

HCBA NEWS

April 1988

President's Column

Scott P. Hemleben



This is the last of my reports to you as President of your Association. It has been a privilege for me to serve as your President during the past year. I am truly grateful for your active and dedicated participation and support during my term.

I would be remiss if I did not publicly thank the Officers, Directors, Chairpersons and Committee members for their outstanding work on behalf of the Association. I extend special thanks to Editor Ben Piazza, Jr. and the members of his Editorial Board who have consistently produced an excellent newsletter; to Leonard Van Slyke, Chairman of the Program Committee and his Committee members for providing outstanding programs resulting in excellent attendance by our members; to Crymes Pittman, Chairman of the Bench & Bar Relations Committee and to Director Bob King for their fine work in organizing receptions for the Supreme Court and for Judge Joseph G. Moss as well as for heading up the Association's lobbying effort in support of judicial salary increases; to Don Nichols and Leonard Van Slyke for their excellent job planning and implementing the HCBA Migrant Program for teachers of civics and government; to Robert T. Gordon, Chairman of the Membership Committee and to his Committee members

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HCBA Law Firm Survey

The 1988 survey was mailed to participating firms on February 29, 1988. It contains 1988 and 1987 data from which potential trends may be spotted. The survey should be viewed as a report card. It can make partners proud of what they have achieved, identify areas that need improvement, and initiate some positive actions gleaned from the report. The confidential report was prepared by Roger E. Muns & Company, CPAs, and is only available to firms that participated in the survey.

David Maisters, while on the faculty of the Harvard Business School, defined the concept of Net Income Per Partner (NIPP). NIPP is the product of leverage, blended billing rate, utilization, realization and margin. The HCBA survey provides information to analyze a firm's NIPP. In addition, the survey reports information relating to firms' policies and practices that affect partners, associates and others. This is the only comprehensive survey of Jackson area law firms. Firms that did not participate in the past should consider doing so next year.

PRO BONO NOTES

By: Phyllis M. Thornton

Mississippi Pro Bono Project

Private attorneys in Mississippi donated in excess of 4500 hours of free legal services to low-income citizens in civil matters during 1987 through the Mississippi Pro Bono Project. The program opened over 1000 new cases and closed 730 cases as of December 31, 1987. The average cost per case was \$124.38.

Harrison D. McIver, III, Executive Director of Central Mississippi Legal Services stated "On behalf of Central Mississippi Legal Services and, more importantly, the legal services clients, I would like to express our sincere appreciation to the panel members in Hinds County for their significant contribution during 1987. It demonstrates what the concerted efforts of the private sector, the Mississippi Pro Bono Project

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Second Helpings and Leftovers

by

Captain Equity

Despite an overwhelming consensus of negative opinion inspired by our inaugural column, we're back. Actually, we have it on good information that we were simply a convenient target for frustrated supporters of failed candidates for state and local office. Every lawyer knows at least two or three. That being the case, we're ready to let bygones be just that as we seek to push on to new frontiers of food and drink. Besides, events of recent weeks teach us never to resign, just apologize and take a leave of absence.

This edition's feature is a salute to fellowship, comradery and the belief that the human spirit, no matter how trampled, is eternally capable of restoration. Today's topic is the cocktail hour.

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HINDS COUNTY BAR ASSOCIATION LUNCHEON MEETING

April 19, 1988

12 Noon

\$7.50

Capital City Petroleum Club

The Speaker will be Mississippi Supreme Court Justice James Robertson.

CLE CALENDAR OF EVENTS

April 19

HCBA Membership Meeting. Capital City Petroleum Club. Jackson, MS.*

April 21

How to Advise Clients About Pensions and Welfare Benefits Problems. Sponsored by UM Center for CLE. Jackson, MS.

April 26

Negotiation Techniques (via satellite). Sponsored by UM Center of CLE. Oxford, MS.

April 28

Real Estate Purchases and Sales. Sponsored by UM Center for CLE. Jackson, MS.

April 29

Liability and Litigation in the Workplace. Sponsored by UM Center for CLE. Jackson, MS.

May 5-6

A Course in Practical Legal Skills. Sponsored by Young Lawyers Division and Harrison County YLS. Biloxi, MS.

May 10

S Corporations (via satellite). Sponsored by UM Center for CLE. Oxford, MS.

May 10

Income Tax Issues Affecting Estates and Trusts (via satellite). Sponsored by UM Center for CLE. Jackson, MS.

May 11, 12, and 13

Amendments to the Bankruptcy Rules and Proposed Local Rules. Sponsored by MS Bankruptcy Conference. Biloxi, Jackson, and Jackson, MS, respectively.

May 17

Aids and Other Contagious Diseases in the Workplace (via satellite). Sponsored by UM Center for CLE. Jackson, MS.

May 19

Litigation Program (via satellite). Sponsored by UM Center for CLE. Jackson, MS.

June 2-3

MSB Annual Meeting and Section Programs. Sponsored by MSB. Biloxi, MS.

June 2

Creative Real Estate Financing (via satellite). Sponsored by UM Center for CLE. Oxford, MS.

June 9

Pension Law and Practice II (via satellite). Sponsored by UM Center for CLE. Jackson, MS.

June 15

Municipal and County Court Prosecuting Attorneys Seminar. Sponsored by MS Prosecutors College. Biloxi, MS.

June 16-17

Municipal Attorneys Seminar. Cosponsored by UM Center for CLE and MMA Attorneys Sect. Gulfport, MS.

June 18-29

International Studies Program. Sponsored by Univ. of MS School of Law. Cambridge, England.

June 21

HCBA Membership Meeting. Capital City Petroleum Club. Jackson, MS.*

July 2-15

International Studies Program. Sponsored by Univ. of MS School of Law. Dublin, Ireland.

July 22

Health Law Institute. Sponsored by UM Center for CLE. Jackson, MS.

August 12

The Paper Chase - Discovery of Documents in Building Your Case. Sponsored by UM Center for CLE. Jackson, MS.

*Not approved for CLE credit.

President's Column *continued*

whose considerable efforts resulted in the Association achieving the largest ever paid membership - 1,043; to Chairman Frank Holbrook and his CLE Committee for their work in co-sponsoring a seminar on the recent revisions to Mississippi's corporate, securities and partnership laws; to Chairman John Gourlay and his Legal Economics Committee for their work in conducting the second annual survey of Jackson law firms concerning law office management and procedure; and to Chairman Tom Rhoden and his Small Firm Practice Committee for their outstanding work in providing seminars of interest to small firm practitioners. Finally, I thank our Executive Director, Ben Davis, for his capable assistance throughout the year.

As you can see from the Officers and Directors slated for service during 1988-89, your Association will be governed by an excellent Board of Directors under the capable leadership of Jay Travis. Jay has already attended the American Bar Association Leadership Institute in Chicago and I am confident that under Jay's leadership we can look forward to a busy and successful bar year.

MISSISSIPPI COLLEGE

Law Library Schedule

After Exams and Summer - 1988

May 10 - 13	(Tuesday - Friday)	8:00 a.m. - 4:30 p.m.
May 14 & 15	(Saturday & Sunday)	CLOSED
May 16 - 20	(Monday - Friday)	8:00 a.m. - 4:30 p.m.
May 21 & 22	(Saturday & Sunday)	CLOSED
May 23 - 27	(Monday - Friday)	8:00 a.m. - 4:30 p.m.
May 28 & 29	(Saturday & Sunday)	CLOSED
May 30 - June 3	(Monday - Friday)	8:00 a.m. - 4:30 p.m.
June 4 & 5	(Saturday & Sunday)	CLOSED
June 6	(Monday)	Regular Summer Hours Begin

Law Library Regular Summer Hours

Monday - Thursday		8:00 a.m. - 10:00 p.m.
Friday		8:00 a.m. - 8:00 p.m.
Saturday		9:00 a.m. - 8:00 p.m.
July 4 (Monday)		CLOSED

The onset of darkness evokes a universal reponse in the heart of mankind. Only the alcoholic manifestation varies according to culture, tradition, geography and applicable liquor laws. For instance, British army officers tend to reach for a gin and tonic, while San Franciscans ask for chardonnay by the glass. In Manhattan it's late afternoon martini, while locals in Oaxaca favor a shot of mescal to blunt a day of jangled inflation. In Jackson it's beer. In Rankin County it's a ride to Jackson.

Because American beer is largely fungible and priced within the reach of even the most destitute court appointed attorney, we decided to concentrate on the ancillary features of metro watering holes as they relate to atmosphere, service, personal safety and wide variety of other intangibles. We have tried to categorize these establishments into some kind of meaningful pattern according to one's specific need and mood. Unfortunately, we suspect our system is more apt to resemble the index to Mississippi Code Annotated.

Before turning to our survey, we must follow through on some unfinished business from last edition's column. We did indeed launch a scientific expedition to determine once and for all the relative darkness readings at the Sun-n-Sand and Patio Club. Using high-powered lasers, we were able to get through the front door of the Sun-n-Sand downstairs bar. After a tense 45 minutes, we had penetrated to a depth of seven or eight feet before having to turn back. Too dark. We did, however, make a rather startling discovery that should clear up a mystery that has baffled many political pundits and public servants for nearly a decade. At four feet, we came upon two legislators and an asphalt lobbyist left over from the Finch administration. It seems that the lobbyist couldn't pay the bar bill, and the two elected officials were unable to find the exit due to a total absence of light. As a result, they decided to sit it out in hope of rescue. We're pleased to report that all three are a bit pale and bloated, but otherwise fine.

This recent expedition and unanticipated discovery has given our staff new inpetus to conquer these outposts of uncharted man-made wilderness. We plan to probe the underground warrens of Lamar Street in time to report to you in the next issue. Our preparations for Lamar Quest II include writing a grant proposal to the National Science Foundation and a trip to Fernwood video to rent a VHS copy of "Journey to the Center of the Earth," starring Pat Boone.

And now for the thirsty, here is Captain Equity's thumbnail guide to metro Jackson's beverage scene.

THE RANK AND FILE'

- The Body Shop** - Great country jukebox in spartan surroundings.
- The Dutch Bar** - Triple-A version of The Body Shop. Long history; rhythm & blues jukebox featuring Motown and Stax; longneck beer.
- Angelo's Wayside Inn** - Deluxe rank and file; good jukebox; friendly service and clientele; spirited pool competition.
- The Cherokee²** - Pinball and cold beer make this Old Highway 51 legend a must.
- The Red Top & Shamrock** - In Memorium.
- The Coachlight Inn** - The Hard Rock Cafe of the rank and file; live country music.

FLASHES IN THE PAN

- Wayne Dowdy and Dick Molpus' Wine and Veggie Bars** - \$50 cover charge; open bar; entertainment.
- Legislative parties** - These tend to tail off after April.
- Bar Foundation Banquet** - Now available on video tape.

HOTEL BARS

- Radisson Walthall** - Great for wine, piano music; solid brass decor.
- Ramada Renaissance** - The late afternoon gateway to Madison County; a more dignified alternative to 1001 (but fewer new friends).
- Holiday Inn Downtown** - Good location; complimentary fried catfish and cheese tray.
- Ramada Coliseum** - A haven for sales professionals.

MAJOR DISAPPOINTMENTS

- State Tax Commission (Gluckstadt Office)** - Avoid special "off list" wine orders if your feelings are easily bruised.
- Sod House at the Forum** - We really wanted a bar built below ground designed for a maximum of eight patrons; would have been ideal meeting place for the Belhaven Neighborhood Improvement Association's Executive Committee.
- Rankin County** - Not everybody is a member of the Niknar Country Club.

EXPOSED BRICK & NEON

- George Street Grocery** - Best bartender in town; St. Pauli's but not Beck's; Marcie went to law school.
- Hal & Mal's** - White hot with the political and arts set; oysters on the half shell.
- Iron Horse Grill** - Ferns and shooters.

SUBURBAN PUBS

- Poet's** - Stand-up crowd of professionals; pleasant atmosphere.
- Scrooge's** - Cozy; oyster bar; imported beer du jour; Golden Margarita endorsed by General Noriega.
- Bennigan's** - Alcohol, fried zucchini and noise. (See New Friends and Petroleum Landmen).
- CS's** - Traditional college beer joint; Jackson's premier collection of empty beer cans and political memorabilia.
- Christo's** - Try the tamales; neighborhood bar at its best.
- Sundancer** - Passe; Glitzy decor with heavy brass polish bill.

COMERS

- Shuckers Oyster Bar** - Best raw oysters in town; jury still out on anything fried; darts and pool.
- Jackson Bar & Grill** - Bass ale and a promising wine list.
- Trent Lott Wine & Veggie Bars** - \$100 cover charge; open bar; free hair spray.

NEW FRIENDS AND PETROLEUM LANDMEN

- 1001** - No elaboration necessary.
- The Embers** - No elaboration necessary.
- The Dock** - No elaboration necessary.
- The Krystal (all locations)** - No elaboration necessary.
- Sundancer** - Decertified; see Suburban Pubs.

¹Hint: Wear coat and tie or pearls, go in a group, order an appetizer and ask a lot of questions. Good chance they'll think you are Epicurius.

²Formerly Sid's Cherokee and Rag's Cherokee.

³Let's hope for some sort of special election to continue this year-long tradition.

CAPTAIN EQUITY'S READERS POLL

Metro Jackson Lunch Spots

Favorite lunch spot:

1. _____
2. _____
3. _____

Best iced tea:

Best expense account luncheon spot
(to take clients)

Best cornbread::

Best downtown Jackson lunch spot:

Best take-out/delivery service
(for mid-deposition lunches):

Best sandwich:

Best suburban Jackson lunch spot:

Best service at lunch:

Best hamburger:

Best Madison County lunch spot:

Longest wait for table
(in tenths of an hour):

Best Rankin County lunch spot:

Best salad:

Best kept lunch spot secret
(where nobody goes but should):

Comments:

Best luncheon entre'
(non-plate lunch):

Complete this form and return by May 5, 1988 to:

CAPTAIN EQUITY
C/O HCBA NEWSLETTER
Post Office Box 22845
Jackson, Mississippi 39225-2845

You may sign your name or remain anonymous:

Pro Bono Notes continued...

and the legal services programs can accomplish in working together for the common good.

Members of the MPBP panel are asked to accept three (3) cases or twenty (20) hours per year. Potential clients are screened by the local Legal Services office. The Project will reimburse attorneys for all out-of-pocket expenses. The Project also sponsors CLE programs on a regular basis which are provided at no charge to panel members.

Jacksonians Honored

Gloria Graves, Training Coordinator for the Mississippi Legal Services Coalition and HCBA member Harrison D. McIver, III, Executive Director of Central Mississippi Legal Services, were recently honored as the outstanding Trainer and Training Supporter in the Southeast at the National Convention for Legal Services Trainers held in Chicago, IL. "Training for Peak Performance in the 1990's" was the scene of this 1st national event that attracted over 100 people who either coordinate, design or deliver training for advocates in programs funded by the Legal Services Corporation.

Graves was cited for her contribution to the delivery of training for paralegals and her substantive work in public benefits. Ms. Graves also assists the Mississippi Pro Bono Project in designing training events for private attorneys. Harrison McIver serves as a member of the Mississippi Pro Bono Project Board of Directors, the Chair of the Southeast Project Director's Association, and has been fundamental to the creative design of regional events.

Ahlers Decided in Supreme Court

(Reprinted with permission of the American Bankruptcy Institute)

On March 7, 1988, the Supreme Court decided **Norwest Bank Worthington, v. Ahlers**, 56 U.S. L.W. 4225, emphatically rejecting any expansion of the 'new contribution of capital' exception to the absolute priority rule, which the Eighth Circuit had attempted in the decision below so as to permit family farmers to retain ownership of their farms by contributing future labor. In an unanimous opinion written by Justice White, the Court clearly held that there was no such "sweet equity" exception that would allow owners to preserve their interest in a debtor in a cramdown under Section 1129(b) of the Bankruptcy Code. And, in a footnote, the Court raised a question as to

the continued viability to the entire 'infusion-of-new-capital' exception to the absolute priority rule.

The Ahlers owned a family farm in Minnesota that, along with equipment and other personalty, secured a \$1 million loan to Norwest Bank. After a 1984 default, the bank moved to replevin the collateral, and the Ahlers filed a Chapter 11 petition. A contested motion for relief from the stay under Section 362 was eventually considered by the Eighth Circuit, which remanded to the District Court to determine the probability of success of a plan of reorganization. Although the District Court found a plan by the Ahlers to be "utterly unfeasible," the Court of Appeals reversed, finding feasibility and outlining a plan for the debtors. 794 F. 2d. 388 (8th Cir. 1966) The Appeals Court found that the debtors' promise of "labor, experience, and expertise" as farmers was sufficient contribution of new value so as to fall within the exception to the absolute priority rule enunciated in **Case v. Los Angeles Lumber Products Co.**, 308 U.S. 106 (1939), thereby permitting the Ahlers to keep their farm under a plan, confirmed under the cramdown provisions of Section 1129(b), in which creditors' claims were not paid in full. It was this holding by the Court of Appeals that was reversed by the Supreme Court.

The Court found that what the Ahlers had offer—their future work—did not fit within the "money or money's worth" required to be contributed under **L.A. Lumber**. The Ahlers offered only "a promise of future services (that) is intangible, inalienable, and, in all likelihood, unenforceable." 56 U.S. L.W. at 4227. It was not an asset that would be reflected in a balance sheet or that could, at confirmation, be exchanged for value in the marketplace. The Court also rejected the debtors' suggestion that there was any exception to the absolute priority rule broader than the delineated in **L.A. Lumber**.

Indeed, in what ultimately may become the Ahlers decision's most important part, the Court clearly signaled that the continued viability of the emtore **L.A. Lumber** exception to the absolute priority doctrine, in light of the doctrine's codification in Section 1129(b) in 1978, was a wide open question. 56 U.S. L.W. at 4226, n.3. This dicta gave deference to, but did not adopt, the Solicitor General's brief arguing that the **L.A. Lumber** exception no longer existed.

The Court went on to reject the debtors' broad equitable arguments regarding the "fairest" treatment of unsecured creditors who would lose all value to the secured creditor if a cramdown failed, pointing out that the voting

of creditors on a plan, and not the bankruptcy court's views of what is best for such creditors, determines the acceptability of a plan. The Court also rejected the argument that retained equity in an insolvent debtor had, for cramdown purposes, "no value," since control and future profits were obviously of value to the Ahlers.

Finally, the Court, in response to eloquent pleas regarding the plight of financially distressed farmers, noted that the appropriate response was the special legislative relief provided by new Chapter 12 and not an unjustified, and less burdensome exception to the cramdown requirements of Chapter 11.

Much of the Court of Appeals decision in Ahlers had centered on adequate protection issues, particularly those raised by **In re American Mariner Industries, Inc.**, 734 F.2d 426 (9th Cir. 1984). Presumably because the Court disposed of the **American Mariner** doctrine in its recent decision of January 20, 1988, in **United Savings Assoc. of Texas v. Timbers of Inwood Forest Assoc., Ltd.**, 56 U.S. L.W. 4107, the relief from stay and adequate protection issues were mentioned only in passing in the Ahlers decision.

Shapero v. Kentucky Bar Association

The Supreme Court heard oral arguments in **Shapero v. Kentucky Bar Association** on March 1, 1988. The Shapero case has implications regarding the use of direct mail advertising and solicitation of legal work (such as bankruptcy proceedings) by attorneys.

On July 12, 1985, the Petitioner, Richard D. Shapero, asked the Lawyer's Advertising Commission of the Kentucky State Bar Association to approve a letter to prospective clients who had a foreclosure suit filed against them. The

...continued on back page

HINDS COUNTY BAR ASSOCIATION

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Correspondence regarding the newsletter should be directed to: Ben J. Piazza, Jr., P.O. Box 22845, Jackson, MS 39225-2845. Letters to the Editor must be signed but the writer's name will be withheld upon request. The Editor reserves the right to reject any letter.

Shapero, *continued...*

proposed letter was in conflict with Kentucky law and the Advertising Commission rejected the direct mail piece. Shapero then requested an opinion from the Ethics Committee of the Kentucky Bar Association about the validity of the Kentucky rule prohibiting targeted direct mail solicitation. The Ethics Committee also disapproved of the direct mail letter. Yet, both the Advertising Commission and the Ethics Committee did not find the letter to be false, misleading, or deceptive.

Shapero petitioned the Kentucky Supreme Court for review of the Ethic Committee's opinion and the Kentucky rule. The Kentucky Supreme Court decided to delete the rule and to adopt the American Bar Association's Model Rule 7.3 as the rule of law in the case. Model Rule 7.3 differs from the old Kentucky rule in that targeted direct mail advertising is prohibited in those cases "when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." Subsequently, the Kentucky Supreme Court affirmed the decision of the Ethics Committee.

Before the U.S. Supreme Court, Shapero's "question presented" was "whether a state court may employ a blanket prohibition on targeted direct mail advertising by attorneys to ban a specific mailing which has not been found to be false, misleading or deceptive after submission to an advertising review commission."

The American Bar Association filed an Amicus Curiae brief in support of the Respondent, the Kentucky Bar Association.

Bankruptcy Rules Seminar Announced

The Mississippi Bankruptcy Conference, Inc., is sponsoring a Seminar on the Bankruptcy Rules, including the proposed Local Rules. The Seminar will be held at the following Locations:

May 10, 1988	..... Oxford	..... University Inn
May 11, 1988	..... Biloxi	..... Royal d' Iberville Hotel
May 12, 1988	..... Jackson	..... Ramada Inn Metrocenter

The proposed Local Rules are being finalized by our three Mississippi Bankruptcy Judges. At least one of the Bankruptcy Judges will speak at each of the Seminars, along with leading local practitioners in the Bankruptcy area.

Pre-registration prices are as follows:

Members of Mississippi Bankruptcy Conference	.....	\$ 85.00
Non-Members	.....	\$110.00
Secretaries and Paralegals	.....	\$ 50.00
Copy of Materials Only	.....	\$ 50.00

Those registering after May 4, 1988, must add \$10.00 (for secretaries and paralegals, add \$5.00). Please make your checks payable to **Mississippi Bankruptcy Conference, Inc.**, and mail to Post Office Box 449, Jackson, Mississippi 39205, along with your name, address, and office phone number, and indicate whether you are a member or non-member of the Conference, or a paralegal/secretary.

HCBA Member to Chair ABA Committee

HCBA member, Dewitt L. Fortenberry, Jr., of Edmonson, Biggs, & Jelliffe, has been named Chair-Elect of the Intellectual Property Law Committee of the Tort and Insurance Practice Section (TIPS) of the American Bar Association for the 1987-88 bar year. The Tort and Insurance Practice Section is one of the largest and oldest sections of the American Bar Association. Its 30,000 members are active trial lawyers representing both plaintiffs and defendants, law professors, judges and counsel for insurance, transportation and other interested corporation. The Intellectual Property Law Committee focuses on matters relating to the protection of intellectual property, including, but not limited to trademark, copyright, and patent infringement; tortious appropriation of computer programs; and misappropriation of proprietary information.

Hinds County Bar Association, Inc.
P.O. Box 12314
Jackson, MS 39236-2314

FIRST CLASS

IMPORTANT
HCBA Luncheon Meeting
12 Noon, April 19, 1988