June 6, 1987

Jean Paul LaCour—Pensacola, Florida
Admitted: 1937
Died: June 13, 1987

Hugh Strother Patterson, Sr.—Bushnell, Florida
Admitted: 1937
Died: July 2, 1986

Shuford Brandon Smyer—Birmingham
Admitted: 1912
Died: June 11, 1987

George Edwin Stone, Jr.—Mobile
Admitted: 1935
Died: April 25, 1987

William Borden Strickland—Birmingham
Admitted: 1955
Died: April 23, 1987

White Edward Gibson, Jr.

White E. Gibson, Jr., an honored member of the Birmingham Bar Association for 57 years, died April 30, 1987. He also was a member of the Alabama State Bar and the American Bar Association and practiced with the firm of Lange, Simpson, Robinson & Somerville. Gibson's practice covered many areas of law but he particularly was known as a railroad defense counsel.

Gibson was born in 1908 and graduated from the University of Alabama School of Law in 1930. He served in the United States Army Reserve for more than 25 years; during World War II, Gibson was staff judge advocate of the Fourth Infantry Division in Europe and held the rank of colonel.

Gibson is survived by his son, White E. Gibson, III, of New Orleans, Louisiana. ■

Jean Paul LaCour

On June 13, 1987, Colonel Jean Paul LaCour, United States Army (retired), died. He graduated in law at the University of Alabama in 1937 and was a member of Alabama's varsity football team.

He opened a law office, but was soon recruited by the FBI, where he served until World War II. He was selected and commissioned a 2nd Lt. in Coast Artillery (anti-aircraft). He later was transferred to the Corps of Engineers and commanded troops in combat in World War II. He participated in the invasion of Sicily and the Italian mainland, and thereafter he served with distinction in other parts of the European Theatre.

He was still in the Army during the Korean operation and commanded a battalion after the Inchon landing. He was promoted to colonel, United States Army, November 1, 1954. He retired as a colonel in the Transportation Corps in 1963.

He received the following military decorations: American Defense Service Medal, American Campaign Medal, World War II Victory Medal, Merit Unit Commendation, Eastern/Asiatic/European Campaign Medal, Korean Service Medal, United National Service Medal, National Defense Service Medal, Bronze Star, Oak Leaf Cluster to Army Commendation Medal and Armed Forces Reserve Medal.

After retirement, he accepted employment in the offices of Jones and Welch until he could take The Florida Bar examination. Upon passing the examination at age 70, he became an associate in the firm until his retirement in 1983.

The day after his death, a letter was received inviting him to attend his 50th class reunion at the University of Alabama.

He was a man of the highest integrity and ethics. He was a credit to both the legal and military professions.

J. McHenry Jones
Jones & Welch
Pensacola, Florida

Ex Arguendo . . .

"A democracy cannot exist as a permanent form of government. It can only exist until the voters discover they can vote themselves largess out of the public treasury. From that moment on the majority will always vote for the candidate promising the most from the public treasury — with the result that democracy will collapse over a loose fiscal policy, always to be followed by dictatorship."

An observation 200 years ago by British historian Alexander Tyler.

BIRMINGHAM PUBLISHING COMPANY
130 S. 19th Street, Birmingham, Alabama 35233 205/251-5113 FAX 205/251-2222

Financial and Legal Printers Since 1910

"Westlaw customer support makes it clear that they really want

Giuliano Chicco
Head Librarian
Kramer, Levin, Nessen, Kamin & Frankel
New York

Meg Chicco
Head Librarian
LeBoeuf, Lamb, Leiby & MacRae
New York

their service to work for you."

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

WESTLAW®

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

JOHN L. DAVIS, J.D.

MICHAEL D. GOODSON
P.O. Box 17334
Montgomery, AL 36117
Phone: 205/277-1914

Mr. William D. Coleman
Capell, Howard, Knabe & Cobbs
P. O. Box 2069
Montgomery AL 36197