HCBA

HINDS COUNTY BAR ASSOCIATION

MAKING OUR CASE FOR A BETTER COMMUNITY

APRIL 2005

President's Column

by Linda A. Thompson

Are you old enough to remember when movies showed pages flying off a daily calendar to indicate the passing of time? My days seem to be going by just that quickly - and the year of service to the Hinds County Bar is ending in one more month. It has been my great pleasure to head this organization for the past year, and I thank all the members who have so capably carried out the committee work of the HCBA.

We have several important events scheduled during the next several weeks. On Tuesday, April 19, Kathleen Hawk Norman and Emily Maw, Chairman and Legal Director, respectively, of Innocence Project New Orleans, will address the HCBA at the luncheon meeting at the Capital Club. In Louisiana, IPNO has secured release and exoneration of four clients who had served cumulatively 91 years at Angola for crimes they did not commit. IP has six pending cases in Mississippi, three in Hinds County, and one each in Bolivar, Lee and Sunflower Counties. This is out of 400 potential Mississippi cases, some 40 still being at various stages of review. IP takes care to represent only those where there is a very high probability of actual innocence.

At the luncheon meeting we will also present the winners of the annual essay contest. This culminates the work of the Law-Related Education Committee that sponsors the contest for high school students.

On Thursday evening, May 12, we will hold our annual reception and dinner honoring the judiciary at the Old Capitol Inn. The keynote speaker for the dinner will be the Honorable Edith H. Jones, Judge of the United States Court of Appeals for the Fifth Circuit. We expect a capacity crowd, including most of the state and federal judges in our area, so reserve your seat (or table) right away.

The annual HCBA golf tournament will take place at Annandale Golf Course on Thursday, May 19. Not only will you golfers have the opportunity to play a beautiful course, but also your participation will help fund the substantial contribution the HCBA makes to the Mississippi Volunteer Project.

This is my last President's Column. I will soon happily hand the gavel (and pen) over to the able hands of the incoming president, Alveno Castillo.

February Membership Meeting

Mississippi Attorney General Jim Hood (third from left) was the speaker at the February HCBA Membership Meeting. Pictured with him are Mississippi College School of Law Dean, James Rosenblatt; Jose Simo; HCBA President, Linda Thompson; Leyser Morris, Elder Law Committee Chairman; and Molly Miller, Elder Law Committee Member.

HCBA LUNCHEON MEETING

Tuesday, April 19, 2005 Capital Club 12:00 Noon $15.00

The program will be presented by Kathleen Hawk Norman, Chairman, and Emily Maw, Legal Director of the Innocence Project, New Orleans.

HCBA Calendar of Events

April 19, 2005
HCBA Membership Meeting.
Noon. Capital Club

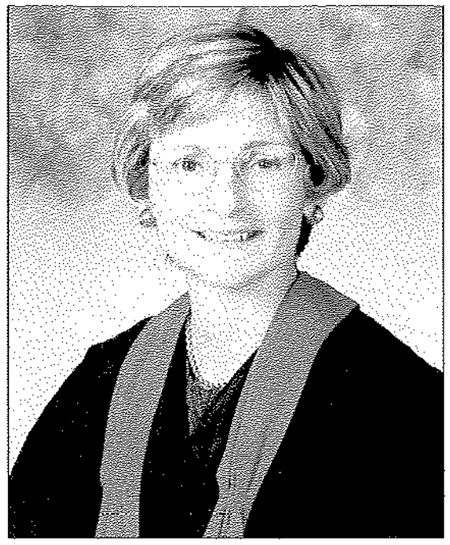
May 12, 2005
HCBA/JYL Evening Honoring the Judiciary.
6:30 p.m. Old Capitol Inn

May 19, 2005
HCBA Golf Tournament.
Noon. Annandale Golf Club

June 21, 2005
HCBA Membership Meeting.
Noon. Capital Club

August 16, 2005
HCBA Membership Meeting.
Noon. Capital Club

Judge Edith Jones to Be Speaker at Evening Honoring the Judiciary



The Honorable Edith H. Jones, Judge, United States Court of Appeals for the Fifth Circuit, will be speaker for the 12th Annual Evening Honoring the Judiciary. This year's event, chaired by Roy Campbell, will be held on Thursday, May 12, beginning at 6:30 p.m. at the Old Capitol Inn.

Judge Jones was appointed to the Fifth Circuit by President Ronald Reagan and sworn in May, 1985. She graduated from the University of Texas Law School with honors and served as Editor of the Texas Law Review. Her B.A. degree is from Cornell University where she was a member of Mortar Board and named to the Deans List.

Her professional memberships include: President, Garland Walker Inn of Court; Board of Directors, Texas Law Review Association; Board of Directors, St. John's Law School Masters in Bankruptcy Program; Judicial Advisory Board Member, George Mason University Law and Economics Program; Board of Directors, Sam Houston Area Council Boy Scouts of America; Board of Visitors, South Texas College of Law; Member, White House Fellows Commission (appointed May 2002 by President George W. Bush); Member, President's Council of Cornell Women; and Former Member, National Bankruptcy Review Commission.

Invitations with a reservation card will be mailed for the dinner in mid-April.

Mississippi College Law School Hosting Visit By Former U.K. AG

Sir Nicholas Lyell, Q.C., a former Solicitor General(1987-92)and Attorney General(1992-97) for the United Kingdom and Member of Parliament, will speak at Mississippi College School of Law in Jackson on Tuesday, April 12, 2005, at 11:30 a.m. Sir Nicholas will speak on the timely topic of "Security, Justice and Liberty in a Free Society." His remarks will focus on comparisons between the United States and British approaches to balancing national security and civil liberty concerns. The event will be held at Mississippi College School of Law's new classroom building at 151 East Griffith Street in downtown Jackson.

"The balance between national security and civil liberties is one of the most vexing issues facing the United States," notes Gregory Bowman, Assistant Professor of Law at Mississippi College who teaches national security law and international law. "Sir Nicholas Lyell's visit to Mississippi College School of Law will give our students a firsthand view of how other nations such as Britain struggle with these same concerns."

Sir Nicholas is a member of Monckton Chambers at Grays Inn, London. He specializes in Commercial Law, European Community Law, and Human Rights. Some of his major cases include: International Transport Roth GmbH and others v. The Home Office(2001 WL 1476255), The Bahamas District of the Methodist Church in the Caribbean and the Americas and Others v. The Hon Vernon J. Symonette M.P. and Others (2000 WL 1151338), R v. Kingston Upon Hull City Council ex p. Rhodes & Ors. Q.B.D. 9 October 2000(Public law)(2000 WL 33250589), Save Petroleum Ltd v. US Kara Q.B.D. 21 December 2000.

Members of the Hinds County Bar are invited to join with the faculty and student body for this important presentation.

HCBA ELECTION RESULTS

Congratulations to our new officer and directors!

Secretary-Treasurer	Director-Post 1	Director-Post 2
R. David Kaufman	**Leyser Hayes**	**Luke Dove**

The Trial of Chief Wesley Revisited

by John Land McDavid

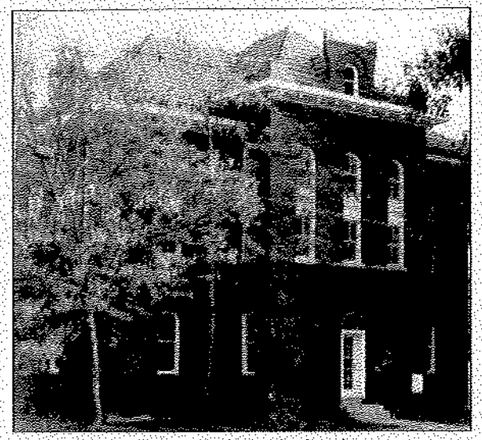
The February 2005 issue of this Newsletter contained an article about the trials of Choctaw Chief Wesley Cameron in Noxubee County in 1940 for the killing of Evans Tubbee, a member of his tribe. Chief Wesley was tried twice for the murder of Tubbee. First in the "white man's court" and then at an Indian court near the forks of Dancing Rabbit Creek. He was acquitted in both trials. The article dealt primarily with the trial in the Indian court at Dancing Rabbit Creek.

As I was a ten-year-old living in Macon, county seat of Noxubee County, at the time of the arrest, incarceration and trials of Wesley, I have vivid memories of this saga. These events not only created great interest in Noxubee County, they were reported in the Memphis Commercial Appeal and the New Orleans Times Picayune. They apparently received even wider attention as a wealthy Indian in Oklahoma heard about Chief Wesley's arrest and hired W. B. (Bill) Lucas, an able Macon attorney, to defend the Chief.

The Macon Beacon, Noxubee county's weekly newspaper, reported that when news of the killing reached Macon, Noxubee County deputy sheriffs were sent to Chief Wesley's home to bring him to jail. When they arrived at his home, the officers discovered he had gone to Neshoba county to confer with the chief of the Neshoba Choctaws. Knowing Wesley was traveling on foot, the deputies assumed he would take the public roads. They hoped to overtake him, but upon arrival at the home of the Neshoba chief, they found Chief Wesley had already arrived, conferred and departed. Chief Wesley, instead of taking the public roads, had traveled through the hills and dense pine forests of Noxubee, Winston and Neshoba counties along trails according to the Macon Beacon "known only to the Indians". Several days later Wesley turned himself in and remained in jail in Macon until he was acquitted in August, 1940.

On several occasions during the summer of 1940 including during the trial, groups of Chief Wesley's family and tribe, sometimes over fifty in number, came to Macon to visit the Chief and show their support. My memory of these occasions is of the courthouse lawn covered with blankets on which Indian women sat with small babies and children. The women wore dresses which came to the ankle with bright, highly embroided tops. They sat quietly for hours. The Beacon reported tribe members were allowed to visit the Chief in jail two at a time.

The Chief's wife, Mrs. Juley Wesley, wrote a letter to then President Franklin D. Roosevelt asking the treaty between the United States and the Choctaws be honored so her husband would not be subject to trial in the "white man's" court. Her letter was published in the Beacon. Chief Wesley and his supporters claimed under the treaty



The Noxubee County Jail where Chief Wesley was kept from June to August, 1940. The building now houses the Noxubee County Library.

crimes between Indians could not be tried in the "white man's' court.

One Saturday while Chief Wesley was still in jail one of my cousins and I decided to visit the Chief before we went to the matinee movie at the Dreamland Theater. The jailer took us to Chief Wesley's cell on the second floor and locked us in. I had never been in the jail before. As we walked across the iron walkway from one side of the second floor where we entered across to the Chief's cell, I noticed there had been built into the walkway floor a trapdoor so hangings could be conducted in the jail without building a gallows.

The Chief had a kindly, grandfatherly demeanor. I now have no memory of our particular conversation, but it had to be limited considering we were two ten-year-olds and he was a Choctaw who spoke English as a second language. I do remember we asked him the Choctaw pronunciation of English words. He would respond with a smile. When it was time to go to the movie, my cousin and I discovered the jailer had left. Eventually he returned, unlocked the cell door and we went to the movie. For several years afterward when I saw Chief Wesley on the streets of Macon I would greet him with a friendly "Hello Chief Wesley". He would return my greeting with a word and a smile.

The trial of Chief Wesley took place in late August, 1940, on the second floor courtroom of the Noxubee County courthouse. The courtroom was standing room only. The area outside the courtroom and on the circular iron staircase were filled with people trying to get into the courtroom. As a ten-year-old, I had an advantage. I could

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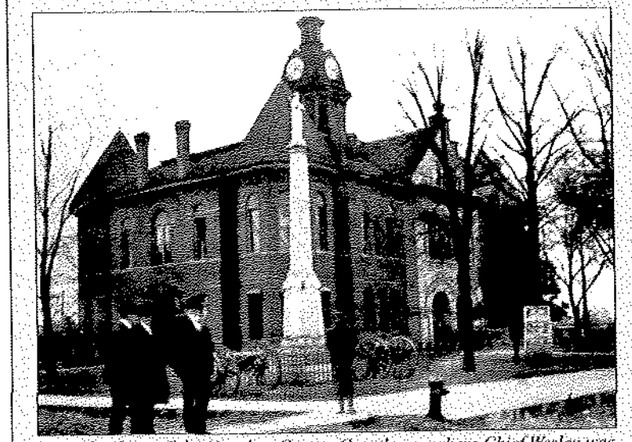

An early photo of the Noxubee County Courthouse where Chief Wesley was tried and acquitted. The building had a major fire in 1951 and was razed.

scoot and squeeze in and around the adults and make my way into the courtroom. There was no air conditioning. All of the windows were up and spectators sat on the window sills. As no one wanted to leave the courtroom and lose their seat, spectators sitting near a window would lower a cord out of the window down to the ground where a friend or an enterprising merchant would tie a cold Coca-Cola to the cord to be drawn up to the court room.

Because a number of the Choctaw witnesses did not speak English, an interpreter was needed. The interpreter, dressed in a suit and tie, stood beside the witness box translating in English the testimony of the witnesses. The wealthy Indian from Oklahoma, along with his attractive wife, came for the trial. He wore a dark business suit and a rounded crown black hat and drove a shiny black sedan.

John C. Stennis, Judge of the Sixteenth Circuit Court District, which then comprised Clay, Kemper, Lowndes, Noxubee and Oktibbeha counties, presided. Judge Stennis previously served as district attorney. The then district attorney, L.W. (Red) Brown of Starkville, prosecuted the case. I remember him as a tall, big-chested man with a booming voice when speaking to the jury. He had an interesting rhetorical gesture. When making a point, he would raise one arm high over his head, extend his forefinger upward and then rapidly twirl his forefinger in a circle as he boomed out his point. At the conclusion of the point, he would dramatically bring his arm down. Some years later I got to know one of his sons at Ole Miss. I told him I had watched his father prosecute cases in Noxubee County. His son told me his father on occassion would cut a hole in the toe of one of his socks. When his opponent was arguing to the jury, Red Brown would remove his shoe. By displaying a big toe protruding from the sock he hoped to distract the jury during his opponent's argument.

Chief Wesley was acquitted. The Macon Beacon reported: "After he was acquitted Wesley was very grateful to the white people and especially Judge John Stennis who presided over the trial. He asked Judge Stennis to come to the Indian trial and help him as he had done in the white trial. Judge Stennis explained that he could take no part in the trial, but would certainly be present as an interested spectator."

While these events during the summer of 1940 were exciting and seemed unforgettable at the time, a little over a year later Noxubee County, along with the rest of the country, was involved in World War II. Several years later, Circuit Judge John C. Stennis of Dekalb was elected to the United States Senate and the saga of Chief Cameron Wesley was forgotten until revived in the last issue of this Newsletter.

Killing the (other guys') Lawyers

by Luke Dove

Shakespeare's eloquent phrases are always inspiring, but sometimes are misquoted. None is more frequently misquoted than the pithy epigram of Jake the Butcher in Henry VI, 2d part: " The first thing we do let's kill all the lawyers".

Today, almost 400 years later, legions of highly-paid lobbyists for business, insurance, pharmaceutical, medical and manufacturing interests frequently but unwittingly invoke the spirit of Jake the Butcher as they campaign relentlessly against "junk lawsuits" and "greedy trial lawyers". Their goal is to figuratively kill the lawyers by "tort reform" legislation which, they assert, will make American businesses more productive and competitive, reduce the costs of goods and services, speed the delivery of affordable health care and bring "common sense" to a legal system run amok. There may be some truth to that claim. But not much.

Tort reform has far more to do with money and politics than with improving the justice system, or the delivery of health care or the business environment.

The irony is that the legal system is now being "reformed" by the very groups that traditionally benefitted the most from lawyers. For the past 400 or so years, generations of lawyers have principally represented the interests of landed, commercial and mercantile clients. Shakespeare's Jake the Butcher was, on the other hand, an ardent supporter of Jack Cade, an armed insurrectionist and would-be despot. Cade seeks to capitalize on the popular grievances of "downstairs" society in order to incite rebellion and invoke mob justice. The juxtaposition of the landless and murderous Cade against the wealthy gentry represented conflict within the ranks of society. Cade, for his own ends, advocates the overthrow and murder of those with wealth, power, education and position; the destruction of established order. And who stood steadfastly as the first line of defense against such anarchy and lawlessness? Who sought to preserve vested property rights and economic interests? To quote Shakespeare:

> CADE: Be brave, then, for your captain is brave and vows reformation. There shall be in England seven halfpenny loaves sold for a penny...and I will make it a felony to drink small beer. All the realm shall be in common...And when I am king....
>
> FOLLOWERS: God save your majesty!
>
> CADE: I thank you good people! There shall be no money. All shall eat and drink on my score, and I will apparel them all in one livery that they may agree like brothers, and worship me as their lord.
>
> BUTCHER: The first thing we do let's kill all the lawyers.

Perchance you noted that the Butcher's avowed goal was to kill all the lawyers, presumably because lawyers were scarcely available to those without property, wealth and position. Today at least, insurance, medical and business groups only want to kill the other guys' lawyer; specifically, lawyers for consumers, debtors and persons with significant personal injury claims. So far, the rich and powerful have not publicly expressed a desire to eradicate their own lawyers who have, after all, served so loyally for so long, albeit for handsome fees.

Since nettlesome criminal statutes prevent the actual murder of lawyers, tort reformers resort to the next best thing— reforming the justice system by legislative strangulation. And where did they get the impetus to strangle the justice system? From lawyers and judges.

During the last 20 years, lawyers and judges created a perfect legal storm in the confluence of punitive damage awards, mass personal injury claims and an elected judiciary which sometimes failed to ensure a "level playing field" for all parties. To calm stormy legal waters, lobbyists have convinced legislatures to spread the oil of "tort reform".

If you failed to notice, the reforming trend began several years ago with restrictions on the rights of corporate shareholders to recover damages. Reform spread to compulsory arbitration, with the result that an entire economic group-stockbrokers-now has a virtual exemption from jury trials. Not surprisingly other groups like this idea very much. As long as there is any possibility a corporate malfactor may have to actually answer for its transgressions, why not answer to arbitrators rather than juries.

Tort reform now includes efforts to "cap" monetary damages and attorney fees. Reformers say their efforts are justified. They say mass torts equals mass extortions. However, this logic overlooks the fact that if "mass torts" had not first occurred in the pursuit of massive profits, these suits would not have been filed. Many mass tort cases, especially early ones, had real merit. The tort reform lobbyists, however, also have a valid point about recent cases involving dubious claims. These cases seem to be more about prospecting for fees than redressing real injuries.

Also during the last 20 years, more and more lawsuits of every stripe have included a demand (and a threat) for punitive damages. Punitive awards have been upheld on appeal in questionable cases. The principal concern raised by a claim for punitive damages is the complete lack of predictability. To say that punitive damages may be "allowed only with caution and within narrow limits" is meaningless. The result has been that businesses and insurers cannot fairly assess litigation risks, except for their well-founded belief that in some venues they will certainly be stuck with a large punitive damage award. Punitive damages have an important place in the law, but they are not a substitute for the lottery. A better course, and one which has been previously suggested, is to allow the recovery of reasonable attorney fees by the plaintiff as part of special damages. Punitive damages instructions should be restricted by judges to cases with truly extraordinary facts. But that has not happened.

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Imbued with the spirit of Jacksonian democracy, Mississippi was the first state to require that judges be elected. Most other states followed our lead. Until that time, virtually all judges had been appointed. The appointive and the elective systems of selecting judges both have shortcomings. We have seen the dismal results of some lifetime appointments to the bench. But our current elective system may have even greater drawbacks. A principal concern of an elected judge is to run unopposed for another term. We should instead consider a single term 8 year appointment for judges.

But, rather than making adjustments to the legal system ourselves, we lawyers defaulted to lobbyists and special interest groups whose last special interest is the integrity of the law.

As Pogo famously observed, "We have met the enemy, and he is us." The guiding star for lawyers, as professionals, should always be a six letter word: CLIENT. Instead, we have been guided and even driven by a four-letter word: FEES. When the principal concern is our fees rather than our clients needs, we endanger the entire legal system.

Applying traditional contingent fee contracts to mass tort cases has resulted in recovery of enormous legal fees which bear no relationship to services actually performed or time actually spent on a case, and has made many lawyers very, very wealthy. There are counties in Mississippi in which the richest person in the county (by far) is a lawyer(s). Clients are no longer persons or even clients in any real sense. They become only part of an "inventory" of cases. Fault certainly is not limited to the plaintiff's bar. Some defense firms are pyramid billing factories. Success as a lawyer is measured more by billable hours than by professional services which benefit the client. In fact, very little thought seems to be given as to whether some legal services are even necessary much less whether they actually benefit the client.

Until we— lawyers and judges— can act professionally and protect and preserve the legal system of which we are a part, then others are going to continue with efforts to "reform" the law in a way which suits only their interests.

Best of the New South or Just Another Bad Neighborhood?

by Captain Equity

There is a municipal election next month in the City of Jackson. Frank Melton is seeking to unseat two term Mayor Harvey Johnson. In past years this story would have dominated the water cooler talk in the Capital City, but truth be told, it really isn't that big of a deal. Why, you ask? Well, simply because what happens in the City of Jackson has less and less relevance to a majority of area residents with each passing day. Allow me to explain.

Once upon a time the imaginary political lines that staked out the city limits of municipalities were a great deal more important to urban areas than they are today. The incorporated area of a city usually reflected the overwhelming majority of its population and all that went with it such as its collective wealth, human resources, economic well being, neighborhoods, etc. Such is no longer the case in most major metropolitan areas of the United States. To illustrate consider the following examples all of which are based on 2003 population figures from the Bureau of the Census of the U.S. Department of Commerce. In terms of population of incorporated cities, El Paso, Texas is larger than, Boston, Washington D.C., Seattle and Denver in that order. Fresno, California tops the city of Atlanta in population by more than 5%. San Antonio, Texas is the eighth largest municipality in the entire United States besting the likes of San Francisco, Cleveland and St. Louis.

However, when Metropolitan Statistical Area (MSA) data is used, Greater Washington D.C. which includes parts of adjacent Virginia and Maryland, ranks as the seventh largest metro area in the United States. Boston comes in at 10; Seattle, 15; and Denver, 22 with El Paso trailing significantly at 69. Atlanta's metro population of 4.24 million is ten times that of the city of Atlanta. And for the demography tie breaker of the day, what is the largest MSA not to have a major league professional sports franchise of any kind? Answer: Riverside-San Bernardino-Ontario California with 3.25 million people. As the 13th largest metro area in the country, it comes in just ahead of metro Phoenix, Arizona. (Editor's Note - The so-called Inland Empire does, however, lead the country in smog hands down).

This brings us back to Jackson and the coming Democratic primary between Melton and Johnson with the winner to face Republican Rick Whitlow. When viewing the city of Jackson as part of the larger metro area, it would be more accurate to refer to it merely as Central Jackson. Following this line of reasoning, North Jackson would extend outward from Ridgeland to Flora, Gluckstadt and the North Shore of the Reservoir. East Jackson would be co-terminus with the eastern reaches of the City of Brandon. West Jackson would end just to the east of Bolton with South Jackson running down U.S. 49 to Florence and I-55 South to Crystal Springs. The newly configured MSA Central Jackson region would have three mega neighborhoods: East Central which lies east of I-55; the North State -Fondren Sliver which is as much a state of mind as it is a narrow, ambiguously marked spit of land running roughly north from City Hall to the Olive Garden parking lot south of County Line Road. The Sliver also

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Book Notes

by Nonie Joiner

It is always a good experience to shop in a bookstore, whether it's an independent bookstore such as Lemuria and Square Books, a chain store like Books-a-Million, Borders or Barnes and Noble, or a used bookstore like Choctaw Books. Going to a bookstore, for me, involves committing a fairly large amount of time, as I am not capable of going into a bookstore, going straight to a certain book, buying it and walking right out again. I have to browse. I like to go to a bookstore as a destination event, like going to a movie or a play. I look at new books and old books and fiction and history and gardening books and talk to the people who work there and just take my time with the whole thing. I hardly ever leave with just one book. However, if I'm at home and I read about a book I know I want to get, I like the convenience of going to a website and ordering that book. This is especially good for buying Christmas and birthday gifts for out-of-town friends and relatives, as you can just phone or go online, and arrange to have books wrapped and delivered.

In the past, every time I ordered a book online, I had lingering guilt about not supporting my local bookstores, in particular the independent bookstores. However, you now can support a local store and still buy online. The American Booksellers Association has established an affiliate program, BookSense, for independent booksellers who wish to sell books on the Web. Booksellers pay a fee to BookSense, and BookSense handles the online book inventory, online ordering, payments, shipping, handling, etc. You cannot go to the BookSense site and order a book without routing your order through a local bookstore, but you can access your local bookstore's website through the BookSense site, which offers an affiliate locater search vehicle. Eight Mississippi bookstores are listed with BookSense.

Books sold through BookSense are primarily new or fairly recent books and books by major authors. There is a listing for "inventory status" which may be "not yet published," "usually ships in 1 to 5 days," "special order," or "out of print." Be advised, however, that just because your local store's BookSense site indicates that a book "usually ships in 1 to 5 days," that does not mean that you should get in your car and drive down to pick it up. The BookSense site, which is branded to the individual bookstore when accessed through that bookstore's site, has the same inventory list for all its affiliated bookstores. Books may be in stock at the local store, but they may also be coming from somewhere, and someone, else. Therefore, if you're considering picking up the book in person, you're better off just calling the bookstore in the first place.

Although Lemuria appears on the BookSense list for Mississippi, Lemuria does not have a link to BookSense on the Lemuria website. Lemuria does have on its site a list of first editions which it has in stock and which cannot be purchased through BookSense. You have to get in touch with the store to buy those.

Square Books does have a link to BookSense on its website. The Square Books site also states that collectible books are not available through BookSense. For those, one must contact the store, or click on a link to usedbookscentral.com. That site was established in 2001 by a used book dealer; dealers pay fees based on the number of titles listed. A search of the site turns up books in the hands of a number of dealers; the dealers names are given, so that you can tell if you are ordering from a local store or dealer.

The Old Capitol Shop has many books by Mississippians and about Mississippi, and maintains an inventory list on its website. You can order by mail or phone, but not online.

Choctaw Books does not have its own website, however, they will locate and order a book for you. This is a good solution for people who are reluctant to disclose their credit card number to unknown entities on the internet, and has the added advantage of permitting you to look around Choctaw Books while you are there.

The internet has completely changed the shopping environment with regard to used, out-of-print, rare and collectible books. There are innumerable web sites where there are links, it seems, to every book dealer in the world who has any version of a particular book. You can type in a title and find that title in new books, used books, rare books, signed books, first editions of the book, every other edition of the book, first or second or every other printing of the book, the book in English or Swedish or Hindi, and you can buy it with that one patented click. It can take minutes or hours, depending on how much time you want to spend looking at all the available choices.

This is both a good and a bad thing. It has taken a lot of the fun out of visiting used bookstores, always one of my favorite activities when traveling. There's less pressure to get to a used bookstore on a brief visit to another city, when I know I can almost certainly find whatever I might want online. Of course, I'm not a serious collector, and I'm not buying books as investments, I'm just buying things I want to read. I do like to have original editions of books if they're not too costly, and one good thing about shopping on the internet is that you can almost always find the book you're looking for. One bad thing is that you can't smell it. Seriously. Online dealers will describe the condition of a book in regard to the cover, the spine, the dust jacket, etc., but unless it has mildew spots all over it, they almost never tell you if it smells to high heaven. Sometimes their descriptions just plain misrepresent the condition of the book. Remember, anyone can call himself a book dealer on the internet, and these dealers are located all over the world. Maybe "very fine" has a different meaning in Sardinia. If you happen to order from someone who's not a reputable dealer, you may be in for a lot of trouble and inconvenience,

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encompasses other mini-pockets of affluence that fall within the Jackson City Limits like Woodlea and Woodhaven. The remainder of Central Jackson would be known simply as "Everything Else." "Everything Else" comprises by far the area's largest neighborhood in terms of population.

In 2003 the Greater Jackson MSA accounted for 453,500 people. By way of comparison, Metro Jackson is a little more than a third the size of Metro Memphis and not quite half the size of Greater Birmingham. For those of you feeling a bit inferior, we are bigger than Montgomery, Alabama but not by much. Of all who call the metro home, about 39.5% or 179,599 live in the Jackson City Limits or Central Jackson. That figure has been in decline for some time.

Central Jackson definitely has its pluses. They include tall buildings along Capitol Street along with lots of tax exempt state owned property and downtown churches. Two of the biggest positives are a sizable regional medical complex that can't be moved to the suburbs and restaurants that serve wine by the glass. On the down side, notwithstanding our Peter Pan from Neverland Police Chief, Jackson has a big city crime problem. According to *The Clarion-Ledger*, the 2004 murder rate was five times the national average. If you remove the East Central and North State - Fondren Sliver neighborhoods there is no telling what the murder rate would be on a per capita basis. Overall, Jackson has the ninth worst crime rate for cities of 100,000 - 500,000 in population. I wonder what it was before crime supposedly plummeted last year.

There are other telling quality of life indicators the next Central Jackson mayor will have to confront. For instance, there is not a single commercial movie theater in the City of Jackson. There are, however, enough abandoned and blighted buildings in the Everything Else neighborhood to make the most poverty stricken visitor from the Third World feel right at home. Faced with this reality, too many affluent and middle class Jacksonians of all races continue their outward bound exodus in search of better schools, greater opportunity and heightened personal safety. When they leave, they take a little bit of Jackson's tax base with them.

To his credit, Harvey Johnson has sought to counter these trends with a planned downtown entertainment district, a convention center, a renovated downtown hotel et al. We all know the list by heart. However, for these plans to come to fruition, it will be necessary for a critical mass of actual living, breathing people with more than three bucks in their pocket to frequent these attractions on a regular basis. That is doubtful given the specter of crime whether it is perception or reality. That coupled with Central Jackson's undeniable blight and mounting abandoned retail and residential space make it hard for Central Jackson to compete for its slice of prosperity, especially given the superior quality of life options that now exist or are under construction elsewhere in the metro.

And finally there is the ever present intangible of attitude and animosity fueled as always by race. Borrowing a page from white racist political demagogues of bygone days, Councilman Kenneth Stokes continues to inflame the racial atmosphere with his ongoing antics. Sadly, Mayor Johnson is and always has been missing in action when it comes to displaying real leadership on this front. In fairness, the Mayor is caught between a political rock and hard place. Stokes gets reelected for a reason, just as white segregationists of the past did. Those who vote to return Stokes to office every four years vote for mayor too. That is why in my view that Frank Melton is Central Jackson's best hope for helping make Johnson's dream a reality.

Unless and until the City of Jackson sees some real leadership backed up by action to combat the tangible and intangible challenges cataloged here, the more prosperous, educated, successful residents of Metro Jackson of all races will continue to vote with their wallets and their feet. The same goes for the business and professional segments of the metro economy. Frank Melton understands what is happening to Jackson. He is also not afraid to ruffle feathers that need ruffling. In my opinion, the next Mayor needs to be a big time feather ruffler. The alternative is the ever increasing irrelevance of a city that is becoming just another bad neighborhood.

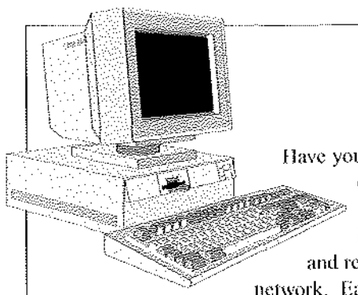
And that, my friends, is the bottom line!

Editor's Note: This is an opinion column intended to provoke thought and encourage discussion. The viewpoints expressed are solely those of Captain Equity and are not to be attributed to the Hinds County Bar Association, its officers and directors or its editorial board.

continued from page 8

or at least a bad allergy attack.

So, I have resolved that I will still go to bookstores most of the time in preference to shopping online. If I'm in a hurry and need to order a new book online, I will try to order locally if possible. For used books, I'll check Choctaw Books first, for several reasons. One is that I really like to look at and handle a book before I buy it. You can't judge a book by its cover, you know. Also, I don't always know what I want. It's good to be able to look around and see what's available. Finally, we don't want Choctaw to close. That's happened to a lot of used bookstores nationwide - there are far fewer stores than there were ten years ago, as storeowners decide it's less trouble to just sell online. I would hate for Fred Smith to decide to become only an online dealer. So go on over to Choctaw and sniff around.



On Computing

by Joel Howell

Have you networked your home computers? If not, Wi-Fi is a popular, inexpensive, convenient, and relatively simple way to network. Early on, few paid attention to wireless security. As it has become more widespread, however, the risks are increasing, but most network users still fail to take steps to secure their Wi-Fi network.

Wi-Fi uses radio waves, which penetrates walls to transmit information. These radio waves are not confined to your home. The waves go through walls and out into the surrounding world, free for hackers to take advantage of. These hackers may be attempting to access your personal information and steal your identity.

Securing your Wi-Fi network is relatively simple with four basic steps.

1. Disable your SSID broadcast - By default, most networks send a short message repeating the network's name, which is called the SSID, otherwise known as the Service Set Identifier. Anyone outside your home or drives by could detect that you have a wireless network, find out the network's name and access it. So, by disabling the SSID broadcast, you will prevent strangers from passively scanning the area and receiving your network's broadcasts. If your laptop has wired and wireless capabilities, use it to configure. On the other hand, instead of disabling your SSID broadcast, you may wish to rename the SSID. However, you must be smart, don't use your name or some other information which would easily identify you. Create the SSID passphrase into Notepad or any other word processing program so it can easily be cut and pasted into the configuration fields.

2. Change the password on your access point - Default passwords are common knowledge to hackers. So, if you leave your password unchanged, it would only take a minute or two to figure out the proper password.

Be smart. When you change your password, use a combination of numbers and letters, not something obvious like your name, street name, animal's name, etc. That's too revealing to strangers.

Another note on access points - Be sure to place your access points outside your firewall. If you place your access points inside the firewall and someone breaks into your WLAN (wireless local area network), he or she will have access to your intranet, too.

3. Use encryption - There are two standard types of encryption. Wired Equivalent Privacy (WEP) is an older and less secure method. It uses a non-changing 64 or 128-bit key. It is not the best method, but it is better than nothing.

Wi-Fi Protected Access (WPA) uses 256-bit encryption, which is much harder to decode than the WEP, especially since it is constantly changing. WPA is more prevalent in new gear, but if you have old equipment, you may be able to get WPA through a firmware update. Firmware is software written on a chip inside a piece of hardware. You may want to check your manufacturer's Web site for more details. Consider using a passphrase that is at least twenty random characters but you can use up to sixty-three characters. Be careful to not use words in the dictionary or personal information that people can easily find out. Use a combination of numbers, capital letters, and lower case letters to make this as difficult as possible for the hackers to figure out.

The only downside to encryption is that it can slow your network down; however, the trade off is increased security.

4. Enable Media Access Control (MAC) filtering - MAC is an address assigned to each wireless card. Each wireless device has a unique MAC address which includes six sets of paired characters and is usually printed on the back of your wireless card.

Basically, MAC filtering tells your access point to grant access only to MAC addresses you enter

Note that all the foregoing is accomplished through your access point's firmware and will Vary depending upon your vendor. If you have a network of any size, Windows XP SP2 incorporates a wireless network setup wizard.

After implementing these four measures you can do your own security check. Install the free program NetStumbler (http://www.netstumbler.com) onto a laptop or PDA. This program will detect open Wi-Fi networks. After installing the program, try walking around the outside of your house with your laptop or PDA and see what a hacker may see. If you have implemented the four measures discussed above you should not detect anything.

Even after locking down your Wi-Fi network, it still may be vulnerable. Be especially careful of your computer's vulnerability when traveling or connecting in high activity places such as coffee shops. Any determined hacker can eventually break down any security walls. However, after taking preventive measures, many hackers will give up and move to another unprotected house. If this is still not enough security for your computer, be on the lookout for the more secure WPA2 (recently out) which incorporates the newer Advanced Encryption Standard (AES).

Questions or comments? Email webmaster@hindsbar.com.

GOLF OUTING JUST FOR LAWYERS

(All Lawyers and Judges in Hinds, Rankin & Madison Counties are eligible.)

13th Annual

HINDS COUNTY BAR ASSOCIATION GOLF TOURNAMENT

Thursday, May 19, 2005

Shotgun Tee Off: 1:00 p.m.

Hamburger/Chicken Buffet 12:00 noon

Annandale Golf Course (Soft Spikes Required)

All proceeds from the tournament will go to the

MISSISSIPPI VOLUNTEER LAWYERS PROJECT

4 Person Scramble*

Limit 116 Persons

COST ONLY $125 Per Player includes Lunch and Post-Tournament Cocktail Party

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REGISTRATION FORM
DEADLINE, MAY 6, 2005

Name_____ Your Handicap_____

Address_____ Team Members Handicap

_____

_____

Phone _____

*Each competing "4" must have a combined handicap of at least 40 or more with only 1 member having a handicap of 10 or less.

Must send check with registration, and checks should be payable to: Hinds County Bar Association, c/o Debra Allen, 812 N. President Street, Jackson, MS 39202. For more information call, Debra at 353-0001.

MISSISSIPPI COLLEGE LAW LIBRARY HOURS

January 11, - May 11, 2005

Monday - Thursday .....7:30 a.m. - midnight
Friday .....7:30 a.m. - 9 p.m.
Saturday .....9 a.m. - 9 p.m.
Sunday .....noon - midnight

EXCEPTIONS

Spring Break

Friday, March 18th .....7:30 a.m. - 5 p.m.
Saturday, March 19th .....9 a.m. - 5 p.m.
Sunday, March 20th .....1 p.m. - 5 p.m.
Mon., March 21th - Wed., March 23rd ..7:30 a.m. - 5 p.m.
Thurs., March 24th - Sat., March 26th ..9 a.m. - 5 p.m.

Exam Schedule

April 29th - May 11th

Monday - Friday.....7:30 a.m. - midnight
Saturday .....9 a.m. - midnight
Sunday .....noon - midnight

Summer hours will begin May 12th.
Hours are subject to change without notice.

Correspondence regarding the newsletter should be directed to: HCBA Newsletter Editor, 151 E. Griffith Street, Jackson, MS 39201. Letters to the editor must be signed, but the writer's name will be withheld upon request. Telephone inquiries should be made to the Executive Director at 601-969-6097. The web site address is hindsbar.com.

Hinds County Bar Association, Inc.
151 E. Griffith Street
Jackson, MS 39201

FIRST CLASS

IMPORTANT

HCBA Luncheon Meeting
12:00 noon., April 19

HCBA

HINDS COUNTY BAR ASSOCIATION

MAKING OUR CASE FOR A BETTER COMMUNITY

AUGUST 2005

President's Column

by Alveno N. Castilla

In my first column, I mentioned that one of the focal points for the HCBA this fiscal year will be to encourage our members to be more active in the pro bono service area. As you know, this area has gained more attention recently with the revisions to Rule 6.1 of the Mississippi Rules of Professional Conduct adopted by the Mississippi Supreme Court, effective March 24, 2005. Although the rule suggests, but does not mandate, at least 20 hours of work per year (or in lieu of hours, a $200 payment to be used by the Mississippi Bar to provide civil legal assistance to the poor), there are many lawyers and law firms that will, in fact, want to meet the aspirational service goal. For those lawyers and law firms still trying to assess the "business case" for doing more pro bono work, I urge you to consider the following.

Why do pro bono work?

The profile of pro bono activity across the profession and our community has risen over the past several years, thanks to organizations like the Mississippi Volunteer Lawyers Project and Mississippi's Legal Services Programs. This profile will continue to rise as the profession continues to embrace it.

Pro bono work is now established as a professional responsibility but it is more than that. A number of surveys indicate that such activity is actually good for business! These surveys reveal that pro bono work:

- Reduces attrition rates of younger lawyers by providing opportunities for them to have a more varied practice and to broaden their range of legal and non-legal skills. It also indicates that the firm cares about them and the community around it - not just its full-rate paying work.
- Helps retain productive partners and associates by helping unify firms. This happens when lawyers (and staff) have the opportunity to work together across specialties, levels of seniority, and offices, and provides a common frame of reference and pride.
- Can increase and improve the firm's profile and visibility with community leaders and improve client perceptions of the firm. This may not be the reason that many law firms undertake pro bono work, but we all know and preach that visibility and networks are important and can help to attract new clients and keep old ones.

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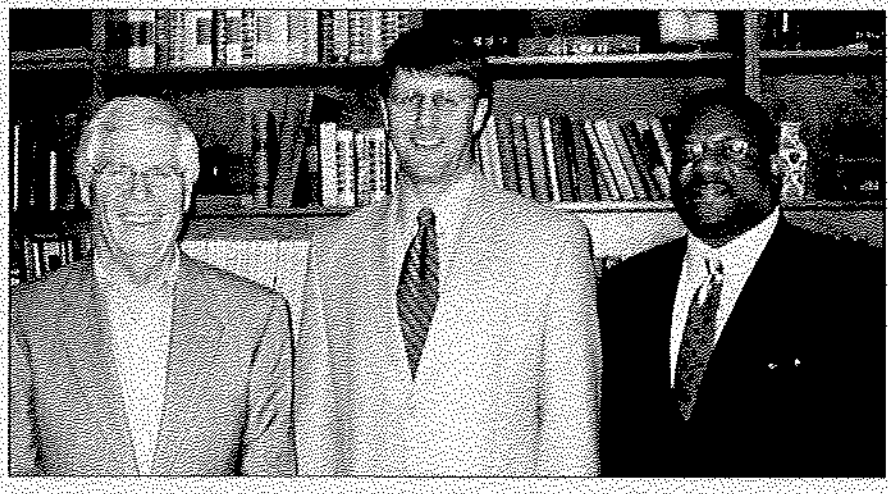


June HCBA Luncheon Meeting

State Senator Gray Tollison presented the program at the June HCBA Luncheon Meeting. Senator Tollison (center) is pictured with HCBA member Jimmy Robertson (left) and HCBA President Alveno Castilla.

HCBA LUNCHEON MEETING & ETHICS CLE PROGRAM

Tuesday, August 16, 2005 Capital Club 11:30 a.m. $25.00 Lunch & CLE

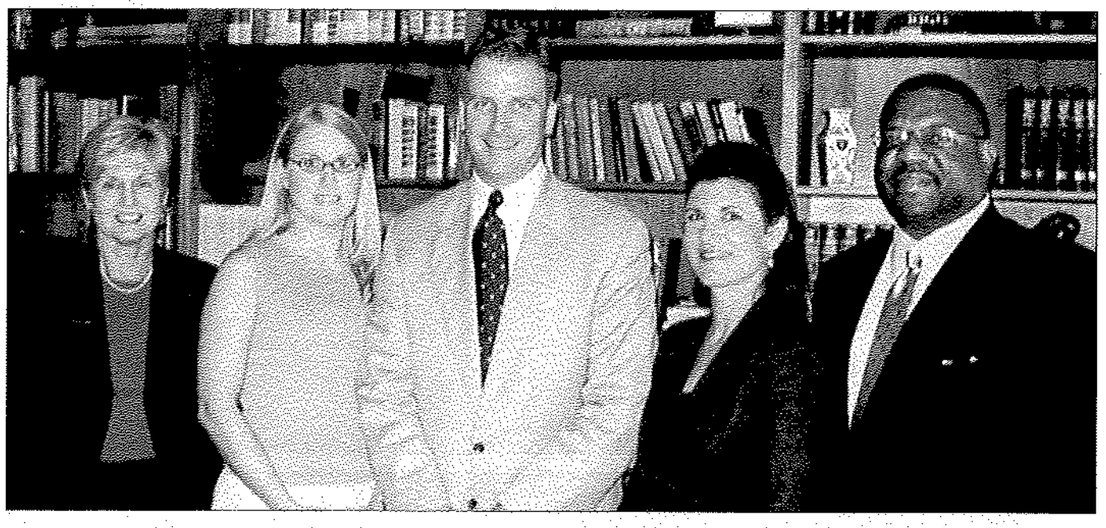
The one-hour Ethics CLE Program will be presented by Adam Kilgore, General Counsel, The Mississippi Bar

HCBA Calendar of Events

Tuesday, August 16, 2005
HCBA
Membership Meeting
Noon.
Capital Club

Tuesday, October 18, 2005
HCBA
Membership Meeting
Noon.
Capital Club

HCBA Presents Community Grant to Catholic Charities



At its June luncheon meeting, the HCBA presented a community grant to the Karitas Therapeutic Day Care Program operated by Catholic Charities. The grant money will be used for computers and obtaining internet access for the students served by the Program. Rebecca Harris, Director of Development, accepted the grant for Catholic Charities. Shown after the meeting are (from left) Linda Thompson, HCBA Immediate Past President; Melody McAnally, member of the HCBA Community Grants Committee; David Maron, chairman of that Committee; Rebecca Harris, Catholic Charities; and HCBA President Alveno Castilla.

Annals Of The Law

by Luke Dove

THEMIS COMES TO LIFE

For many generations and in many cultures, the ideal of justice has been represented by a female. Ironically, however, the actual administration of justice as opposed to the ideal has remained almost exclusively in the hands of men. For good or for ill, that is changing rapidly.

In western culture, the depiction of justice is most frequently represented by the Greek goddess, "Themis". In the Greek pantheon, Themis was the goddess of "right order". In the Roman mythology she was referred to as "Justicia". She is depicted as blindfolded to represent complete impartiality in judgment, especially with regard to the reward or the punishment for the dead. In her right hand, he holds a sword representing the power of the law. In her left hand, she holds a set of balanced scales poised to weigh the most important evidence of all—the heart.

The sobering concept of the female goddess sitting in final judgment on your life may have originated with the ancient Egyptian goddess "Ma'at" who assisted in the final judgment of the dead by weighing their hearts on the scales of justice against the deeds of their lives. Our word "Magistrate" is derived from the name of this goddess. However, in the modern judicial system the heart has become irrelevant and thus inadmissible in evidence.

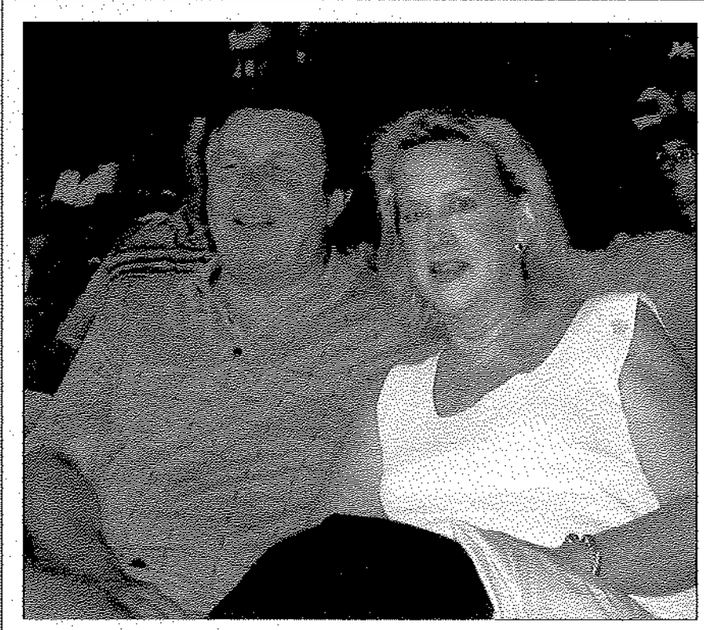
In American, women no longer merely represent the ideal of justice-they now represent a significant percentage of the actual administration of justice.

Justice Sandra Day O'Connor, the first woman to serve on the United States Supreme Court, and a crucial vote on a host of important issues, recently announced that she will retire. When President Reagan nominated Sandra Day O'Connor in 1981 to be the first woman justice, he did not have a large pool of female applicants from which to choose. The number of credentialed women lawyers was very small as late as 1981. At the time, O'Connor sat as a mid-level appellate judge in Arizona.

The first woman to serve as a federal appeals court judge was Florence Allen, appointed by Franklin Roosevelt in 1934. In 1949, Harry Truman appointed Burnita Matthew to be the first female federal district judge. In 1981, there were about 700 federal judges, only 48 of whom were women. Today there are 201 women and 622 men among active federal judges. President Clinton appointed 104 women to the federal bench. To date, President Bush has appointed 45 additional women federal judges.

According to the American Bar Association, by 1981 only 36% of law students were women. Today, slightly more than 50% of all law students are women. These advances for women in the law, however, are still not reflected in the upper ranks of partners in major law firms. Only about 16% of law firm partners are women. Justice O'Connor (who graduated 3rd in her 1952 Stanford Law School class) was not offered an associate position with any law firm. A couple of firms, however, did offer her a job as a secretary.

Today, women represent more than the ideal of justice. In America, women will become more and more important in the actual administration of justice. It only took a few thousand years, but Themis is finally coming to life. But still, in spite of this great progress, the association of old white guys just hopes that women judges won't have to weigh our hearts.



Luke Dove, HCBA Director and esteemed editor of the HCBA News, and his wife, Marlane Chill Dove, are pictured enjoying a Mississippi Braves game.

Guard Your Card Hard

by John Land McDavid

Financial data and identity loss is a national problem. It's the exception to read a newspaper or magazine that does not include some mention of this problem. And then there's the television ad about Jim enjoying Maurice's vacation while buying all the Rolex's in the display case.

The July 2, 2005, issue of The New York Times contained an article by M.P. Dunleavey, who writes on personal finances for MSN Money, about her experience with data loss. Motivated by her personal experience, she shared useful information and suggestions for protecting personal data in the following paragraphs:

Unfortunately, although there are steps you can take to protect yourself - and you should - there are no guarantees. "You cannot protect yourself," said Edmund Mierzwinski, consumer program director at the U.S. Public Interest Research Group in Washington. "The best thing you can do is react swiftly if it does happen."

That said, Mr. Mierzwinski endorsed the preventive measures offered by Privacy Rights Clearinghouse (www.privacyrights.org), a nonprofit consumer advocacy group, and by the Identity Theft Resource Center (www.idtheftcenter.org), also a nonprofit. Besides the standard advice to shred personal documents, following are some tips I found useful:

- Avoid letting your cards out of your sight. Do not let s tore clerks take your card away on the pretext that there's a "problem."
- Restrict the access to your personal data by signing up for the National Do Not Call Registry (www.donotcall.gov), remove your name and address from the phone book and reverse directories - and most important - from the marketing lists of the credit bureaus to reduce credit card solicitations. The site www.optoutprescreen.com can help.
- Consider freezing your credit report, an option available in a growing number of states. Freezing prevents anyone from opening up a new credit file in your name (a password lets you gain access to it), and it doesn't otherwise affect your credit rating.
- Protect your home computer with a firewall, especially if you have a high-speed connection.
- Rein in your Social Security number. Remove it from your checks, insurance cards and driver's license. Ask your bank not to use it as your identification number. Refuse to give your Social Security number to merchants, and be careful even with medical providers. The only time you are required by law to give your number, Mr. Mierzwinski said, is when a company needs it for government purposes, like tax matters, Social Security and Medicare.
- Curtail electronic access to your bank accounts. Pay bills through snail mail. [In a follow-up article in the Times on July 16th, Ms. Dunleavey, withdrew her recommendation for "snail mail" provided, however, your computer is protected with a firewall and virus software.] Avoid linking your checking to savings. Use a credit card for purchases rather than a debit card.

Ms. Dunleavey had five charges totaling nearly $1,800 against her bank account even though she had not lost his debit card. She assumed some clerk or waiter, who handled her card, used it to create a counterfeit card.

I recently had a similar experience involving ,instead, a credit card. Someone during a three-day period, over the phone or internet, charged my credit card for about $500 on each occasion with three different cell phone companies. As I had my card, they obviously somehow obtained my card data. My credit card company, suspecting a problem, contacted me a week or so later and the charges were deleted. My card was cancelled, however, and a new card issued. Most vendors now have credit card systems where the card owner swipes his or her card and signs a charge slip which prints only the last four digits of the card number. As I thought about my situation, I realized a week or two before I made a purchase at a local business where the clerk swipes the card and the purchase slip contains my entire card

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The O'Connor Legacy, Separation of Church and State and an Uncertain Future

Opinion Column by Captain Equity

Being from the South, we are all familiar with the axiom "If it ain't broke, don't fix it."

This particular aphorism has innumerable applications. Unfortunately for the country, in my opinion, the President's pending appointment of Judge Roberts as a replacement for retiring Supreme Court Justice Sandra Day O'Connor promises to ignore these homespun words of wisdom to the detriment of us all.

One of Justice O'Connor's last cases on the Court dealt with the propriety of displaying the Ten Commandments in and around state government buildings. Two companion cases from Kentucky and Texas asked the Justices to clarify what exceeded the Establishment Clause and what did not. The answer, which reminds us all of Constitutional Law back in the dark days of law school was, predictably, "It depends." By a narrow 5 to 4 margin, the Court held that display of framed copies of the Ten Commandments within Kentucky courthouses exceeded Constitutional limits. In the companion case, display of a monument inscribed with the same ancient document on the grounds outside the Texas state capitol was permissible. The touchstone of difference was context of the display.

Predictably, zealots on both sides of the issue were dismayed, but, from my perspective, the Supreme Court got it about right. In essence, the Court mirrored the view of most Americans that God not only exists but that this country was founded upon many of the basic precepts found in the Judeo Christian heritage. At the same time, the Court sought to honor and preserve the fundamental separation of the secular and ecclesiastical realms so as to avoid the consequences of abuse caused by the failure of empires and nations down through history to do likewise.

Justice O'Connor, a Reagan appointee and the first woman to serve on the Court wrote a short but precise concurring opinion that reminded everyone exactly why separation of church and state was deliberately woven into the cloth of what would become the United States of America. I commend to you a quick reading of her imminently persuasive logic. In sum, she reminded us that the issue has nothing to do with belief in a Supreme Being but rather allows everyone the personal freedom and liberty to practice their own religion freely. One need only look at the daily carnage throughout the Middle East to see what happens when countries operate as a fundamentalist theocracy rather than a representative secular democracy. To this point, O'Connor wrote:

> Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: why would we trade a system that has served us so well for one that has served others so poorly?

For the handful of lawyers out there who actually clerked for the United States Supreme Court, the meaning of Justice O'Connor's words are apparent. For the rest of us, and I am paraphrasing, "If it ain't broke, don't fix it."

Sometime ago back in the good old days of local banks, Am South's predecessor Deposit Guaranty sponsored its annual symposium that brought nationally known business and political leaders as well as journalists to Jackson to survey the year ahead. I remember journalist Steve Roberts, Cokie's husband, telling us that in America, mainstream politics defined as actually getting legislation enacted into law was played between the forty yard lines. This apt football analogy rang true back then. Unfortunately, something has changed in the ensuing years. Dialogue has devolved into shouting and consensus has been replaced by blind partisanship. Nowhere is this more evident than in the so-called cultural issues of which separation of church and state leads the list. Distortion of issues and disdain for the type of common sense that has been the hallmark of Justice O'Connor casts everything in terms of all or nothing, right or wrong, conservative verses liberal. If only the complex issues of modern life were that simple.

Notwithstanding the overheated rhetoric and end of the world scenarios, all the surveys on the subject show that 96% plus of Americans believe in God. One need only contemplate the miracle implicit in the human body to believe in a Higher Power. If more proof is needed, how about the precision of the seasons and the exceedingly narrow range of temperature and atmospheric conditions that sustains life on earth for an almost infinite variety of organisms, plants, animals and humans. Accident? Happenstance? I think not. Problems begin to emerge only when we get into the details such as the relative worth of one religion verses another or consideration of issues such as stem cell research or if Catholic families can adopt children from so called faith-based Christian adoption agencies and on and on and on.

These problems are exacerbated by a vocal minority who profess to talk to God on a minute by minute basis and have precise albeit simple all or nothing answers to life's greatest mysteries. While I think the right is over represented in this regard, I readily acknowledge that such dangerous levels of certainty not to mention use of God for purely personal reasons is a general human frailty. Take, for instance, Reverend Al Sharpton, failed Democratic Presidential candidate and former tour manager for James Brown who was called to the pulpit at age seven. Excuse me, but what seminary did Reverend Al attend? Shouldn't there have been some follow through?

And then there is the ubiquitous Reverend Jesse Jackson who in recent decades has morphed into such a media hound and corporate shakedown artist that even camera crews tend to ignore him. More recently, when Bill Clinton got himself in trouble with Monica, he sought out spiritual advisors that included, of course, the Reverend Jesse Jackson. Just last month, Reverend Richard Scrushy a corporate mogul turned late blooming televangelist dodged a 36-count fraud indictment in

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- Fits into the modern trend toward corporate social responsibility and "the triple bottom line."
- Helps firms attract the best lawyers. Data indicates that better graduates and laterals are attracted to firms with established in-house pro bono programs.
- Provides professional development for employees
  - ◇ Greater client contact
  - ◇ Earlier courtroom experience and contact with judges
  - ◇ Better time management skills are developed
  - ◇ The need to exercise independent judgment is presented at an earlier stage
  - ◇ Negotiation skills are honed
  - ◇ For both transactional lawyers and litigators, pro bono cases offer the chance to learn new areas of law, develop new skills, and gain more confidence overall.
- Benefits staff morale and workplace culture (non-lawyers feel good about and are proud to work at a firm that helps people who cannot otherwise afford legal services).
- Cuts into budget in a minimal way in that the costs of doing pro bono work are largely marginal rather than fixed costs.
- Provides a high degree of personal satisfaction. What other platform offers the chance to make a major difference in the life of a family or a community in critical need of a particular service, to right wrongs, and to work on matters where the individual lawyer's contribution is apparent and necessary?

On a final note, I want to stress that pro bono work is not just for large firms. In fact, I find it interesting that these same surveys showed small firms to be doing more pro bono on a per lawyer basis than large ones. Whether large or small, every firm has a "culture"—a particular way of doing business, training lawyers, providing legal services to clients, and the public persona that it presents, either purposefully or by default. It is not surprising that the firms that are able to entwine pro bono activity into their culture are the firms with the most successful pro bono programs. These are the firms that provide concrete support and positive reinforcement for attorneys who take on pro bono matters.

Pro bono capacity can and should increase and it is in best the interests of our profession as a whole to share the burden of fulfilling this professional obligation. To assist in keeping this obligation at the forefront this year, we have created a new Pro Bono Committee of the HCBA with the charge of helping to cultivate, encourage, and foster the participation of our members in pro bono activities. Venecca Green has graciously agreed to chair this committee. We look forward to reporting to you on the activity of this committee in upcoming Newsletters and membership meetings.

continued from page 4

number. I recommend, whenever possible, do not use your debit or credit card at a business which still uses a charge slip containing your entire credit card number. A friend tells me, when he receives a charge slip with the entire card number, he obliterates the number before returning the slip to the clerk or cashier.

Ms. Dunleavey concludes her article with a quote by Mr. Mierzwinski that, "What will stop identity theft are strong notification [to card holders of suspicious activity] laws and stronger penalties, which we don't have now." So, guard your card hard.

An Evening Honoring the Judiciary

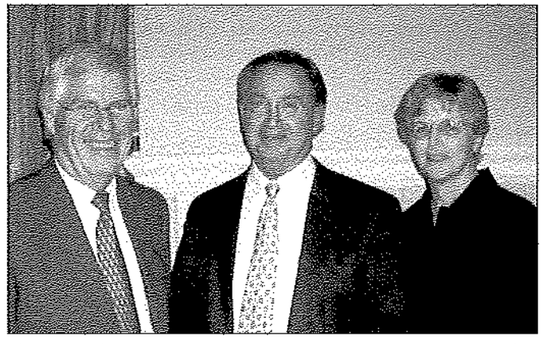
The Evening Honoring the Judiciary, co-sponsored by the Hinds County Bar and the Jackson Young Lawyers Associations, was held Thursday, May 12, at the Old Capitol Inn. The speaker was Judge Edith H. Jones of the United States Court of Appeals for the Fifth Circuit. Judge Jones was introduced by her fellow judge, the Honorable E. Grady Jolly.

Roy Campbell served as chairman of the twelfth annual event. The dinner is held in honor of federal judges, members of the Mississippi Supreme Court and Court of Appeals, and judges in the trial courts of Hinds, Madison, and Rankin Counties.

HCBA President Linda Thompson (2004-05) and JYL President Amanda Jones (2004-05) presented their respective association's awards. The HCBA presented its revered Professionalism Award to Louis H. Watson. The HCBA also recognized Ben Piazza for Outstanding Service Award and Dan Jordan for Pro Bono service.

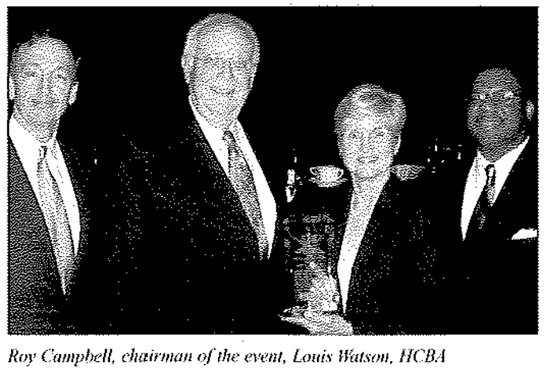
Alveno Castilla, HCBA President (2005-06) and Delores Arline.

Joy Phillips, President of the Mississippi Bar and former HCBA member, Alveno Castilla, and Linda Thompson.

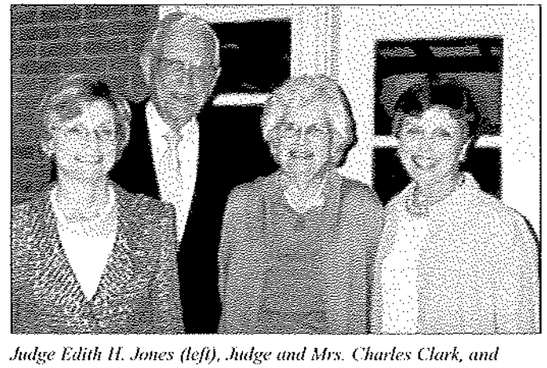


HCBA member Jimmy Robertson, and Supreme Court Justice and Mrs. George Carlson.

The Honorable E. Grady Jolly and the Honorable Edith H. Jones.



Roy Campbell, chairman of the event, Louis Watson, HCBA Professionalism Award recipient, Linda Thompson, and Alveno Castilla.



Judge Edith H. Jones (left), Judge and Mrs. Charles Clark, and Bettye Jolly.

Tri-County Lawyers Honored in Destin

Despite the initial uncertainty of how Hurricane Dennis would affect the 100th Annual Meeting of the Mississippi Bar, more than 400 lawyers assembled at the Sandestin Hilton to enjoy the resort and conduct the business of the Bar. Traditionally, the Saturday morning Farewell Brunch is the time for recognizing distinguished achievement by individual members and turning over the gavel to the new administration. Lawyers from Hinds, Rankin, and Madison Counties were among those honored.

Presented pins for fifty years of Mississippi Bar membership were William Ray Phillips of Clinton, Mary Libby Payne of Pearl, and Lauch M. Magruder, Jr., now of Highlands, NC., but a long time member of the HCBA.

Chief Justice James W. Smith, Jr. selected Presiding Justice William L. Waller, Jr. of Jackson and Jack E. Pool, also of Jackson, for the Chief Justice's Award.

Distinguished Service Awards went to Roy D. Campbell, III of Jackson and Ronald C. Morton of Clinton.

Mary Libby Payne of Pearl received one of the two Lifetime Achievement Awards.

Because of her years of practice in Jackson, the HCBA might be allowed to lay some claim to the loyalties of Joy Lambert Phillips of Gulfport, who became the first female president of the Mississippi Bar when she accepted the gavel from outgoing president Charlie Swayze whose son is in Jackson at MCSOL. Of course, our own C.York Craig, Jr. will be serving as president-elect this year.

The officers and members of the Hinds County Bar Association congratulate these lawyers for their outstanding service to the legal profession.

continued from page 5

Birmingham by forsaking his suburban white church and embracing a predominately black inner city congregation. Given that he had personally hired five consecutive self confessed crooks as CFO's at Health South without a clue of their ongoing, independent misdeeds, I have become even more unshaken in my steadfast faith in miracles.

The list of suspect men and women of the cloth goes on forever. Jimmy Swaggart, Jim and Tammy Faye Bakker lead a very long list of people who exploited sincere followers for their own gain. Our very own Preacher Edgar Ray Killen dodged a felony conviction back in the 60s when a lone holdout on a federal jury said she "just couldn't convict a preacher." And despite all the good the Catholic Church has done, except perhaps the Spanish Inquisition, Bishops who knowingly reassigned collar-wearing pedophiles to other parishes to prey on the children of devout church members not to mention the pedophiles themselves make a mockery of trust and any claim to moral authority the Church may have had.

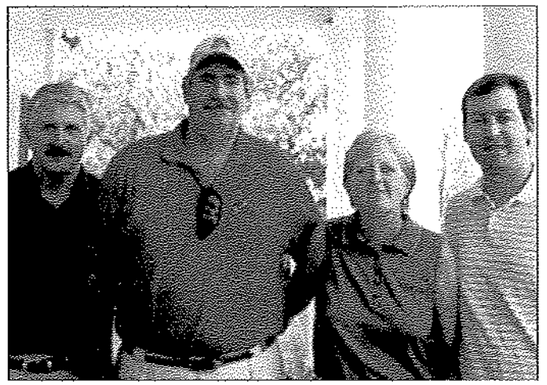
My two current favorites in the "I know what's best for you" culture of spiritual certitude are Dr. James Dobson and Tony Perkins. They both share hundred dollar haircuts, head political machines that prominently contain the word "family" and have the phone numbers of high-ranking Republican officials for whom they have raised millions of dollars programmed into their cell phones. They make no secret of the fact that they know God's will in explicit detail and want to cram it down every single American throat, mine included whether their views are shared or not. Perhaps they are well intended, but their take on things seems just a little too Talibanish for me, if you know what I mean.

The bottom line is this: I'd like to ponder the reverent mysteries of God on my own, thank you. I am doing just fine without the benefit of all the pat answers others are so eager to provide for me through the vehicle of expanded state sponsored spirituality. Justice O'Connor, a self-described conservative understands how I feel. Unfortunately, she will no longer be on the Supreme Court to look out for people like me.

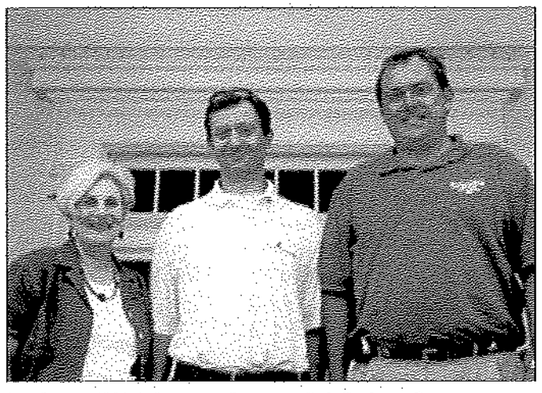
Editor's Note: This is an opinion column intended to provoke thought and encourage discussion. The viewpoints expressed are solely those of Captain Equity and are not to be attributed to the Hinds County Bar Association, its officers and directors or its editorial board.

2005 Golf Tournament

The Hinds County Bar held its 13th Annual Golf Tournament on Thursday, May 19, at Annandale Golf Club. The proceeds from the tournament, chaired by Rob Dodson, will be contributed to the Mississippi Volunteer Lawyers Project. Serving on the Committee with Dodson were: Tommie Cardin, Rusty Brown, Keith Obert, Ben Piazza, Debbie Allen, Stuart Kruger, Harris Collier, Jay Bolin and Collier Simpson.

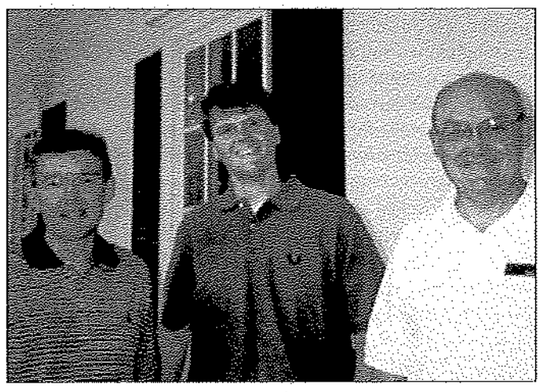


Ricky Luke; Ben Piazza, Past HCBA President and Committee Member; Debbie All and Lyle Robinson, Committee Members.

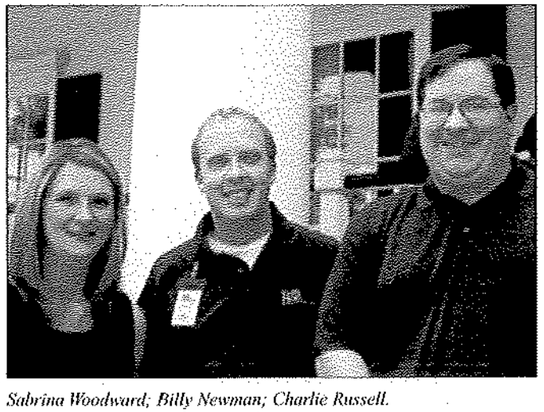


Pat Evans, HCBA Executive Director; Rob Dodson, Committee Chairman; Rusty Brown, Committee Member.

Tina Gwin; Harris Collier, Past HCBA President and Committee Member; Margaret Collier; Lindsay Woodrow.



Tommie Cardin, Committee Member; Jay Kilpatrick; Ken Lefoldt.

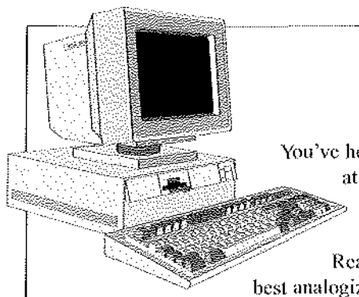


Sabrina Woodward; Billy Newman; Charlie Russell.

John Gordon and Cole Taylor

On Computing

by Joel Howell



You've heard about BLOGs (here at least), but are you taking advantage of the power of RSS?

Really Simple Syndication is best analogized to the feed readers or aggregators used by major news organizations, such as the Associated Press and Reuters. Technically, RSS is a family of XML file formats for web syndication used by weblogs and websites to provide a short description of web content with links to the full version. This is delivered by an XML file called, among other things, an RSS channel. RSS allows you to track updates from that feed by using a news aggregator.

A few examples will make this clearer. There are some 240 federal government feeds. Most can be found through the federal RSS Library at *www.firstgov.gov/Topics/Reference_Shelf/ Libraries/RSS_Library.shtml*. These feeds are indexed by topics from agriculture to statistics.

Doubtless you are aware of the Cornell Legal Information Institute, www.law.cornell.edu, which archives U.S. Supreme Court opinions. You should also know that those opinions are being circulated by its fiibulletin. The feed at *http://straylight.law.cornell.edu/supct/rss/0.91/ supct_today.rss* provides decisions for the current day. Recent decisions are provided through *http://straylight.law.cornell.edu/supct/rss /0.91/supct_recent.rss*.

Washington and Lee School of Law monitors the table of contents of more than 500 law journals via *http://law.wlu.edu/library/feeds/index.asp*. From this, you can search the entire list of publications or download a file that allows you to load the whole list to your own RSS reader.

Secretary of State Blawg, *www.leaplaw.com/blawg* tracks corporate and UCC filing information and requirements from all 50 states. It includes an RSS feed for the blog as a whole, as well as one for each of the 50 states.

GovTrack, *www.govtrack.us* monitors the status of federal legislation, speeches of members of Congress, voting records, campaign contribution, and a lot more. Better yet, you can define issues you want to follow and receive updates through an RSS feed.

Microsoft considers this of sufficient import to integrate RSS support into the next versions of Internet Explorer (7.0) and Windows (Longhorn, said to be out the second half of next year, but don't hold your breath).

For more detail on RSS and links to software for implementation, take a look at Wikipedia, *www.wikipedia.org*.

Ever wonder how big the Internet is? A web search on Google explores 8,050,044,651 web pages (and that number will be larger by the time you read this). After a Google search, click on "more" above the search line and take a look at Google Suggest, which helps phrase your most effective search terms.

Want public records information? Search Systems Worldwide Free Public Records Directory, *www.searchsystems.net*, can explore 30,355 public record databases. You can search by geographic location, including, but not limited to, nationwide, statewide, worldwide, and outer space (try it and see!)

Attorney Howard Nations maintains National Legal Links, *www.howardnations.com*, which has links to the law of all 50 states, federal and state government sites, databases for 10 personal injury sites, 14 causation areas, many medical sites, and 25 general resource areas.

Finally, we are a couple of months into the implementation of Casemaker, accessible through the Mississippi Bar website. It's available for every Bar member; if you haven't tried it yet, don't miss out any longer.

Questions or comments? Email webmaster@hindsbar.com.

HCBA Members Participate in Stewpot Food Drive

When Stewpot Community Services called the HCBA about the sixth annual "Christmas in July" food drive, more than a dozen law offices rallied to help. These firms set up collection boxes for non-perishable food donations and asked all employees to participate in the food drive.

Melody McAnally of Bradley Arant Rose & White performed liaison duties between firms and Stewpot. Leyser Hayes helped to coordinate the Attorney General's office for support, and LeAnn Nealey of Butler Snow solicited additional volunteers

Linda Thompson spearheaded the HCBA Stewpot Committee. Thompson said, "Thanks to all who donated food for Jackson's hungry, marginalized people. I hope this will become an annual project for the Hinds County Bar."

Book Notes

by Nonie Joiner

Our Editor has indicated that he thinks Book Notes should concern books which involve legal topics. His suggestion for this issue was a book titled something like *Adventures of a German Slave Girl in Old New Orleans*. I'm afraid to look up the correct title for fear of a sudden influx of peculiar e-mails and advertisements. The Editor insists that the book addresses serious legal issues, but I have decided to leave it to him to do that particular book review.

Instead, I'm going to call your attention to *The Journal of Mississippi History*, which frequently contains articles of interest to the legal community. The current issue, Summer 2005, contains an article by Donald K. Mitchener titled "Divided Loyalties: Reactions of Mississippians to Franklin D. Roosevelt's Supreme Court Reform Proposal." This most interesting article details the reaction of Mississippians to the proposed reform, and suggests that it had a long-lasting effect on the politics of the state. All of the following, except my questions at the end, were drawn from this article, which I urge you to locate and read.

If you haven't thought about this recently, as I hadn't, let me refresh your memory. In 1936, Roosevelt was elected to a second term by the widest majority in over a century, and Democrats won control of both houses of Congress. The United States Supreme Court, however, was solidly conservative and pro-business. Beginning in 1935, the Court handed down a series of decisions which invalidated acts passed as part of Roosevelt's New Deal. Several of these decisions were unanimous. In February 1937, Roosevelt sent to Congress a federal judiciary "reform" proposal which would allow the president to name an additional Supreme Court justice for each sitting justice who was more than 70 1/2 years old. This would have permitted Roosevelt to name 6 new justices. The proposed reform, of course, created a storm. Within two months, the Court handed down two decisions favorable to Roosevelt's political position. Then a justice retired, allowing Roosevelt to replace him with Hugo Black, and Roosevelt's main supporter in Congress, the Senate majority leader, died. In July, 1937, the bill was sent back to committee and died there.

In 1937, Mississippi had seven Representatives; the two Senators were Pat Harrison and Theodore G. Bilbo. Initially, of the congressional delegation, only Wall Doxey and Aaron L. Ford opposed the proposal. Reaction at home in Mississippi was more varied. Bilbo, a supporter of any cause that purported to support the little man against the more privileged classes, actively tried to ensure passage of the bill. He read into the Senate record a resolution by the Mississippi Bar Association in support of the reform plan. According to Mitchener, the resolution had passed by a Bar Association vote of 165 to 101, although the Bar's Board of Commissioners had voted against it 14-3. One wonders how this matter ever got to the membership for a vote, and how many members the Bar had at that time.

Newspapers in Mississippi and in Memphis and New Orleans contained many editorials and letters to the editor which addressed the issue. Fred Sullens of the *Jackson Daily News* is quoted as writing that opponents of the reform plan "'. . . want[ed] to cling to moth-eaten precedents and be governed by the thoughts of men long dead. . . . '" He thought the bill would pass, because "'The people have the votes and Roosevelt still holds the gravy ladle with a firm and vigorous hand.'" The editor of the *Madison County Journal* also thought the bill would pass, but did not editorialize in favor of it. The editor of the *Tupelo Daily Journal* stated that Roosevelt could "'restore prosperity and make it permanent'" if he could "'[re]move the reactionary obstructionists on the Supreme Court.'" On a more practical note, the ". . . *Drew Leader* editor stated that men over sixty were just not able to carry on business as well as were men of a younger age." The *Oxford Eagle*'s editor thought that the bill "'was designed to help the masses rather than the 'economic royalty' group.'"

There were, however, frequent expressions of opposition. E. A. Doty of Kosciusko wrote to *The Commercial Appeal* that "With maturity came vision. . . 'We don't need any boy judges.'" Ernest Smith, editor of the Greenville *Daily Democrat Times*, wrote that most Washington County lawyers he'd talked to were opposed to the reform, and that "'. . . we find opposition stronger than any we have ever seen to a Democratic administration measure.'" Many southern Democrats, though loyal to the party, thought that this time, Roosevelt had gone too far. Mitchener suggests that the objections of southern Democrats, based on constitutional issues, may have been the first crack in the foundation of the Democrats' previously solid south.

After Roosevelt's attempt to pack the Court, we had a Democratic president, a Democratic-controlled Congress, a Democratic south, and a Supreme Court headed toward liberalism. Now we have a Republican president, a Republican-controlled Congress, a Republican south, and a Supreme Court very likely headed toward a long period of conservatism. Are there any lessons to be learned here from the objections, based on constitutional issues, of many moderate southern Republicans to some of the proposals of extremely conservative Republicans?

The Journal of Mississippi History is a quarterly publication of the Mississippi Department of Archives and History, in cooperation with the Mississippi Historical Society. For only $25, you get membership in the Historical Society, and receive the *Journal* as well. It's a deal. Of course, if you'd care to give them a little more, they'd appreciate it.

Additions to the State Law Library from Hinds County Law Library Funds: January-June 2005

by Charles Pearce, State Law Librarian

Below is a list of recent book acquisitions at the State Law Library. Most can be checked out for three days, and a few can be checked out for two weeks. Please let us know up front if books are needed longer.

At the end of the list, please notice the Mississippi law titles of which most are seminar books. To find other books in the State Law Library's collection, go to *www.mssc.state.ms.us* and click the Law Library button at the top of the screen.

CALL #	AUTHOR	TITLE
HV 5825 .L96 2002	Lyman, Michael D.	Drugs in society : causes, concepts and control
KF 1534 .S64	Spero, Peter	Fraudulent transfers : applications and implications
KF 1121 .F67	Force, Robert	The law of seamen
KF 1164 .A648i 1996	Holmes, Eric M.	Holmes's Appleman on insurance, 2d
KF 1249 .R45	Rheingold, Paul D.	Mass tort litigation
KF 1250 .B35	Baker, William Gary	Determining economic loss in injury and death cases
KF 1250 .D61 2001	Dobbs, Dan B.	The law of torts
KF 1250 .E25	Eck, James R.	Structuring settlements
KF 1257 .A3H67	Hornwood, Sanford W.	Systematic settlements 3d : a practical guide for the personal injury specialist
KF 1257 .B67	Boston, Gerald W.	Emotional injuries : law and practice
KF 1257 .O73 2004	O'Reilly, James T.	The lawyer's guide to elder injury and accident compensation
KF 1262 .E43	Elder, David A.	Privacy torts
KF 1266 .E43	Elder, David A.	Defamation : a lawyer's guide
KF 1286 .C65		Comparative negligence manual
KF 1296 .B37	Bass, Lewis	Products liability : design and manufacturing defects 2d
KF 1298 .H45	Heidt, Kathryn R.	Environmental obligations in bankruptcy
KF 1299 .H39C48	Cetrulo, Lawrence G.	Toxic torts litigation guide
KF 1301 .5 .I58A85	Ashley, Stephen S.	Bad faith actions : liability and damages
KF 1375 .C35	Callison, J. William	Partnership law and practice : general and limited partnerships
KF 1380 .Z9M362 2005	Mancusco, Anthony	LCC or corporation? : how to choose the right form for your business
KF 1388 .Z9R86 2005	Runquist, Lisa A.	The ABC's of nonprofits
KF 1425 I57		Internal corporate investigations
KF 1501 .C72	Crandall, Thomas D.	The law of debtors and creditors : bankruptcy, security interest, collection
KF 1524 .A34 2005	Ahern, Lawrence R.	Bankruptcy procedure manual
KF 1524 .A37	Aaron, Richard I.	Bankruptcy law fundamentals
KF 1524 .B76 2004	Brown, William Houston	Bankruptcy exemption manual
KF 1524 .C54	Cohen, Arnold B.	Consumer bankruptcy manual
KF 1524 .S74	Steinberg, Howard J.	Bankruptcy litigation
KF 1527 .A31R47 2005	Resnick, Alan N.	The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 : with analysis
KF 154 .M35 2004		Major acts of Congress
KF 154 .O94 2002		The Oxford companion to American law
KF 154 .W47		West's encyclopedia of American law
KF 156 .A113 2003		1001 Legal words you need to know
KF 170 .R3	Rabkin, Jacob	Current legal forms : with tax analysis
KF 220 .C68 1998		Courtroom drama : 120 of the world's most notable trials
KF 220 .G73 2002		Great American trials
KF 242 .A1L48	Levitt, Carol A.	The lawyer's guide to fact finding on the Internet

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KF 250 .S67 2004	Small, Daniel I.	Letters for litigators : essential communications for opposing counsel, witnesses, clients, and others
KF 251 .G37 2004	Garner, Bryan A.	The winning brief : 100 tips for persuasive briefing in trial and appellate courts
KF 300 .S74	Stein, Jacob A.	The law of law firms
KF 306 .R68 2005- 2006	Rotunda, Ronald D.	Legal ethics : the lawyer's deskbook on professional responsibility
KF 313 .M45	Meiselman, David J.	Attorney malpractice : law and procedure
KF 3319 .E47	Rothstein, Mark A.	Employment law
KF 3455 .A65M66	Moore, Maureen F.	Employment forms and policies
KF 3464 .15 .L58	Livingston, Donald R.	EEOC litigation and charge resolution
KF 3467 .A7S49 2001		Sexual harassment in the public workplace
KF 3469 .M66	Mook, Jonathan R.	Americans with Disabilities Act : employee rights & employer obligations
KF 3489 .L43	Leader, Laurie E.	Wages and hours : law & practice
KF 3605 .M3	McCormick, Harvey L.	Medicare and Medicaid claims and procedures
KF 3626 .A6G73	Graham, Howard L.	Federal Employees Compensation Act practice guide
KF 3649 .B35	Balsam, Alan	Disability handbook
KF 3964 .M64M65 2003		Toxic mold litigation
KF 4548 .E53 2000		Encyclopedia of the American Constitution
KF 4548 .O94 1999		The Oxford guide to United States Supreme Court decisions
KF 529 .M67 2001	Morgan, Laura W.	Attacking and defending martial agreements
KF 535 .G65	Gold-Bikin, Lynne Z.	The divorce trial manual : from initial interview to closing argument
KF 5698 .J84	Juergensmeyer, Julian	Land use planning and development regulation law
KF 5698 .Z59	Zizka, Michael A.	State & local government land use liability
KF 605 .S56	Borron, John A.	The law of future interests
KF 695 .N45	Nelson, Grant S.	Real estate finance law
KF 695 .P33		Padrick's RESPA, TILA, HOEPA and ECOA in real estate transactions, with forms
KF 755 .A65M8	Murphy, Joseph Hawley	Murphy's will clauses : annotations and forms with tax effects
KF 755 .R67	Ross, Eunice L.	Will contests
KF 850 .S95	Sylvia, Claire M.	The False Claims Act : fraud against the government
KF 8742 .A35O93 2005		The Oxford companion to the Supreme Court of the United States.
KF 8752 .H58	Hittner, David	Federal civil procedure before trial : Ffith Circuit edition
KF 879 .527 .H38	Hawkland, William D.	Uniform Commercial Code series
KF 8840 .B76 2004	Brown, Heidi K.	Fundamentals of federal litigation
KF 8887 .V35	Vairo, Georgene M.	Rule 11 sanctions : case law, perspectives and preventive measures
KF 8900 .A3D359	Danner, Douglas	Pattern discovery. Tort actions.
KF 8900 .D57		Discovery proceedings in federal court
KF 8900 .I48	Imwinkelried, Edward J.	Pretrial discovery : strategy & tactics
KF 8900 .L57	Lisnek, Paul Michael	Depositions : procedure, strategy and technique
KF 8900 .V47	Vesper, Tom	ATLA deposition notebook
KF 8915 .A76T7	Aron, Roberto	Trial communication skills
KF 8915 .B47 2003	Berg, David,	The trial lawyer : what it takes to win
KF 8915 .C45	Childress, Celia W.	Persuasive delivery in the courtroom
KF 8915 .G53	Gianna, Dominic J.	Opening statements : winning in the beginning by winning the beginning
KF 8915 .H47	Herman, Russ M.	Courtroom persuasion : winning with art, drama and science
KF 8915 .K47	Kestler, Jeffrey L.	Questioning techniques and tactics
KF 8915 .L37 2004	Lavine, Douglas S.	Questions from the bench
KF 8915 .P88	Purver, Jonathan M.	The trial lawyer's book : preparing and winning cases

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KF 8915 .Z9V47	Vesper, Thomas J.	ATLA trial notebook
KF 8920 .P68	Pozner, Larry S.	Cross-examination : science and techniques
KF 8924 .C67 1997	Corboy, Philip H.	Final arguments
KF 8925 .B84C6	Conger, Dwight G.	Construction accident litigation
KF 8925 .P4A8		ATLA's litigating tort cases
KF 8925 .P4K64	Koehler, Karen K.	Litigating minor impact soft tissue cases
KF 8925 .P4S65 2002		The spine at trial : practical medicolegal concepts about the spine
KF 8925 .P4T39	Taylor, J. Sherrod	Neurolaw : brain and spinal cord injuries
KF 8925 .T7H36		Handling motor vehicle accident cases
KF 8925.4 .P79 2002		Psychological injuries at trial
KF 8935 .I45U5	Imwinkelried, Edward J.	Uncharged misconduct evidence
KF 8935 .J64	Fishman, Clifford S.	Jones on evidence, civil and criminal
KF 8940 .P7J34	Jakala, Daniel P.	Defense against a prima facie case
KF 8947 .L36 2004	Lange, Michele C.S.	Electronic evidence and discovery : what every lawyer should know
KF 8950 .S26 2003	Sandler, Paul Mark	Model witness examinations
KF 8958 .R68	Rothstein, Paul F.	Federal testimonial privileges : evidentiary privileges relating to witnesses
KF 8959 .A7E67 2001	Epstein, Edna Selan	The attorney-client privilege and the work-product doctrine
KF 8959 .A7R53	Rice, Paul R.	Attorney-client privilege in the United States
KF 8961 .L36	Lancaster, Walter R.	Expert witnesses in civil trials : effective preparation and presentation
KF 8965 .A6C36	Campbell, Terence	Cross examining experts in the behavioral sciences
KF 8968 .25 .S39	Schwartz, Max	Engineering evidence
KF 8972 .S56	Singer, Amy 1953-	Trials and deliberations : inside the jury room
KF 8972 .S86 2004	Sunwolf, Dr.	Practical jury dynamics : from one juror's trial perceptions to the group's decision-making processes
KF 8979 .B58	Blue, Lisa	Blue's guide to jury selection
KF 8979 .D66	Donner, Ted A.	Jury selection : strategy and science
KF 8979 .J67	Jordan, Walter E.	Jury selection : the law, art, and science of selecting a jury
KF 8984 .A65A5 2005		Model jury instructions : business torts litigation
KF 902 .C66 2004		The construction contracts book : how to find common ground in negotiating design and construction contract clauses
KF 9050 .F74 2003	Frederick, David C.	Supreme Court and appellate advocacy : mastering oral argument
KF 9050 .W5 2004	Wiener, Frederick	Effective appellate advocacy
KF 9084 .A6A4		Alternative dispute resolution practice guide
KF 9084 .C65	Cole, Sarah R.	Mediation : law, policy, practice
KF 9084 .F73 2001	Frascogna, X. M.	The lawyer's guide
KF 9084 .S36	Schoenfield, Mark K.	Legal negotiations : getting maximum results
KF 915 .L44		Legal aspects of selling and buying
KF 9219 .K56 2004	Klotter, John C.	Criminal law
KF 9656 .C75		Criminal defense techniques
KF 9660 .C68	Imwinkelried, Edward J.	Courtroom criminal evidence
KF 9668 .R54 2001		The right against self-incrimination in civil litigation
KF 9672 .C37	Carroll, William	Eyewitness testimony : strategies and tactics
KFM 6668 .M577 2005		Model forms for criminal affidavits : statutory references and penalties : a handbook for judges, clerks, prosecutors and law enforcement officers
KFM 6691 .A75C682	Courtney, Richard A.	Mississippi elder care planning : how to protect assets and provide for services
KFM 6712 .Z9L55		Like kind real estate exchanges in Mississippi
KFM 6717 .B67 2003	Bost, William M.	Evictions and landlord/tenant law in Mississippi

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KFM 6727 .L33 2004	Lacy, Don P.	Recognizing and curing Mississippi real estate title problems
KFM 6744 .Z9C68 2004	Courtney, Richard A.	How to draft wills and trusts in Mississippi
KFM 6744 .Z9G56 2004	Glover, William H.	The probate process from start to finish in Mississippi
KFM 6747 .G56 2005	Glover, William H.	A practical guide to estate administration in Mississippi
KFM 6767 .C6G65 2004	Golmon, Bradley T.	Debt collection from start to finish in Mississippi
KFM 6767 .C6H35 2004	Haley, Elbert E.	FDCPA compliance for the Mississippi practitioner
KFM 6785 .B54 2005	Biggs, Robert A.	Insurance coverage law in Mississippi
KFM 6785 .H36 2004	Hannan, Edwin Y.	Bad faith litigation in Mississippi
KFM 6785 .I58 2004		Insurance bad faith claims in Mississippi
KFM 6791 .A43H86	Hunt, Victor Donald	Uninsured and underinsured motorist law in Mississippi
KFM 6791 .A4O3	O'Donnell, David D.	Mississippi automobile insurance law and practice
KFM 6796.3 .A8P73 2004		A practical refresher on litigating the Mississippi auto injury case
KFM 6807 .5 .Z9C37	Carlisle, Edward L.	Fundamental principles of limited liability companies in Mississippi
KFM 6810 .F54 2004	Flemming, Rusty A.	Choice of business entity in Mississippi : how to do it right
KFM 6821 .A75L46 2004	Leonard, Vann F.	Bankruptcy in Mississippi
KFM 6931 .B37 2004		Basic wage and hour law in Mississippi
KFM 6934 .E55C37 2004	Carroll, Christina L.	Employment discrimination update in Mississippi
KFM 6934 .E55H36 2005	Hammond, Rick A.	Selecting and terminating employees in Mississippi
KFM 7037 .8 .P64		The Mississippi law enforcement officer's handbook
KFM 7058 .A75G64	Goff, David C.	Zoning and land use in Mississippi
KFM 7129 .A3M54 2005		Mississippi rules annotated
KFM 7136.6 H47 2004	Herrington, Brian K.	Litigating the class action lawsuit in Mississippi
KFM 7139 .P4H36 2005	Hall, John C.	Advanced personal injury practice in Mississipp
KFM 7175 .F666 2004	Rychlak, Ronald J.	Mississippi criminal trial practice
KFM 7180 .E9Q56 2005	Quinn, William M.	Getting your evidence and expert testimony admitted into court in Mississippi

MISSISSIPPI COLLEGE LAW LIBRARY HOURS

August 21, 2005 - January 10, 2006

Monday - Thursday .....7:30 a.m. - midnight
Friday .....7:30 a.m. - 9:00 p.m.
Saturday .....9:00 a.m. - 9:00 p.m.
Sunday .....noon. - midnight

EXCEPTIONS

Labor Day

Monday, September 5th .....9 a.m. - 5 p.m.

Thanksgiving

Wednesday, November 23rd.....7:30 a.m. - noon
Thursday & Friday (Nov. 24th & 25th) ..CLOSED

EXAM SCHEDULE

December 2nd - 14th

Monday - Friday.....7:30 a.m. - midnight
Saturday .....9 a.m. - midnight
Sunday .....noon - midnight

Christmas

December 15th & 16th.....7:30 a.m. - 5 p.m.
December 17th & 18th .....CLOSED
December 19th & 21st .....7:30 a.m. - 5 p.m.
December 22nd .....7:30 a.m. - 4:30 p.m.
December 23rd - January 1st .....CLOSED
January 2nd - 6th .....7:30 a.m. - 5 p.m.
January 7th & 8th.....CLOSED
January 9th & 10th..... 7:30 a.m. - 6 p.m.

Regular hours will resume Wednesday, January 11th.
For more information please call 925-7120
Hours are subject to change without notice.

HINDS COUNTY BAR ASSOCIATION

Correspondence regarding the newsletter should be directed to: HCBA Newsletter Editor, 151 E. Griffith Street, Jackson, MS 39201. Letters to the editor must be signed, but the writer's name will be withheld upon request. Telephone inquiries should be made to the Executive Director at 601-969-6097. The web site address is hindsbar.com.

Hinds County Bar Association, Inc.
151 E. Griffith Street
Jackson, MS 39201

FIRST CLASS

IMPORTANT

HCBA Luncheon Meeting & Ethics CLE 11:30 a.m.,, August 16

HCBA

HINDS COUNTY BAR ASSOCIATION

MAKING OUR CASE FOR A BETTER COMMUNITY

DECEMBER 2005

President's Column

by Alveno N. Castilla

Remembering Rosa Parks

(1913-2005)

It would be an omission of epic proportions, and probably unforgivable, if I failed to pay tribute in this column to Mrs. Rosa Louise McCauley Parks, who died from natural causes at her home in Detroit on October 24, 2005. She was 92 years old. Every lawyer reading this newsletter certainly knows who Mrs. Parks was and the significance of her role in the transformation of our country's civil justice and legal system. I want to make sure that as President of the HCBA, I join those who have publicly expressed condolences to her family on her passing and I will forward a copy of this newsletter to them. I also voice my thanks to Mrs. Parks for the courage, pride, strength and perseverance she exhibited, beginning that fateful day in Montgomery, Alabama in December 1955, and continuing throughout her lifetime.

Mrs. Parks' story has been recounted many times over the years, but it will never grow old and is worthy of repeating here because of what it means in the context of our notions of civil rights and equal justice under the law in the United States. Montgomery's Jim Crow segregation laws were complex in 1955. Black passengers were required to pay their fare to the driver, get off the bus and then reenter through the back door. Sometimes, the bus would pull off before the paid-up customer made it to the back entrance. The law reserved the first four rows of a city bus for whites and the last ten rows for blacks. The seats in the middle could be used by blacks if no whites sought them. If the "white section" was full and another white customer entered, blacks sitting in the middle section were required to give up their seats and move farther toward the back. Not only were black riders strictly forbidden from sitting next to whites, they were not even allowed to sit across the aisle from a white rider.

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October Membership Meeting

Presenting the program at the October HCBA Membership Meeting were: Steve Orlansky, Chairman, Mississippi Equal Justice Foundation; Lindia Robinson, Executive Director, State Initiatives Mississippi Center for Legal Services; and Cheri Green, Coordinator, Resource Development Mississippi Legal Services Programs. They are being welcomed by Alveno Castilla, HCBA President.

HCBA Calendar of Events

February 6-24, 2006
Pictorial Directory Photos Taken
8:30-5:00
MC School of Law

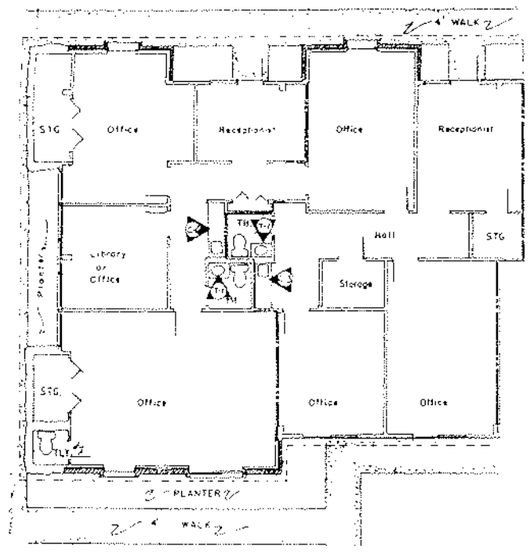
February 21, 2006
HCBA Membership Meeting
Noon Capital Club

April 18, 2006
HCBA Membership Meeting
Noon Capital Club

April 27, 2006
HCBA Golf Tournament.
Noon
Annandale Golf Club

OFFICE SPACE FOR LEASE

Very nice executive suite. 2,500 sq. ft., 8 large offices, plenty of storage and parking, street frontage, conveniently located at 2964 Terry Road near banks, interstates 20, 55, & 220. Call 601-373-5188'



HCBA Officer Candidates Announced

The nominations committee is pleased to announce the following HCBA members who have graciously agreed to run for office for the year 2006-2007

The Nominees for the three positions to be filled are:

Secretary - Treasurer	Director - Post 3	Director - Post 4
Deanne Mosley	Bo Gregg	Melody McAnally
Susan Tsimortos	David Maron	Laura McKinley

The Association's bylaws provide that any other member of the HCBA may be nominated by petition signed by not fewer than twenty HCBA members in good standing and filed with the Secretary - Treasurer on or before January 15.

A ballot and biographical sketch of each nominee will be mailed to each member in good standing during the month of February. For further information. please call HCBA Executive Director Pat Evans at 601-969-6097.

Uncle Sam and Christmas

by Cadet Equity

(Editor's Note: Captain Equity was called out of town shortly before the deadline for his column. Consequently, he has recruited a guest author who is none other than the Captain's precocious twelve year old son, Cadet. Captain Equity will return in the February 2006 issue.)

My dad had to go to Alaska to try and help some of his clients here in Mississippi gain subcontractor status on some FEMA no bid contracts for reconstruction work on the Gulf Coast that were given to companies in the frozen north. Before he left, he told me that while in Alaska he was going to take a digital picture of the site of that $237 million bridge to nowhere that was part of this summer's federal highway bill. Because that project was recently reaffirmed by 82 senators even after *Katrina* and *Rita*, he deemed it of sufficient national importance to include in our family patriotic photo album. He said it will rest proudly between photos of the Watergate complex in Washington and a landscape shot of Teapot Dome, Wyoming. I can't wait to see it. So anyway, in his absence, he asked me to write about our family Christmas this year.

Well, the Christmas tree is all decorated and the packages are all wrapped, but unfortunately, some of our favorite relatives won't be able to celebrate the holidays with us. You see, we have a big extended family. Our favorite relative is Uncle Sam. Actually, there are a lot of Uncle Sam's in our family some of whom are Aunts. They all live in Washington part of the year and have second homes scattered throughout the country. Actually, according to my dad, everybody who is not an illegal alien has the same big extended family. I guess they came over on the Mayflower or were Indians or something like that. Anyway, as my dad explained it, the Sam part is actually a governmental acronym which stands for "Substantial Amount of Muckety Mucks." Even though I am just in the sixth grade, I find this a little confusing. It would seem that the correct spelling should be UNCLE SAoMM. I asked my teacher about this and she said that the "o" was silent, kind of like the "r" in colonel but not exactly. As to the second "M" she said that the federal statute that created the acronym was passed at midnight on a voice vote in Congress way back in 1991 when Dan Quayle was Vice President. Apparently, it was a last minute rider to a tax increase bill styled "The Thousand Points of Light, Stay the Course, Better Late Than Never, Revenue Enhancement Act." According to my teacher, the Vice President misspelled SAM and nobody caught it before the President signed it into law. Mom said that the Vice President was probably reading the President's lips and just misunderstood. Dad said it was because the Vice President wasn't a very good speller.

Anyway, like I said, we aren't expecting a very merry Christmas this year because one of our favorite Uncles named Dubya won't be coming to visit. He's real nice. Uncle Dubya is married to Ms. Laura who is even nicer. I know it's kind of selfish, but one of the reasons we like Uncle Dubya so much is that he always brings us nice presents. He brought my parents a couple of real nice tax cuts a few Christmas's back. One of my friends on the gulf coast whose house got destroyed in the hurricane just got a bag of ice from Dubya. Although he and his family could have made better use of it in late August, my good natured friend considered it an early Christmas present. The only problem was that it was melted when it reached him at his family's tent. Apparently, Dubya got a Brownie or maybe it was a Cub Scout to mail it. Apparently, it was put on a truck in Washington addressed to my friend on the coast. For some odd reason, the bag of ice was first sent to Maine and then Montana and back to Maine before going to Biloxi. I don't know why Uncle Dubya couldn't have overnighted it to my friend by Fed Ex rather than have a Brownie mail it. I guess I'm too young to understand some things.

Uncle Dubya and Ms. Laura were planning on visiting this year on the way to their ranch in Texas with a stopover at the Chevron refinery in Pascagoula to deliver part of a $12 billion dollar Christmas present to the oil industry that was included in this summer's energy bill. Mom said Uncle Dubya had promised to bring Aunt Harriet, a nice lady who works in his office with them. Apparently Aunt Harriet got a big promotion in October. My mom was making a black robe for Aunt Harriet to wear at her new job, but just before Halloween she gave it to my sister to wear as part of her witch's costume. I asked mom if anything was wrong. She said Dubya told her everything was great.

Another one of our uncles who is not so nice is Uncle Dick. Dad says that Uncle Dick hates Christmas but loves Halloween because he and his

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The Constitution and Judicial Independence
Judge William C. Keady Lecture

by Honorable James E. Graves, Jr., Associate Justice, Supreme Court of Mississippi (Reprinted in part by permission)

Judicial independence has been defined as the freedom of the judiciary to render justice fairly, impartially, in accordance with the law and the United States Constitution, without threat, fear of reprisal, intimidation or other influence or consideration.

Alexander Hamilton … wrote in the Federalist #78 to defend the role of the judiciary in the constitutional structure of government. He was emphatic that "there is no liberty, if the power of judging be not separated from the legislative and executive powers.… [L]iberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments"….

Challenges to judicial independence at the federal and state level include the unwarranted criticism of the judges, single-issue campaigns against sitting judges, inadequate funding of the judiciary, judicial recall elections, proposed term limit constitutional amendments, partisan delay in confirmation of federal judicial nominees, threats of impeachment/calls for resignation, and reductions in state and federal sentencing power and discretion. The implications of these challenges to our justice system are far-reaching and undermine court legitimacy and democratic ideals.

Let's first look at the decision in *Brown v. Board of Education* and why it is so important in the context of a discussion of judicial independence. Here's why it is so illuminating:

First of all, those justices, those nine white men from all over the country decided to do what was right. They did the right thing for the right reason. Unfortunately, there are some people, even among today's judiciary, who lack the courage and the conviction to do that.… (Brown) was a unanimous decision.… Those nine men recognized the importance of a united front in such an important decision.… In light of the Court's earlier precedent in *Plessy v. Ferguson*, those justices were certainly labeled judicial activists. What was then viewed by so many as "activism" is now highly praised as "justice."

A judicial activist is any judge who makes a decision with which a very vocal group, large or small, disagrees. However, there is today almost universal praise for the (*Brown v. Board of Education*) decision and almost universal disdain for the Jim Crow system which compelled it. "Judicial activism" is usually associated with liberals, but lately conservatives have been far more likely to strike down laws passed by Congress.… According to Yale Law Professor Paul Gewirtz, Justice Clarence Thomas has voted to invalidate 65 percent of the laws that have come before him in cases while those justices least likely to do so where Ruth Bader Ginsburg and Stephen Breyer.

There have been several major attempts throughout our history to interfere with judicial independence. This is not a new issue. Judges are often accused of being activists, unaccountable and out of the mainstream.

The framers of our Constitution struck a balance between accountability and judicial independence. Hence, (federal) judges have the security of a lifetime appointment which is made by the executive branch with the advice and consent of the legislative branch. In other words, elected officials who are accountable to the public make the decisions regarding service in the judicial branch. It is indeed a system which facilitates judicial independence.

The judicial independence of state courts is an entirely different matter but not really. It's different because most states have elections for state court judges. It's not different because citizens want justice in whatever court they find themselves, whether by chance or by choice. However, in state court elections, the landscape has changed dramatically in the last 10 to 15 years.

Stephen Bright wrote in a Georgia State Law Review article that:

> Federal courts had to enforce the Constitution… because the state courts simply were not independent and did not enforce the law. A Georgia Supreme Court justice acknowledged that the elected justices of that court may have overlooked errors, leaving federal courts to remedy them via habeas corpus, because "[federal judges] have lifetime appointments. Let them make the hard decisions."

How much has changed since (the civil rights era). Mississippi still has judicial elections. And now more than ever before, special interest groups seek to secure the election, not of fair and impartial judges, but judges who will decide in their favor. From oil, tobacco, and pharmaceutical companies, to the insurance defense bar, to prosecutors, to the religious right, to labor unions, to the plaintiff's personal injury lawyers, to medical doctors and other health care providers, all seek to control the courts and the judges. So a judge can (a) try to please everybody, (b) try to please whoever has the most money, (c) try to please whoever controls the most votes, or (d) try to serve the interest of justice.

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William C. Keady: The Lacky Rowe Incident

by Wayne Drinkwater

[Editor's Note: William C. Keady was Chief Judge of the United States District Court for the Northern District of Mississippi from 1968-83. During his time on the bench, Judge Keady earned a national reputation for scholarship and fairness. Wayne Drinkwater was Judge Keady's law clerk from 1974-76.]

Before his appointment to the federal bench, William C. Keady was a member in good standing of Mississippi's legal establishment. A former member of the legislature and a Fellow of the American College of Trial Lawyers, in 1967 he was senior partner of a Greenville firm that included Roy D. Campbell, Jr., Fred C. Delong and James L. Robertson. In line to become president of the Mississippi Bar the following year, Bill Keady was universally regarded as one of Mississippi's best lawyers.

Mississippi was then aflame with racial passion. James Meredith's 1962 admission to Ole Miss came at the price of a riot, two deaths, and the mobilization of federal troops. Medger Evers was murdered in 1963. The following year, Michael Schwerner, James Chaney and Andrew Goodman were murdered in Neshoba County. In 1966, Vernon Dahmer was killed, and James Meredith was wounded while marching from Memphis to Jackson. In 1967, Ben Chester White was shot by the Klan, the treasurer of the Natchez NAACP was killed, and bombings damaged Temple Beth Israel and destroyed the home of the synagogue's rabbi.

Opponents of civil rights were also active in nonviolent ways. The Citizens' Council, formed in 1954 to preserve racial segregation, wielded great influence in the business and professional community. The State Sovereignty Commission conducted secret investigations of Mississippians thought to be sympathetic to civil rights. These and other groups brought powerful social and financial pressure on anyone who did not support Mississippi's racial traditions.

It was a dark time. No Mississippi lawyer interested in career advancement could be identified with those seeking to promote the civil rights of African-Americans.

In the midst of this turmoil, Bill Keady received an unsolicited telephone call from Whitney North Seymour, the president of the American Bar Association. Seymour was active in the Lawyers Committee for Civil Rights Under Law, the most effective civil rights organization litigating in Mississippi. Seymour said that Lacky Rowe, a young civil rights lawyer employed by the Lawyers Committee, had encountered a serious problem in Grenada with Circuit Judge Marshall Perry. Rowe needed help, immediately and desperately.

Judge Perry was a ferocious trial judge and a formidable protector of the status quo. In 1963, he had enjoined Mississippi State's basketball team from participating in the NCAA tournament, where the team would compete against racially integrated teams. On another occasion, Judge Perry jailed civil rights attorney R. Jess Brown for contempt of court. He had also not been helpful, to say the least, in desegregating the Grenada public schools.

In this case, Judge Perry had cited Rowe for criminal contempt. The charge arose from a minor breach of courtroom etiquette, in which Rowe's criminal defendant client, Robert Johnson, had inadvertently walked between Judge Perry and a grand jury venire while the judge was addressing the jurors. Judge Perry had ordered Johnson's immediate arrest and had advised him that he would be sentenced later in the court term.[1] When Rowe objected to this treatment of his client, Judge Perry ordered Rowe's arrest and charged *him* with criminal contempt. Rowe was one of a handful of lawyers licensed to practice in Mississippi who would appear on behalf of plaintiffs in civil rights cases, a fact known to Judge Perry.

Keady was fully aware of the political significance of Seymour's request. Nevertheless, he agreed to help. Rowe's criminal contempt charge was set for the next day, so Keady first called Judge Perry, with whom he had served in the legislature many years before. After the requisite jocular war stories about legislative days, Keady got to the point. He had just been asked to represent Rowe, whom he had never met, and needed a delay of a few days so that he could meet with his client and familiarize himself with the case.

The conversation turned icy. Judge Perry informed Keady that there would be no continuance, and that Rowe was plainly guilty of flagrant criminal contempt toward the court and would be sentenced accordingly. It was clear to Keady that the punishment Judge Perry had

[1] Judge Perry eventually sentenced the unfortunate Johnson to four months in jail for this offense. Johnson's experience with Judge Perry is recounted in *Johnson v. Mississippi*, 403 U.S. 212 (1971), in which the Supreme Court held that Judge Perry, who had been successfully sued by Johnson and enjoined for excluding African-Americans from juries in Grenada County, should have recused himself from ruling on Johnson's contempt charge. Judge Perry's sentence of Johnson occurred *two days* after the issuance of a federal court injunction that Johnson had obtained against Judge Perry.

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So if it happened that a white person had to sit in the middle section, any black riders would have to vacate that whole row. To make matters even more humiliating, black patrons kept the bus system running in that seventy-five percent of the customers were black.

Here are the actual abbreviated facts. On Thursday, Dec. 1, 1955, Mrs. Parks, a 42 year old seamstress for the Montgomery Fair Department Store, boarded the Cleveland Avenue bus. She sat down in the fifth row—the first row of the middle section—next to a black man at the window and across the aisle from two black women. At the next stop, several white passengers boarded, filling up the seats reserved in the "white section," and one man was left standing. Since the "white section" was full, the driver ordered Parks and the three other black customers on her row to move farther toward the back. The other riders did as they were told, but Mrs. Parks, in an act of indescribable courage, quietly refused to give up her place. This angered the driver, who put on the emergency brake, got out of his seat and went over to Mrs. Parks and again demanded that she move to the back of the bus. The driver threatened to call the police. Parks said: "Go ahead and call them." (The driver was the same one who had put her off a bus 12 years earlier for refusing to get off and reboard through the back door.) When she still did not budge, the driver left the bus and returned with a policeman. The driver chose to swear out a warrant rather than let Mrs. Parks go with a simple warning. Mrs. Parks was promptly arrested for violating the bus segregation laws, booked, fingerprinted, and jailed.

Bail was posted by Clifford Durr, a white lawyer whose wife had employed Mrs. Parks as a seamstress. That night, after discussing the situation with her husband and mother, Mrs. Parks agreed to the request of local civil rights leaders, led by E.D. Nixon, to challenge the constitutionality of Montgomery's public transportation segregation laws. She was the perfect test-case plaintiff—hardworking, polite and morally upright. Mrs. Parks, represented by Durr, went to trial on Monday, Dec. 5. The trial lasted 30 minutes, with the expected conviction and penalty: Mrs. Parks was found guilty of breaking a city segregation law and fined $10.00, plus $4.00 in court costs. That same afternoon, the Montgomery Improvement Association (the "MIA") was formed and served as the lead organization for implementing the full boycott of the Montgomery bus system that had been called the night of the arrest. Dr. Martin Luther King, Jr., a young Baptist minister and a newcomer to Montgomery, was elected as president of the MIA, and thus began his rise to world prominence as a civil rights giant.

The highly successful, nonviolent boycott continued while Mrs. Parks' appeal of her conviction worked its way through the court system. In November 1956, the United States Supreme Court ruled that Montgomery's segregation laws were unconstitutional. The boycott was called off after 381 days.

Mrs. Parks, who had always been poor, suffered even more financially in the immediate aftermath of her arrest. "In fact if I had let myself think too deeply about what might happen to me, I might have gotten off the bus," she said in her autobiography. She lost her job at the department store. Her husband Raymond quit his job after his boss ordered that no mention be made of "Rosa" or the case. She had trouble finding work anywhere in Alabama, and amid threats and harassment, she and her husband moved to Detroit in 1957.

It was as if Mrs. Parks was born to the role that she was ultimately cast into. Her actions changed the course of history in the South and America itself. As lawyers, we know that to effect meaningful and positive changes in the civil rights laws, there almost always has to be someone who is willing to stand up (or in Mrs. Parks' case, sit down) and stand firm against injustice despite adverse personal consequences. As lawyers, we owe a debt of gratitude to Mrs. Parks for her courage in taking on the challenge that she did during the horrible Jim Crow era. This incredible lady was truly one of our national heroines because she forever impacted for the better our system of laws and our societal moral center. She is worthy of all the accolades that she has received, including the honor of being the first woman to lie in state in the Capitol Rotunda.

In a most fitting gesture, on Dec. 1, 2005, the 50th anniversary of Mrs. Parks' actions, President Bush signed into law H.R. 4145, authorizing a statue of Mrs. Parks to be erected in the Capitol's Statuary Hall. At the signing ceremony, the president said: "By refusing to give in, Rosa Parks showed that one candle can light the darkness. Like so many institutionalized evils, segregation ultimately depended on public accommodation. Like so many institutionalized evils, once the ugliness of these laws was held up to the light, they could not stand. Like so many institutionalized evils, these laws proved no match for the power of an awakened conscience—and as a result, the cruelty and humiliation of the Jim Crow laws are now a thing of the past."

President Bush continued: "By refusing to give in, Rosa Parks called America back to its founding promise of equality and justice for everyone.... It is fitting that this American hero will now be honored with a monument inside the most visible symbol of American democracy. We hope that generations of Americans will remember what this brave woman did, and be inspired to add their own contributions to the unfolding story of American freedom for all."

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in mind involved disbarment and a significant incarceration in a suitable penal institution.

Keady was shocked. He was also stumped. He had no experience in civil rights law, and it was apparent that Judge Perry was going to lock up Rowe and throw away the key. He knew that if he was to save Rowe, he had to go to federal court, but he didn't know what to ask for once he got there. He told Robertson and Delong to come up with something, anything, right away.

Robertson quickly began drafting a dubious federal complaint and accompanying motion for a temporary restraining order under 42 U.S.C. § 1983, seeking to halt the state court criminal proceeding. (It would be another five years before the United States Supreme Court held that § 1983 was an exception to the Anti-Injunction Act, which forbade federal courts from enjoining state court proceedings.) While Robertson was creating air cover, Keady called United States District Judge Claude Clayton, who was holding court in Greenville at the time.

Late that afternoon, Keady, accompanied by Robertson and Delong, appeared before Judge Clayton. Keady did all the talking. Incredibly, after hearing Keady's presentation, Judge Clayton issued a temporary restraining order enjoining Judge Perry from proceeding with the criminal contempt proceeding the next day, and dispatched a federal marshal to serve Judge Perry with an order that Keady prepared.

All hell then broke loose. Judge Perry was enraged by what he saw as a patently illegal interference with his authority, and by Keady's treachery to the cause. To make matters worse, Judge Clayton held an evidentiary hearing a few days later in which Keady testified at length about his telephone conversation with Judge Perry, and Judge Perry's injudicious remarks. The TRO, which was to have expired after 10 days, remained in effect for years. Rowe escaped punishment, and the Lawyers Committee continued its work in Mississippi. Keady was branded as an ultra-liberal who was intent on destroying Mississippi's way of life.

From a distance of almost 40 years, I continue to look on this episode with wonder and delight — wonder that an establishment figure like Bill Keady would take on such an unpopular and urgent matter in an area of the law about which he knew nothing, and delight that, having taken it, he played to win, without fear of the personal and political consequences that could be expected from helping a young civil rights lawyer and infuriating a powerful — and implacable — state court judge.

There were consequences from the Lacky Rowe case. Thwarted in his efforts to punish Rowe, Judge Perry recruited a candidate to oppose Keady for state bar president, then led a vigorous campaign against Keady's election. In those days, state bar elections were held at the bar convention. Only those in attendance voted. A record number of Greenville lawyers trooped to the convention to support Keady, who by this time had become a figure of controversy. At the convention, Judge Perry spared no effort in communicating his view of Keady to everyone in earshot. Nevertheless, after many speeches, including a stemwinder by fellow Greenvillian Howard Dyer, Jr., Keady was eventually elected state bar president notwithstanding his representation of Rowe.

More significantly for Mississippi, when Judge Clayton was later elevated to the Fifth Circuit, Bill Keady's representation of Lacky Rowe — and the favorable impression that representation created among civil rights organizations in Mississippi and beyond — was a powerful factor in President Johnson's decision to select Keady as Judge Clayton's successor on the federal bench. Thus, Judge Perry was able to take satisfaction that he played at least a small role in ensuring the selection of one of this country's great federal trial judges.

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Justice Rehnquist said in his remarks on Judicial Independence in March 2003: "I suspect the Court will continue to encounter challenges to its independence and authority by the other branches of government because of the design of our Constitutional system. The degree to which that independence will be preserved will depend again in some measure on the public's respect for the judiciary. Maintaining that respect and a reserve of public goodwill, without becoming subservient to public opinion, remains a challenge to the federal judiciary."

Judges and Justices must conduct themselves, both in their on Court activities and judicial decisions and in their everyday lives, in a manner which fosters public confidence in the judiciary. Unfortunately, there are a few who pander to special interests and thereby lessen the public's confidence in what is a venerable institution in our democracy. While the institutions are much larger and much more important than any of the individuals among us who serve, it is important to remember that individuals can dilute the quality of justice which is handed down by these institutions. It is important that those of us who serve, seek to rise to the level of quality which the citizens deserve and expect.

Support Legal Services Through The Equal Justice Foundation

by Steve Orlansky

The Mississippi Equal Justice Foundation offers a new opportunity to Hinds County attorneys conscious of their professional obligation to provide legal services to the poor. Many of us have found it difficult to make a meaningful contribution in this area because the demands of private practice afford little time to take on additional matters, much less to develop a working knowledge of the legal issues sufficient to effectively handle problems unique to the poverty population. The MEJF response is that those lawyers who are not in a position to "do the time" can instead "pay a (figurative) dime," i.e., make financial gifts to support the efforts of our state's Legal Services programs and the Mississippi Volunteer Lawyers Project.

In its initial campaign late last year, directed primarily at the state's larger law firms, the MEJF raised approximately $45,000.00, led by the Jackson firms of Brunini Grantham Grower & Hewes and Watkins & Eager, which contributed $15,000.00 apiece. Generous contributions were also made by numerous other firms and individuals. We can and should do much better this year. Several states of comparable size have conducted similar campaigns which have raised hundreds of thousands of dollars in recent years. Maine - a smaller state with a much smaller bar than ours - raised more than $250,000.00 in its Campaign for Justice in 2004.

By law, Mississippi's Legal Services programs are prohibited from handling criminal, tort or other fee-generating matters. They do not take on class actions or "public interest" cases designed to effect changes in public policy. Rather, the programs' mission is to provide civil legal services to individual clients who could not otherwise afford them. Typical Legal Services clients include battered women needing protection from their abusers, children entitled to but not receiving parental financial support, and elderly and/or disabled citizens requiring assistance in the understanding and assertion of their legal rights.

The need for additional financial resources to support these programs has never been greater. Congressional appropriations to the Legal Services Corporation, the primary source of funding for Legal Services programs across the country, have been cut substantially over the past two decades. At the same time, Mississippi's share of that federal funding has been reduced, as our population growth rate has lagged behind that of many other states. Consequently, of the six regional Legal Services programs that once operated twenty-nine offices in locations well-distributed throughout the state, only two programs with ten offices statewide remain today. Mississippi's 550,000 eligible citizens are now served by fewer than thirty Legal Services lawyers in those ten offices, down from more than 100 lawyers on staff in 1980.

The recent devastation of Hurricane Katrina has only exacerbated this problem in the affected area. As those who have participated in the Bar's hurricane legal assistance program can confirm, the storm has left thousands of Coast residents who need counsel on issues such as tenants' rights and the securing of government benefits to which they are entitled. Many, if not most, of those individuals have no resources with which to retain private counsel and can only look to Legal Services for help.

The members of the Hinds County Bar are privileged to have been licensed to earn a living practicing a noble profession in our state. The obligation to provide legal services to the poor is one of the responsibilities that our Rules of Professional Conduct recognize as accompanying that privilege. A convenient "clip and mail" contribution form accompanies this article. Whether you contribute individually, as a firm, or both, please join us in our 2005 campaign to help bring the ideal of "Equal Justice for All" closer to reality in Mississippi.

Mississippi Equal Justice Foundation

CONTACT INFORMATION

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Donation

☐ $1,000.00 ☐ $500.00 ☐ $250.00

☐ $100.00 ☐ $50.00 ☐ $25.00

☐ Other gift to the Mississippi Equal Justice Foundation $ _____

Please address donations to
Mississippi Equal Justice Foundation
Attn: Office of Resource Development
P.O. Box 951
Jackson, Ms 39205-9914

On Reading The Constitution

by James L. Robertson

When a vacancy occurs on the U. S. Supreme Court, constitutional interpretation rushes front and center and dominates our discourse, though in calmer times it is hardly the lawyer's daily fare. When two such vacancies occur, the discussion intensifies as if Venus and Mars had conjoined in the heavens.

As always, John Q. and Susie Q. Citizen want Justices whose rulings will foster the Citizens' view of what is good for the country. After all, the *raison d'etre* of the Constitution is "to form a more perfect Union, establish Justice, . . . promote the general Welfare," among other familiar homilies.

The Constitution is a pragmatic instrument to the end of a better life for We the People, whatever else it may be.

Of late, we hear calls for "strict interpretation" of the Constitution which seeks to constrain the discretion inherent in the process of adjudication, and in constitutional adjudication in particular. Some Citizens want Justices who will be faithful to "the intent of the Framers." Other Citizens want Justices who will be faithful to precedent.

We all want Justices who eschew their personal moral beliefs, value judgments and political preferences and decide cases according to the Constitution.

Be Careful What You Ask For

A "strict construction" view of the Constitution would not always produce results that its proponents would prefer. One prominent example is Justice Antonin Scalia's "strict construction" of the Confrontation Clause in the face of prosecution efforts to circumvent it. *E. g., Crawford v. Washington*, 541 U. S. 36 (2004); and *Coy v. Iowa*, 487 U. S. 1012 (1988), the latter of which held that alleged child abusers really are entitled to confront in person and in court their youthful accusers, to the consternation of child advocacy groups.

Current reading of the 11th Amendment, which overruled *Chisholm v. Georgia* and by its unmistakeable words limits federal subject matter jurisdiction, could never pass muster under "strict construction." The word "immunity" is not to be found in the text of the 11th Amendment.

I suspect most "strict constructionists" support the War on Terror. I doubt these would be happy were the Court to apply strictly "Congress shall make no law . . ." to the Patriot Act, as Justices Black and Douglas most assuredly would have done.

As our mothers warned us, "Be careful what you ask for."

The *Dycus* Concurrence As Exemplar

Two weeks before John G. Roberts was confirmed as the 17th Chief Justice of the United States, six Justices of the Supreme Court of Mississippi weighed in with a concurring opinion in *Dycus v. State*, 910 So.2d 1100 (Miss. 2005). The *Dycus* concurrence is reminiscent of forty years ago when Justice Tom P. Brady regularly articulated the Court's grudging acquiescence in the U. S. Supreme Court's construction of the Constitution "irrespective of how erroneous it may appear, or how odious it is." *Watts v. State*, 196 So.2d 79, 82-83 (Miss. 1967); *Bolton v. City of Greenville*, 178 So.2d 667, 672 (Miss. 1965).

The concurring Justices excoriate *Roper v. Simmons*, 125 S.Ct. 1183, decided 5-4 by the U. S. Supreme Court on March 1, 2005, for creating, rather than interpreting, law, for importing the *Roper* majority Justices' moral values into the Constitution, and much more. *Dycus*, 910 So.2d at 1102-03.

What is troubling about the *Dycus* concurrence is **not** its view on the constitutional permissibility of imposing the death penalty on juveniles. That point is fairly debatable, given *Stanford v. Kentucky* which announced the opposite view in 1989, again 5-4, and *Thompson v. Oklahoma* decided the year before.

The six Justice *Dycus* concurrence is noted here as a timely exemplar of a demonstrably flawed understanding of the enterprise of constitutional interpretation. At a time when the public needs light and insight regarding the better approach, the *Dycus* concurrence brings heat.

I dare say the view of the concurring Justices in *Dycus* has never been embraced by a majority of the U. S. Supreme Court, except for occasional *ad hoc* decisions desired on other grounds, *e.g., Dred Scott v. Sanford*, 19 How. 393, 454 (1856). The *Dycus* approach is seriously at odds with prominent expressions of the Supreme Court of Mississippi dating back a hundred years.

Almost a century ago, we find in *Dantzler Lbr. Co. v. State*, 53 So. 1, 3 (Miss. 1910) the Marshallian premise "that the Constitution was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages." Twenty years later, Justice Virgil A. Griffith wrote that "the Court is not to be constrained by . . . meanings . . . known to the framers of the instrument at the time of

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its promulgation; . . . ." *Moore v. GMAC*, 125 So. 411, 412 (Miss. 1930), for such a view would so "enchain" the Constitution so that it would "be incapable, in a healthful and uniform manner, of any expansion or developement or movement with the living current of the times." *Id.*, at 413.

Chief Justice Sydney Smith's opinion in *Albritton v. City of Winona*, 178 So. 799, 806 (Miss. 1938) is in this vein and deserves a full reading, as do numerous other cases from *Stepp v. State*, 33 So.2d 307, 309-310 (Miss. 1948), *Alexander v. Allain*, 441 So.2d 1329, 1334 (Miss. 1983), *Pro-Choice Mississippi v. Fordice*, 716 So.2d 645, 651 (Miss. 1998) and many, many others.

The Legislative Facts Of Constitutional Interpretation

A number of points are non-controversial. **All** persons seriously engaged in constitutional interpretation start with the constitutional text, the words at hand that bear the imprimatur of legal validity. I know of no one in the field who does not want to know as much as possible of the problem perceived at the time the clause was drafted, and the original understanding of the constitutional antidote.

It would advance the debate if persons, unhappy with this decision or that, would stop saying the Court's opinion was the product of merely "personal whims or beliefs," *e. g., Dycus* at ¶¶ 6, 9, for that is simply not so. Even Leo Durocher never questioned an umpire's integrity, only his eyesight.

Second, generality of expression abounds in constitutions; indeed, generality of ***expression is supposed*** to abound in a constitution. With the exception of arithmetical clauses providing, for example, that, to be eligible for the office of President, a person shall "have attained to the age of thirty five years," there are few clauses that do not admit of at least two — and usually more — arguable meanings.

Third, many of the grand generalities of the Constitution do not permit readings ***not*** heavily laden with moral premises or value judgments, because the Constitution itself presents grand general premises that are moral in nature. The Framers proclaimed it "to secure the Blessings of Liberty to ourselves and our Posterity." Thus, the Constitution tells us that "No . . . ex post facto Law shall be passed," and that "[n]o State shall . . . make any . . . Law impairing the Obligation of Contracts." The right to the "free exercise" of religion, or "freedom of speech," or freedom from "unreasonable searches and seizures," or from "cruel and unusual punishments," and many more, rest on deeply moral premises.

While the meaning and application of these and other clauses may be debated, it cannot be denied that an adjudication under one or the other ***must*** include consideration of premises indisputably moral, however the case is decided. The Constitution is rich in moral values. A grain of salt should be brought to bear when we hear complaints about Justices importing their moral values into the Constitution.

Fourth, many first and second generation Justices never doubted that resort to extra-textual moral premises and value judgments were an essential part of the enterprise of constitutional interpretation. Justice Samuel Chase, a signer of the Declaration of Independence, thought so in *Calder v. Bull*, 3 Dall. 386 (1798), and so did Justice Joseph Story through most of his thirty-two years on the Court.

Finally, unhappiness regarding the Court's approach to constitutional interpretation is ***always*** a function of the complaining party's unhappiness with the result, and it has been ever thus. We do not hear from Court critics, "Even though the right result was reached, the Court offended the intent of the Framers, or acted on personal whims or beliefs."

Enter Originalism

The case for Originalism is that Courts should be faithful to the intentions of those who wrote the Constitution. Read deeply and the argument is always but a means to satisfy some real or imagined imperative that the discretion inherent in the process of adjudication be greatly restricted. Originalism is proffered to constrain judicial discretion, or so we are told.

Perhaps the most prominent definition of Originalism is that provided by Judge Robert Bork in 1990. In his book, The Tempting Of America, Bork argues that "what counts is what the public understood" at the time of the Constitution, which is that which "is manifested in the words used and in secondary materials, such as debates at the convention, public discussion, newspaper articles, dictionaries in use at the time, and the like."

Serious proponents of Originalism must face unsettling realities. One is that the Constitution contains no hint that Originalism in any of its iterations was intended to be the official approach to constitutional interpretation. Unlike some statutes which carry their own canons of construction, or which we are told to construe "fairly," "liberally," "strictly," or the like, the Constitution includes no original language or other contemporaneous indication that the Framers intended that later generations read the Constitution in a particular way.

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A case can be and has been made that James Madison, the foremost architect of the Constitution, consciously rejected any version of Originalism, for reasons not unlike those judges from Chief Justice John Marshall to Chief Justice Charles Evans Hughes who have seen that Originalism just won't work. It is telling that in 215 years of constitutional adjudication, Originalism has never been embraced as a canon of construction by a majority of the Court.

Practically speaking, Originalism founders upon the fact that there is simply not much of a paper trail regarding the original understanding of many important parts of the Constitution. Some paper trails show conflicts or lead in different directions, some of which prove dead ends. While everyone seriously engaged in the enterprise of constitutional interpretation wants to know as much as can be known about the original understanding, that inquiry is often frustrating.

Legal scholars have searched the "secondary materials, such as debates at the convention, public discussion, newspaper articles, dictionaries in use at the time, and the like" in search of the original understanding of "due process," "privileges and/or immunities" (which appears twice, first in the conjunctive, then in the disjunctive), and "cruel and unusual punishments" and no one has come up with much. There is much more of a paper trail regarding the compromise that led to the configuration of the Senate and the House of Representatives than there is of the original understanding of "necessary and proper," or "excessive fines," or, for that matter, of the criteria by reference to which senators should decide whether to give their "Advice and Consent."

The Problematic Practice Of Originalism

Originalists face the further frustration of backsliding from those within their ranks. What are today's Originalists to do with Chief Justice Rehnquist whose legacy includes elevating *Miranda* to constitutional status in *Dickerson v. U. S.*, 530 U. S. 428 (2000)? Similarly, Justice Scalia provided the swing vote "liberally" construing the First Amendment in *Texas v. Johnson*, 491 U. S. 397 (1989), the first flag burning case, and showed he really meant it in the second flag burning case. *U. S. v. Eichman*, 496 U.S. 310 (1990).

On the other hand, thoughtful scholars through the years have shown that the enforcing the Constitution according to its original understanding can produce results most of today's Originalists would find unsettling. America's Constitution: A Biography (2005), by Yale Law School's Akhil Reed Amar, is only the most recent work of a professional scholar making the case that a "conservative" reading of the Constitution can lead to "liberal" results.

Originalism can get us into deep waters in areas where our moral values as a people ***really have changed***. For example, there is no way around the historical fact that "separate but equal" was perfectly consistent with the original understanding of the Equal Protection Clause, whose draftsmen rather clearly did not contemplate the racial integration of public facilities. One can search the "secondary materials" and come up with little consistent with today's cherished moral **and** constitutional imperative for racial equality.

Originalism crumbles in the face of two prominent cornerstones of today's constitutional architecture: Judicial Review and Incorporation Doctrine.

Judicial review is not in the text of the Constitution. Even Ronald Dworkin, often (unfairly) charged as a liberal constitutionalist, writing in 1986 admitted that judicial review "hardly follow[s] as a matter of iron logic." Judge Bork acknowledged in 1990 that "many historians are not even sure that the Founders as a group contemplated any form of judicial review." But neither Bork nor any other credible Originalist of whom I am aware seriously urges abolition of Judicial Review.

Incorporation of the Bill of Rights into the Fourteenth Amendment so that most of them are enforceable against the states is the other point where Originalists invariably punt. Judge Bork, for example, acquiesces; "as a matter of judicial practice, the issue is settled." He says this, though he admits that Incorporation "has done much to alter the moral tone of communities across the country."

No knowledgeable person believes that either Judicial Review or Incorporation could pass muster under Originalism. If Originalism is to be taken seriously, its proponents must not be allowed to pick and choose which constitutional issues should be decided under Originalism and which should not.

The Constitutional Dimension Of Law As Integrity

Originalism is hardly the only way to cabin judicial discretion in constitutional interpretation, and no one familiar with Anglo-American legal history would think that it is. "Reasonable care" and "undue influence" and "valuable considerations" and "actual malice" are but a few of the open textured common law concepts that **are** the daily fare of lawyers and judges.

For centuries, common law judges have exercised

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judicial restraint in the interpretation and application of these and other "unwritten" common law, and more recently statutory law which condemns "unconscionable contracts" and "restraints on trade." If our purpose is to reduce the occasions when points of law are phrased and applied according to "personal whims," we should seek to understand the processes that led the great common law judges to the bench. No one has written more thoughtfully of judicial restraint in legal interpretation than Prof. Ronald Dworkin. Dworkin labels his approach "Law As Integrity." It's mature presentation is found in Law's Empire (1986). Following Dworkin, the Justice begins with the text before him. A defensible interpretation must fit that text rather than some other text he may wish had been enacted. He wants to know the original understanding and, as well, added understandings as time has passed.

Because constitutional texts are often open textured, we must seek understanding of their purposes. Legal purpose is sought in the objective accessible world because that is often all that there is beyond the vacuous words of the Constitution. We fill the gaps by asking what purpose could best justify the present promulgation of the particular provision of the Constitution. A defensible rendering of a clause must satisfy the dimensions of "fit" and "justification."

Dworkin finds a useful analogy in the idea of the chain novel. A title is provided which suggests the premise of the story. A first chapter is written. Another person writes the second chapter. Still another writes the third. The ground rule at work is that each succeeding chapter author must both honor the contributions of his predecessors, always with a watchful eye on the title. The person who writes chapter 25 has no way around the fact that, even when he follows the ground rule, his chapter is new and it must advance the ball. Nor has he any way around the fact that the preceding 24 chapters exist, and that some invariably took the story in directions not known to the author of the title, and not seen in chapter one. The prior chapters teach lessons that the next chapter's author should heed.

Justices who would be faithful to their oaths would do well to consider the analogy, as Dworkin presents it, and with the constitutional clause at hand the title of the work. A case can be made that one reason the 11th Amendment has proven so problematic through the years is the word "immunity" nowhere appears, nor may the concept be found fairly implied within the text.

According to *Pennhurst*, "The Amendment's language overruled . . . *Chisholm*, but this Court has recognized that its greater significance lies . . . ." *Pennhurst*, 456 U.S. at 98. Whence the Justices' authority to find "greater significance" over and above the constitutional "language?" A Dworkinian case can be made that respect for settled and reaffirmed precedent, from *Hans v. Louisiana*, 134 U.S. 1 (1890) through *Pennhurst State School v. Halderman*, 456 U.S. 89 (1984) and beyond, has 11th Amendment immunity doctrine immune from tinkering except at the edges.

It is hard to imagine a principled attack on the interpretive method at work in *Roe v. Wade*, for example, that does not undermine the immunity interpretation of the 11th Amendment, and many other decisions dear to the hearts of those who say they support Originalism and Strict Construction.

Justices Do And Must Look Out The Window

In the end, we should not inquire what the draftsmen meant. We ask what the clause means. We seek the best statement of purpose which may justify the clause today, given its text, its history and the world that we live in. As usual, Holmes said it best, "The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago." *Missouri v. Holland*, 252 U. S. 416, 433 (1920).

Justices must look out the window, for we have no way around the fact that each adjudication is ***both*** a decision on the merits of the particular case ***and*** a precedent which, given ***stare decisis***, has the trappings of constitutional law, except that the Court may "amend" it.

In its final paragraph the *Dycus* concurrence looks out the window. The six Justices "look[] at the negative changes in our society caused by the attacks on the Constitution and the resultant experiential harm suffered by individual citizens . . . ." *Dycus*, 910 So.2d at 1103, ¶ 13.

We are warned that "If blindly followed, this treatment of the Constitution shall most assuredly lead to the ruin and destruction of the noblest democratic experiment in the history of man." *Dycus*, at ¶ 13.

Such words have a familiar sound to many of us who lived in Mississippi in the 1950s and 1960s. For then as now, when a decision is not to one's liking, however thoughtful the Justices may have been, we are told "[i]t is not the Constitution which is changing, but only some individual justices rearranging a shapeless concept to fit their personal whims and declaring that to be the law *du jour*, without sufficient deference to

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the intent of the framers . . . ." *Dycus*, 910 So.2d at 1103, ¶ 9. These Justices, we are told, are violating not just Separation of Powers, but their very oaths of office.

Some of us are old enough to remember when such articulate invective was leveled at the Court that had declared in *Brown v. Board of Education* that so called "separate but equal" public schools offended the Equal Protection Clause, overruling *Plessy v. Ferguson*. And the Court that in *Gideon v. Wainwright* read the Sixth and Fourteenth Amendments to extend the right to counsel to each person accused of a felony. And *Miranda*. And *Baker v. Carr*. And so many more.

No less an Originalist than Judge Bork himself, speaking of *Brown v. Board of Education* before the Senate Judiciary Committee in 1987, looked out the window. He acknowledged that the Framers of the Equal Protection Clause "had an assumption . . . that equality could be achieved with separation. Over the years it became clear that that assumption would not be borne out in reality ever. . . . [W]hen the background assumption proved false, it was entirely proper for the court to say 'we will carry out the rule they wrote' and if they would have been a little surprised that it worked out this way, that is too bad. That is the rule they wrote and they assumed something that is not true."

And as for *Brown* itself, Bork added "I think it was proper constitutional law, and I think we are all better off for it." But these statements offend Originalism. *Brown* is not "proper constitutional law" under a principled application of Originalism. That "we are all better off for it" accepts that the public convenience and necessity in modern society plays an important role in constitutional interpretation, a veritable anathema to the true Originalist.

Why Not A Living Constitution For A Living Country?

The *Dycus* concurrence "marvel[s]" at recently announced constructions of the Constitution that were "either completely overlooked by or hidden from all of the learned Justices who sat on the Court" in years gone by. *Dycus*, at ¶ 13.

One of those "learned Justices" was Chief Justice Hughes who may have marveled at the approach to the Constitution taken by the *Dycus* concurrence. In 1934, Chief Justice Hughes wrote that "It is no answer to say that this public need was not apprehended a century ago, or to insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time. If by the statement that what the Constitution meant at the time of its adoption it means today, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation.

"It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning — 'We must never forget that it is a *constitution* we are expounding,' *McCulloch v. Maryland*, 4 Wheat. 316, 407 (1819) — a constitution intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs.

"When we are dealing with the words of the Constitution, [Hughes added, quoting Holmes,] . . . 'we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters . . .'" *Home Building & Loan v. Blaisdell*, 290 U.S. 398, 442-43 (1934).

The United States Reports abound with hundreds of similar expressions, from Chief Justice Marshall to the present.

Suggested Further Readings

I see constitutional interpretation as a subchapter in the general enterprise of legal interpretation. And so I urge that the beginning of understanding is the reading and understanding of Holmes, particularly chapter one of The Common Law 1-38 (1881) and *The Path Of The Law*, 10 Harv. L. Rev. 457 (1897). In addition to Dworkin's Law's Empire (1986) [the chapter on constitutional interpretation, pages 355-399], I commend Judge Richard Posner's pragmatic approach in The Problems Of Jurisprudence (1990) [the chapter on constitutional interpretation, pages 286-312] and Law, Pragmatism And Democracy (2003), and Justice Scalia's A Matter Of Interpretation (1997) which includes valuable commentary from four others. Quotes above attributed to Judge Bork come from his The Tempting Of America (1990), which I recommend, along with my book review essay, *Of Bork And Basics*, 60 Miss.L.J. 439 (1990).

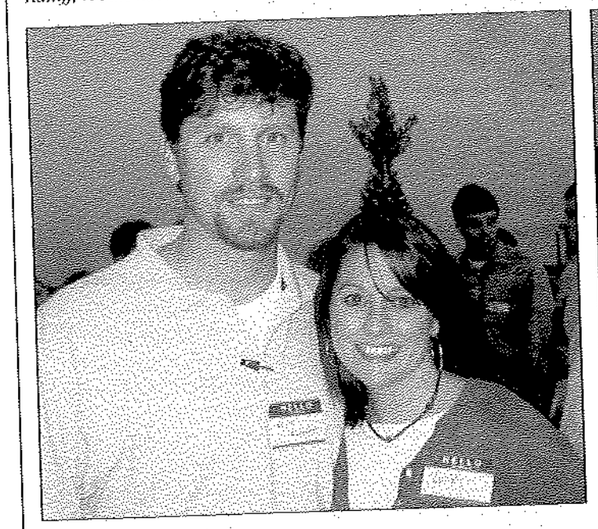
For those who may be serious about studying the subject, the best resource I know of is the 1246 page product of the collaborative efforts of Walter F. Murphy, James E. Fleming, and William F. Harris, entitled American Constitutional Interpretation (1986), presenting the pros and cons and details and history of just about every serious approach to constitutional interpretation anyone has ever thought of.

Fall Social

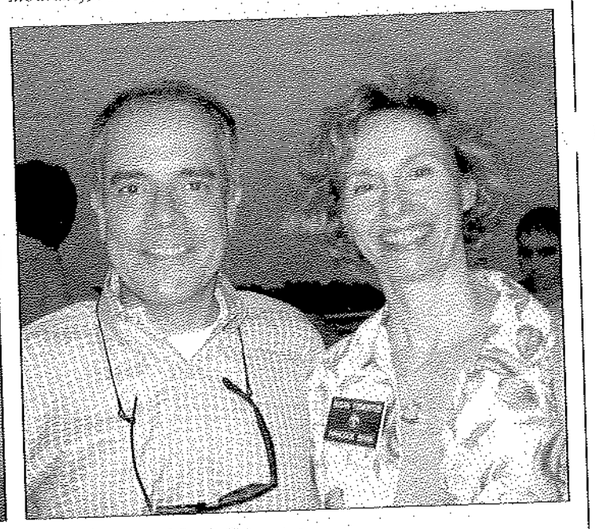
The Hinds County Bar and the Jackson Young Lawyers co-hosted a Fall Social on the rooftop of the historic Fondren Corner Building on October 6.

Missy Rose, JYL Social Chairman; Tanya Dearman; and Pamela Ratliff, HCBA Social Chairman

Katherine Mills; Dorsey Carson; John Scanlon; and Patrick McCraney, JYL President



Kevin and Vicki Rundlett



Steve Williams and Susan Tsimortos

2006 Pictorial Directory Planned

The Hinds County Bar Association will publish a 2006 Color Pictorial Directory. Pictures will be taken at Mississippi College School of Law (third floor interview room), and the dates are February 6-24. You must be a member of the HCBA to be pictured in the directory, and membership is open to all lawyers in Hinds, Madison, and Rankin Counties. Dues are $60 per year.

The directory will cost $40, and additional information will be mailed in January.

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buddies get to play tricks on people. I heard that one of Uncle Dick's best friends got in trouble for a trick. I wonder if Aunt Harriet had to stay in Washington to help Uncle Dick and his friends stay out of trouble and that's the reason she couldn't come with Uncle Dubya and Ms. Laura.

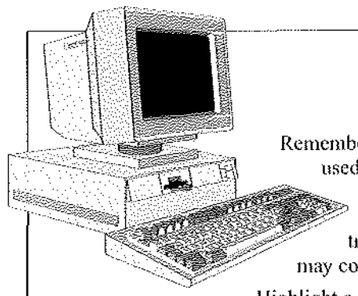
In fact, I overheard Dad tell Mom that there are some other uncles in trouble with the law. One is Uncle Hammer and the other is Uncle Frist. Uncle Hammer's problems seem to be related to money. I wonder if Uncle Hammer is really M.C. Hammer. I know that M.C. Hammer was having money problems a few years back. Maybe they are the same person.

As for Uncle Frist, he is supposedly having eye problems. Dad mentioned something about his trust going blind. I thought your eyes went blind and not your trust, but what do I know, I am only twelve. Anyway, there seems like a lot of trouble in our family. Even our Uncle Trent from Pascagoula has been saying some bad things about some of our other uncles, especially Uncle Frist. Something about being stabbed in the back. Maybe Uncle Frist's sight was so bad that he thought Uncle Trent's back was a manila envelope that he tried to open with his official Senate Majority Leader letter opener. Dad said Uncle Trent used to own that letter opener. Maybe Uncle Frist bought it on e-Bay. Dad said Uncle Trent recently wrote a book to talk bad about Uncle Frist. I don't really understand why but I guess I'd be mad too if I got a letter opener in my back and my house got blown away.

But at least there is some good news. Grandma is going to be getting some free medicine from Uncle Sam starting on New Years Day. Well, it's kind of free like Mom and Dad's tax cuts. I guess it's like doing your Christmas shopping with a credit card and not worrying about the bill till next year. The only problem is that Grandma's present comes with a 637 page instruction book she can't begin to understand. My dad has three of his associates working on it fulltime down at his law firm. I guess I am lucky to have a dad who is a lawyer. That is what I am going to be when I grow up. I wonder what other grandmas do who don't have children who are lawyers?

Well, anyway I sure hope things work out for everybody. As for me, even though I won't be getting as many presents or visits from Uncle Sam, I think I have a shot at getting extra credit at school for this little essay. In fact, maybe instead of being a lawyer, I can be a writer. No offense to my dad, but if he can do it why can't I? He says a lot of people who read his column would agree and that some aren't even nice about it. I wonder if one of those people is Uncle Dick?

Oh well, I gotta get dressed for school. Merry Christmas!



On Computing

by Joel Howell

Remember the days before you used a mouse? Thanks to the gurus at PC Magazine, here are some tips and tricks for keyboard use that may come in handy.

Highlight a file or folder and press Shift-Del to delete it permanently, bypassing the Recycle Bin.

Alt-Enter opens a highlighted file or folder's Properties dialog.

In Windows Explorer, highlight a folder and press Shift-NumPad Asterisk to open the folder and all subfolders.

Click in Windows Explorer's details pane, then press Ctrl-NumPad Plus to size each column exactly as wide as its largest item.

The Windows key brings up the Start menu, of course; but it does quite a bit more when used in combination with other keys:

Win-D toggles between showing the desktop and restoring all Windows.

Win-E invokes the Windows Explorer window.

Win-L locks your system until you enter your password or lets you switch active users, if you're using Fast User Switching.

Win-M minimizes all windows.

Win-R brings up the Run dialog.

Win-S, in Microsoft Word 2002 or later, invokes Windows' text-to-speech engine, which will read either highlighted text or everything from the cursor on.

Win-Pause/Break brings up the System Properties dialog.

Win-U invokes the Utility Manager, which controls accessibility program options.

Missing a Windows key? Ctrl-Esc will bring up your Start menu, though it won't allow you to use Windows-key combination commands like those above.

You can create your own keyboard shortcuts to frequently used programs by right clicking on their shortcut icons (in the Start menu or on the desktop), then clicking in the Shortcut key field and striking a key. Ctrl-Alt-that key will now start the application. Don't want the Ctrl-Alt combination? You can press Ctrl-Shift-x, Shift-Alt-x, or Ctrl-Shift-Alt-x instead. However, Esc, Enter, Tab, Space, Print Scrn, Del, and Backspace cannot be used.

Enough of this seriousness. For a little holiday frivolity, with thanks to Robert Ambrogi and Law Technology news, here are some sites where you can find the crazy things that people patent.

Take a look at www.patentlysilly.com, which is maintained by an engineer/stand-up comedian. Every week, he sorts through new patents issued by the U.S. Patent and Trademark Office in search of ones he considers to be really weird, really cool, or really scary. One of the treasures he has located include a slide-out deck for a recreational vehicle.

Another site, known for combing government archives for hidden documents, is the Smoking Gun, www.thesmokinggun.com. It has two collections of odd patent filings: Plumbing the Patent Files and Inspector Gadget Gizmos. These sites display patents for such inventions as a wig-flipping device to ergonomic underwear.

Totally Absurd Inventions, www.totallyabsurd.com, features a new invention each week and archives prior patents by title. One featured invention is the dummy chicken farmer, which is programmed to patrol a coop at fixed intervals.

Happy Holidays!

Questions or comments? Email webmaster@hindsbar.com.

Book Notes

by Nonie Joiner

The center could not hold. Despite the efforts of the prior administration to neutralize the extremists in each of the opposing parties, the atmosphere of hostility was as strong as it had ever been. Religious groups dictated political decisions. Dissenters with centrist inclinations were oppressed by their own parties. The general public was annoyed with both groups and longed for a more moderate approach. Sound familiar?

The date was 1603. Queen Elizabeth had just died. Her method of keeping the peace had been to punish - often, to execute - extremists in each of the two camps - Roman Catholics and Puritan Presbyterians - who threatened her entrenched Anglican church and therefore her throne. Roman Catholic extremists wanted Catholicism to be the only permissible religion, and wanted to replace Elizabeth with a Catholic monarch. Puritan extremists thought that the Anglican church established by Elizabeth's father, Henry VIII, although Protestant, was decadent and should be exchanged for the stricter Puritan church, which considered intermediaries such as bishops and queens unnecessary. Elizabeth enthusiastically suppressed extremists of both groups. That, of course, only fanned the flames. Literally, in some cases, as burning at the stake was still a mode of execution, although hanging, drawing and quartering was gaining favor as an alternate form of entertainment for the crowds.

Into this unhappy setting came Elizabeth's successor, James VI of Scotland and James I of England. A Tudor descendant, he had been the Stuart king of Scotland since he was one year old, when his mother, Mary, Queen of Scots, was forced to abdicate in his favor. He never saw her again. He was placed in the care of leaders of the Presbyterian church. Scotland at that time was a wild and violent place. During his childhood he was moved frequently from one place to another, fought over and even kidnapped by his traditionally fractious countrymen. He was regarded as a sort of trophy by the Scots, who liked nothing better than fighting and killing each other in between pious expressions of faith. Besides a childhood of being handed around among disagreeable Scottish Presbyterians who preached at him all the time, James at age 21 learned of the execution of his mother, who was alleged to have been a participant in a Catholic plot to place her on Elizabeth's throne.

Understandably, upon becoming King of England, James was ready for some peace and quiet. He became king in 1603 and adopted as his motto "Blessed are the Peacemakers." James thought that a new translation of the Bible which would be acceptable to all parties might help to calm the unrest.

In 1604, he convened the Conference on the Future of the Church.

God's Secretaries by Adam Nicolson (HarperCollins 2003) is an account of the ultimate result of that conference, the production of the King James Version of the Bible.

So how did the Conference decide the Bible should be translated? By committee. An elaborate structure was set up; highly respected scholars were appointed to the committee, together with political types, Anglican churchmen, and a number of Puritans, albeit moderate Puritans rather than extremists. The committee was divided into six subcommittees of eight or nine members each. A section of the Bible was assigned to each subcommittee.

At that point, one might think, the subcommittee would assign portions of its section to each subcommittee member. Instead, each member was told to work alone and to produce his own translation of the entire section assigned to his subcommittee. Therefore, each subcommittee would have eight or nine new translations to consider.

Furthermore, when the subcommittee met, written translations were not handed around. The new Bible would usually be heard rather than read by the majority of the population; therefore, an emphasis was to be placed on the sound of the written words. The subcommittee members read their translations aloud and they were heard by the other members. The final draft was determined on that basis before being written down and circulated to the other subcommittees for review. (Imagine document review sessions where eight or nine lawyers all have their own original drafts of each of the documents, and they can't review each other's written documents, they can just listen to them being read aloud. There would be total chaos. No deal would ever close. Also, someone would get hurt.)

In addition to searching out and using as many original ancient texts as possible, the committee also reviewed prior English translations. The Bible which served as the starting point on which the translation was based was the Bishop's Bible, which had been translated ("rather badly" according to Nicolson) by 14 Anglican bishops. Use of that version was a political move on James' part; it was far more supportive of the role of the monarch and the organized church than was the Geneva Bible, which was the favorite of the Puritan group. The Geneva Bible contained numerous notes to which James objected, and consistently translated "king" as "tyrant." Another prior translation was that of William Tyndale, who had in the 1500's set himself the task of providing a translation simple enough, he said, for "the English ploughboy." One can only assume that a similar goal governs the choice of so many mainstream churches today to use translations so stripped down that they read like Fun With Dick and Jane.

Fortunately, the goal of these translators was to produce a

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translation that not only would provide a "big tent" which would accommodate the religious beliefs of all but the most marginal of the disparate groups, but would also evoke an enriched experience of that which it sought to convey.

God's Secretaries is a beautifully written account of an event - the translation process - which had a result far greater and longer-lasting than the participants could ever have imagined. Nicolson does not profess to be a Biblical scholar and there is no new and startling information here. However, he describes so well the complex setting and events that even though they were previously known, they suddenly become far more interesting. His graceful use of the English language is an appropriate complement to his subject.

MISSISSIPPI COLLEGE LAW LIBRARY HOURS

January 11, 2006 - May 10, 2006

Monday - Thursday .....7:30 a.m. - midnight
Friday .....7:30 a.m. - 9:00 p.m.
Saturday .....9:00 a.m. - 9:00 p.m.
Sunday .....noon. - midnight

EXCEPTIONS

Martin Luther King, Jr. Day
Monday, January 16th .....9:00 a.m. - 5:00 p.m.

Spring Break
Friday, March 10th .....7:30 a.m. - 5:00 p.m.
Saturday, March 11th .....9:00 a.m. - 5:00 p.m.
Sunday, March 12th .....1:00 p.m. - 5:00 p.m.
Mon., March 13th - Thurs., March 16th ..7:30 a.m. - 5:00 p.m.
Fri., March 17th - Sat., March 18th .....9:00 a.m. - 5:00 p.m.

Spring Break
Friday, April 14th .....9:00 a.m. - 5:00 p.m.

EXAM SCHEDULE

April 28th - May 10th
Monday - Friday.....7:30 a.m. - midnight
Saturday .....9 a.m. - midnight
Sunday .....noon - midnight

Summer hours will begin May 11th.
For more information please call 925-7120
Hours are subject to change without notice.

Correspondence regarding the newsletter should be directed to: HCBA Newsletter Editor, 151 E. Griffith Street, Jackson, MS 39201. Letters to the editor must be signed, but the writer's name will be withheld upon request. Telephone inquiries should be made to the Executive Director at 601-969-6097. The web site address is hindsbar.com.

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HCBA

HINDS COUNTY BAR ASSOCIATION

MAKING OUR CASE FOR A BETTER COMMUNITY

FEBRUARY 2005

President's Column

by Linda A. Thompson

We've reached our membership goal for the year with approximately 1,400 dues-paying members, including more than 60 government lawyers. We have honorary members as well, the deans of the two law schools in our state and all the judges in Hinds, Madison, and Rankin Counties.

In years past, when lawyers' offices were clustered about the Jackson or Raymond Courthouses, our members were solicited only from Hinds County. Last year, however, we amended the HCBA's bylaws to reach out to any attorney admitted to any state or federal bar who is interested in our organization. We also added a special reduced dues rate for government attorneys, wanting more involvement from that sector that has such a significant presence in our geographic area of the state.

In any organization, of course, only a small percentage of members choose to be actively involved. The HCBA is no exception. This is not a criticism but simply an acknowledgment that many of our members have commitments to other bar associations and community, civic, religious, and athletic organizations as well. Time is our most precious commodity.

But, I do wish to encourage all our members to get involved in our activities. We have something for everyone - educational programs, lunch and evening social and/or working meetings, and community service. We're doing something right, and we think it is providing benefits that our members value.

The annual Dinner honoring the Judiciary is scheduled for Thursday, May 12, at the lovely Old Capital Inn grand ballroom, preceded by a cocktail reception on the patio. The food and fellowship are always excellent, and we invite you to join with friends there as we honor our state and federal judges. This is a joint effort of the HCBA and the Jackson Young Lawyers.

This year's speaker is the Honorable Judge Edith H. Jones of the United States Court of Appeals for the Fifth Circuit Court. Roy Campbell is chairman of the HCBA Judicial Dinner Committee.

An important part of the Evening honoring the Judiciary is the presentation of the HCBA Professionalism Award to a member who has consistently demonstrated adherence to professional standards of practice, ethics, integrity, civility and courtesy, encouraged respect for the law, shown commitment to the practice as a learned profession, has vigorously represented clients, strived for the highest levels of knowledge and skill in the law, and significantly contributed time and other resources to public service. More details about this award are included elsewhere in this newsletter, and we solicit your participation in the nomination process.

The annual golf tournament will be held at Annandale Golf Club on Thursday, May 19. All those who have participated in this event have enjoyed it — buffet lunch, an afternoon on a fine course, cocktails and food afterward, with many prizes and surprises. Competition is in teams of four. A registration form is included in this newsletter. Rob Dodson is chairman of the event again this year, joined by an experienced committee of good golfing lawyers.

Your officers are always striving to make our organization better. In February, HCBA President Elect Alveno Castillo and I will attend the meeting of the National Conference of Bar Presidents in Salt Lake City. This is in conjunction with the ABA Midyear Meeting. In March, HCBA Secretary-Treasurer John Henegan will participate in training at the National Conference of Bar Presidents meeting in Chicago. Executive Director Pat Evans will go to the meeting of the National Association of Bar Executives at the same time and place.

If you have projects to recommend to the HCBA Board for consideration — or other suggestions about the organization — please contact me or our Executive Director, Pat Evans.

HCBA LUNCHEON MEETING

Tuesday, February 15, 2005 Capital Club 12:00 Noon $14.00

Speaker: The Honorable Jim Hood, Attorney General of Mississippi

HCBA Calendar of Events

February 15, 2005
HCBA Membership Meeting.
Noon. Capital Club

April 19, 2005
HCBA Membership Meeting.
Noon. Capital Club

May 12, 2005
HCBA/JYL Evening Honoring the Judiciary.
5:30 p.m. Old Capitol Inn

May 19, 2005
HCBA Golf Tournament.
Noon. Annandale Golf Club

June 21, 2005
HCBA Membership Meeting.
Noon. Capital Club

August 16, 2005
HCBA Membership Meeting.
Noon. Capital Club

The Hinds County Courthouse, the stately mid-nineteenth-century structure in Raymond, is shining with fresh white paint, undergoing a much needed exterior renovation. The work is being funded by a grant from the Mississippi Department of Archives and History. The architectural firm of Canizaro, Cawthon & Davis is overseeing the project.

Attorney General Jim Hood is February Luncheon Speaker

At the HCBA luncheon meeting on Tuesday, February 15, the speaker will be Jim Hood, Attorney General of Mississippi. He was elected to that position on November 4, 2003. Before his election to the position, he was District Attorney for the Third Circuit Court District in North Mississippi, which includes Benton, Calhoun, Chickasaw, Lafayette, Marshall, Tippah, and Union Counties.

As District Attorney, Hood published a forty-page victim's manual. For his efforts in victims' rights, his office received the 2003 Justice Achievement Award from the Crime Victim's Compensation Program. He also secured funding for a special prosecutor for cases involving violence against women and children.

Hood published a merchant's booklet on bad checks, produced a crime prevention video for school children and an alcohol treatment manual for drug offenders, produced a children's crime prevention video showing stark scenes of prison life, established a jail tour program for alternative school students, and established a pretrial diversion program for young first-time offenders.

For five years, Hood served in the Attorney General's Office as an Assistant Attorney General, where he ran the Drug Asset Forfeiture Unit. His Unit seized more than a million dollars from drug dealers which local law enforcement agencies throughout Mississippi used in their drug enforcement efforts.

Hood was educated in the public schools of Chickasaw County and received his J.D. degree from the University of Mississippi in December 1988. He is a fifth-generation Mississippian and avid outdoors man and hunter. Jim and his wife Debbie have three children.

HCBA Law Library Committee

The HCBA Law Library Committee met on January 10th with Circuit Judge Bobby DeLaughter at the Hinds County Courthouse in Raymond. Shown at the bench in the courtroom are (from left) Judge DeLaughter, Charlie Pearce, Carolyn McCallum, Ben Piazza, Carol West, Anne Smith, Barbara Neil, and Randy Wilson.

Annals of the Law

by Luke Dove

The Red Man's Burden

Editor's Note: On September 15, 1830, at Dancing Rabbit Creek, the United States entered into "Treaty of Perpetual Friendship, Cession and Limits" with the "Mingoes, Chief, Captains and Warriors of the Choctaw Nation of Red People". In exchange for rum and fee simple title to land in the Oklahoma territory, the Choctaws ceded to the United States their ancestral homeland and hunting grounds which comprised half of the present State of Mississippi. The treaty required the Choctaws to abandon their lands "during the falls of 1831 and 1832". Most Choctaws embarked on the "trail of tears" across the Mississippi River. A remnant remained in Mississippi.

The Chief Pushmataha referred to by Ruben Davis, a former District Attorney, was not the same Choctaw chief who fought with Andrew Jackson at the Battle of New Orleans. The great Chief died in Washington on Christmas Day, 1824 and was buried with full military honors.

The trial of Chief Wesley was first reported in "The Times Picayune" and was written with the assistance of then Judge and later Senator John C. Stennis.

The Trial of Chief Pushmataha (1836)

As reported by Ruben Davis, former District Attorney, in Recollections of Mississippi and Mississippians (1890).

Pushmattahaw, a Choctaw chief, had killed one of his subjects. In doing this, he acted under his tribal authority, and was so far justifiable. But under our law, which had been extended over all the territory conveyed by the Indians to the general government, the execution became murder. Pushmattahaw exercised great control and influence over his tribe.

He had in some way incurred the hatred of the land companies organized to purchase reservations. It was important to them that he should be got out of the way, and to this end they employed a number of able attorneys to aid me in the prosecution.

The grand jury of Kemper County reported a bill of indictment, and all the requisite preliminaries were performed by me, preparatory to an early trial....The defense had secured the services of some of the ablest lawyers in the State, from Vicksburg and Jackson. A day for trial had been appointed, and witnesses summoned...The testimony was soon ended. All the facts were against the defendant, and the corpus delicti was clearly shown. It was necessary to put the defense entirely upon tribal authority.

The argument was opened for the State by (Samuel J. Gholson) in a characteristic speech. When Mr. Joe Baldwin (later the author of Flush Times of Alabama and Mississippi) arose, he was at first listened to with such slight curiosity and general indifference as might be expected for a very young man, entirely unknown to his audience. In a few moments this was changed to absorbing interest and attention. His speech was marked by the clearest and most convincing logic, rising at times into vivid oratory. It was evident that this modest young man, though yet to fortune and to fame unknown, was destined to take no obscure place in his day and generation.

Other arguments were made, and the case was submitted to the jury. After short deliberation a verdict of guilty was rendered. The defendant was informed of the result, and that he would be hung. He was shocked at the mode of death, and made pathetic appeals against such an indignity, claiming his right to die like a warrior. The court had no power to interfere, and sentence was pronounced according to the prescribed forms of our law. When this was done, Pushmattahaw rose to his full height, and gave vent to a wild war-whoop, so full of rage and despair that it was terrible to hear. As there were many Indians present, there was for a time danger of attempted rescue.

Application for pardon was made to the governor, and the chief had strong hope that it would be granted. A few days before that appointed for the execution, he was informed that the governor had refused the pardon, and that he must die what he considered the death of a dog. This communication was made to the unhappy chief in cold-blooded and inhuman malice, and the result came near proving fatal. Pushmattahaw broke a bottle which chanced to be in his cell, and with a piece of the glass severed an artery in his left arm. He would have died in a short time from loss of blood, if the sheriff had not made an accidental visit to his prisoner. A pardon was granted and sent to the sheriff by an express, in time to save the life of the Choctaw chief.

If I could have controlled this matter, this chief should never have been prosecuted, nor so much as indicted. His dominion as a chief was not at an end. His tribal laws were still in force, and his sovereign power unquestioned by the wild people who willingly submitted to his rule. The treaty between the government of the United States and the Choctaw nation was in reference to exchange of territory. The political status of neither was involved, nor did the chiefs of the nation pretend to give up their jurisdiction. Their peculiar system of government,

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however obnoxious to our ideas of justice, was regarded with reverence by the lawless people of their tribes. Several tribes had gone west to take possession of their new homes, and Pushmattahaw was preparing to follow. After conviction, I signed a recommendation to the governor for pardon, and was rejoiced when I heard that the chief was restored to his people.

The Trial of Chief Wesley (1940)

As reported in Wigmore, A Kaleidoscope of Justice (1941)

This morning in Judge (John C.) Stennis' court, a jury of 12 Noxubee County white farmers brought in a verdict of "not guilty" in the case of Cameron Wesley, charged with the murder of Evein Tubby, both...are full blooded Choctaw Indians.

Cameron Wesley is chief of a "tribe" of six families. Some 500 are all that are left here of some 25,000 Choctaws whose hunting grounds in 1830 were two-thirds of the State of Mississippi. Evein Tubby (also spelled "Tubbee", which means "killer" in Choctaw) was a full blooded Choctaw Indian, too. Chief Cameron Wesley slew him Sunday, June 16, 1940, at Wesley's home, and claimed self-defense...the State of Mississippi charged it was deliberate murder, caused by rivalry of the two for the chieftainship of the dwindling tribe, and demanded the death penalty. But the jury believed W.B. Lucas of Macon, defense counsel, when he argued self-defense against "a drunken Indian on the warpath, with hell in his heart and war on his wings."

But within an hour after he heard the "not guilty" verdict with stoic calm traditional to his race, this morning Chief Cameron Wesley called on Judge Stennis and explained that he lived under two laws; American law and Choctaw law. American law said that he could not be placed twice in jeopardy for the same crime. But Choctaw nation law said he must stand trial. Jenny Tubby (or Tubbee), widow of the man he slew, must set the time for the tribal trial, and it must not be later than the second week in September, 1940. Over it would preside Annie Wallace, " 'bout 70 years old, Judge, " elected queen of the Choctaw tribe some four years ago. Beside her would sit Johnny Cotton, overseer of the tribe, another full blooded Choctaw.

The tribal trial, Chief Cameron explained, is to be held at the fork of Dancing Rabbit creek, some 15 miles southwest of Macon. There, September 15, 1830, now a hundred years ago, the Choctaw nation "mingoes, chiefs, captains and warriors"...signed the Dancing Rabbit Treaty by which the Choctaws sold to the Americans all their lands east of the Mississippi river, now 25 Mississippi counties. There they agreed to leave for the Indian Territory, now Oklahoma, half of them in 1831, half in 1832. But some stayed by their old hunting grounds. Cameron Wesley's forbearers were among them.

The slight, swart Indian in farm overalls,...white cotton work shirt with a collar like a Russian blouse, touched with faded Indian embroidery, explained his plight to Judge Stennis. If the tribal court finds him guilty, and there are those in the tribe he believes his enemies, he will be sentenced to suicide. "They give me gun. They say: 'Go shoot yo'se'f?' I do".

Choctaw law gives only one defense for killing a human being outside of war, he said; that is accident. The burden of proof that it was accident rests with the defendant. "But if you can't prove it was accident, what will you do?" asked Judge Stennis.

"Shoot myself," said Chief Cameron Wesley slowly.

"But if you change your mind and won't shoot yourself." asked Judge Stennis. "What happens then?"

"They give gun to my oldest son, John Wesley," said Chief Cameron Wesley. "He shoot me. Make all clean."

More than 300 men, women, children traveled long miles of dusty country dirt roads, stood for hours under a blazing sun, to witness the strange Indian ceremonies....Then, far away amid the trees, the beat of a tribal drum was heard. It was being beaten in slow, steady marching cadence, the cadence by which the human heart pumps blood....Up the dusty road, between high clay banks, through a leafy tunnel of ragged trees, a small band of Indians was seen approaching. In the lead an Indian boy of 14 beat the drum. Behind him marched Indian men, carrying the sticks of their ball game, like Lacrosse sticks. Behind them marched the squaws. By the squaws trudged the papooses old enough to walk, their bare feet kicking up the dust. Some of the squaws carried nursing babies at their breast.

Their faces were inscrutable. Not a muscle moved save the involuntary twitching of coppery eyelids. Up to the Dancing Rabbit Treaty grounds they marched. Squarely beside the grave of Evein Tubbee, the man he slew, descendant of Mushulatubbee,...stood Cameron Wesley, the slayer. In one hand he carried a plant with a flower in bloom. He knelt at the head of the grave. He scooped a hole in the dusty earth with his dark-work hardened hands, and he placed the flower there. His hands patted the earth about the roots as one familiar with the earth and the things that grow upon its breast.

Then he rose and took two steps. He was close beside the grave yet, but now he was squarely in

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front of the granite monument on the spot where his ancestors had traded away what today are 25 of Mississippi's 82 counties; traded them away for barrels of rum and a home in the Indian territory that is Oklahoma now.

Then while white spectators strained their ears, the voice of Chief Cameron Wesley rose upon the still, hot air. The cadence of Choctaw, the long-forgotten speech, the language of a dying race, rose and fell, rose and fell....And this is what Chief Cameron Wesley told them, in the Choctaw that has survived 110 years, intact against the English speech that surrounds it:

"Warriors, women, children of the Choctaw nation, I am your chief, I stand before you here at the spot where our ancestors signed away our land to the white man. My life is in your hands. I have slain a man. If you do not know, thus was the slaying done."

Step by step he rehearsed the fatal day of that Sunday, June 16, 1940. He told how Evein Tubbee had come to his home.... He said Tubbee had cursed him and his family, threatened them, hurled rocks through the doors and windows of their little home, and had danced the war dance ....From his own woodpile, Wesley said, the invader had seized a club, waved it like a war club, and threatened to kill them all.

"I did not want to kill. I did not mean to kill," Chief Cameron Wesley's voice rose and fell, rose and fell. The Choctaw cadence was like music on the air. He was not speaking. He was chanting."My wife fled, with her youngest baby at her breast," the Chief's voice went on. "My sons fled. My daughters fled. We ran. We knew that the devil of drink was within Evein Tubbee. We knew that when the sun rose again he would be ashamed that he had made war talk to us, his friends.

"I picked up my gun and I fled," the chanting voice went on. "Evein Tubbee ran hard behind me. I could hear his feet upon the ground. I thought every step to feel his club upon my head. Then there was the fence, I knew that I could not leap over that fence. I knew that if I stopped to climb that fence he would kill me."

"I thrust my gun back of me, " went on Chief Cameron Wesley's voice. "I hoped it would make Evein Tubbee stop. So I thrust my gun around my side, with the muzzle pointing at him. And I looked over my shoulder. The gun went off. He fell. I did not mean to shoot him. I meant only to make him stop. But the gun went off. He fell. He was dead. The bullet was in his heart. I had killed him....

"Men of my nation," Chief Cameron Wesley's voice rose in full chant again. "Women of my nation. Children of my nation. My life is in your hands. It was 110 years ago our ancestors signed the treaty with the white men on this spot where my father sleeps in his grave beside the grave of the man I killed.

"I have been set free by the white man's law that could have hanged me like a dog. Now I stand before your law, which is my law. The treaty we signed with the white man said that we could live under our laws. I have lived under the Choctaw law. If you say I must die by the Choctaw law, give me the weapon and I will die here by my own hand. If you say that I am banished from the tribe, I will go away, with my cotton unpicked in my fields.

"Men and women are born and they die. But while the clouds come up on the sky, while the water runs, while the rain and sun bring crops out of the earth, the law goes on. I live under our law. I can die under it. It is for you to say.

"I have spoken."

The singing cadence of his voice died away. Silence fell on Dancing Rabbit....Impassive, stoic, unflinching, the dark face of Chief Cameron Wesley, set with those black, fathomless eyes looked steadily into the dark faces and the obsidian eyes that were centered on him. The little group of less than 50 Indians stood motionless for some two or three minutes that seemed like a year.

Then, out of the crescent ranks of them stepped Johnny Cotton, their overseer, elected by their own vote.... Over the hot and dusty bare earth he strode three steps. His hand thrust out. It met and gripped the out thrusting hand of Chief Cameron Wesley.

"Hail, Chief," he said. "I have heard. I believe. I speak to tell you that to me you are free man and chief as before."

"It is well," said Chief Cameron Wesley.

Both faces might have been carved of some dark wood, for all the emotion they revealed. But that was the moment when a man stepped free of jeopardy.

Eunice Wallace, queen of the Choctaw tribe, stepped forward. Her dark hand thrust out, the Chief gripped it. Then, one by one, men and women and children they came to where their Chief stood before the great granite marker. The same formula marked each one; the hand grip, the short, spoken phrase, the impassive face.

And there by the grave of the man he slew stood Cameron Wesley. He turned to his white friends.

"I have not all the English to tell you all we say in Choctaw words," he said. But they tell me I am their chief for all my life, and they want me to be chief of all the Choctaws in Mississippi."

Then they danced a dance of celebration around the monument that marks the Dancing Rabbit Treaty ground...

New Link between HCBA and State Library

by Charlie Pearce, State Librarian

Thank you for helping to improve legal resources in the State Library. Upon the recommendations of the HCBA Board and Law Library Committee, the Hinds County Board of Supervisors recently approved a three-year contract designating the State Library as a public law library for Hinds County. The State Library welcomes this new relationship and greatly appreciates the new annual support of $55,000.

We plan to earn the confidence of the HCBA members by spending the money in effective and accountable ways. Each month, $567 will purchase one public access Westlaw terminal. The State Library's subscription now includes all federal and fifty-state cases, all federal and fifty-state codes, and KeyCite. The only charge to the user is 15 cents per page for printing cases or cites. Attorneys who occasionally use other state and federal jurisdiction databases might consider changing their subscription to a Mississippi plan and using the State Library's Westlaw terminal whenever they need other state cases and codes.

The goal of every purchase will be to appeal to the widest possible use. A large portion of the funds will be used to purchase basic print materials in American law with an emphasis on Mississippi research. The State Library lacks many of the basic treatises, and many books on our shelves are old and of little value to the practitioner with a current issue. For example, one of the most widely recognized works on insurance law is *Appleman on Insurance*. In 1996 a complete revision of *Appleman* started, but the State Library was unable to purchase the revised volumes. With this new support by Hinds County, these volumes will become a current source for all to use.

In addition to acquiring books for the practitioner, the funds will be used to acquire books for the lay person. Buying *West's Encyclopedia of American Law* will help us better serve high school and college students with class assignments.

The new books should be used both inside and outside the State Library. Books purchased with Hinds County funds can be checked out for at least three days, and some will circulate for as long as two weeks. Let us know up front if the book is needed longer and we will do our best to accommodate your research needs.

Please feel free to contact us about suggestions for new purchases. However, if you do not contact us, we plan to keep in touch with you. New title lists will be sent to HCBA for inclusion in your newsletter. Also, a donor search will be added to the State Library's online catalog so that anyone using our catalog on the Supreme Court's website (www.mssc.state.ms.us) can find all books purchased with Hinds County funds.

One possible use of the funds would be to build a practical digital library that would not overlap with Westlaw, Lexis, or the Mississippi Bar's new project, Casemaker. Several months ago Judge Leslie Southwick suggested an important undertaking. He expressed a need for primary and secondary sources on Mississippi's Constitution of 1890 available through the internet. He mentioned the journal of the constitutional convention and newspaper accounts of the convention as being of interest to judges, lawyers, legislation drafters, and scholars. Perhaps the scope of this project would cause it to fall more into the category of a Mississippi Bar project. However, the Hinds County Bar and State Library could have someone digitize constitutional sources and put them into an existing website for all to use. This project requires more planning, and a decision should be made about which bar association or other group would be the appropriate entity to build this digital library.

Construction of the next State Library in the new judicial complex eventually will provide a beautiful facility spread over two floors on the west side of the building. It would be a shame if the information resources found in the Library were deficient compared to the surroundings. With your interest and support, we can prevent this from happening. With your financial help, the new State Library will have much better legal sources on par with the impressive architecture.

Again, thank you for making the State Library a branch in the county law library system. Please let me know how we can become more relevant to your practice. My office telephone number is 359-3612, and my email address is cpearce@mssc.state.ms.us.

HCBA Professionalism Award

At the HCBA Dinner Honoring the Judiciary on May 12, 2005, the HCBA will present its sixth annual Professionalism Award. The recipient of the award will receive a plaque bearing his or her name, the year the award was presented, and the criteria for the award. In addition, the recipient's name will appear on a trophy on permanent display at the Mississippi Bar Center.

Nominations are being sought for this award. The recipient will be chosen by a selection committee comprised of the Senior Hinds County Chancery, Circuit and County Court Judges, the Senior United States District Court Judge from the Jackson Division, and three HCBA members.

The criteria for the award are that the nominated member must have consistently demonstrated adherence to professional standards of practice, ethics, integrity, civility and courtesy; have encouraged respect for, and avoided abuse of, the law and its procedures, participants, and processes; have shown commitment to the practice as a learned profession, to the vigorous representation of clients, and to the attainment of the highest levels of knowledge and skill in the law; and have significantly contributed time and resources to public service.

HCBA members are encouraged to submit the names and addresses of suitable candidates to Pat Evans, HCBA, 151 E. Griffith St., Jackson, MS 39201. A brief statement as to why the nominee is deserving of the award may be included with the submission of his or her name. ***A deadline of March 10, 2005, has been set for receipt of nominations.***

Fraudulent Conveyances And Some Ramifications Thereof

by John Land McDavid and Mark Franklin

1. Miss. Code Ann. §15-3-3 provides that transactions "made and contrived of malice, fraud, covin, collision, or guile, to the intent or purpose to delay, hinder, or defraud creditors of their just and lawful actions..... [are] clearly and utterly void".

2. Miss. Code Ann. §11-5-75 provides the chancery court shall have jurisdiction to set aside fraudulent conveyances or other devices resorted to for the purposes of defrauding creditors.

3. Allfred v. Nesmith, 149 So. 2d 29 (Miss. 1963), holds a tort claimant is a "creditor" with the meaning of §15-3-3 and §11-5-75 and a tort claimant may maintain an action in chancery court to set aside a conveyance made to defraud a creditor without first obtaining a judgment at law ascertaining the damages.

4. Attorney Fees, Punitive Damages, Costs and Interest. Where a judgement is granted to set aside a transfer deemed to be "fraudulent", the possibility that attorney fees, costs, interest and/or punitive damages may also be granted cannot be precluded. In Holland v. Mayfield, 826 So. 2d 664 (Miss. 1999), which involved a suit against an investment solicitor for an investment found to fraudulent, the court held for the plaintiffs and awarded the plaintiffs attorney fees and punitive damages (five times compensatory damages). See also 37 Am. Jur. 2d., Fraudulent Conveyances and Transfers, §216. Several New York decisions have held attorney's fees are allowed in case of fraudulent transfers. In Re Kovler, Bkrtcy. S.D.N.Y. 2000, 253 B.R., 592 (also allowed "cost"); Ford v. Martino, N.Y.A.D. 2 Dept. 2001, 722 N.Y.S. 2d. 574, 281 A.D. 2d 587; Heimbinder v. Berkoritz N.Y. Supp. 1998, 670 N.Y.S. 2d 301. In Re Kovler, supra, and Heimbinder v. Berkoritz, supra, also allowed punitive damages. Both post judgement and pre-judgement interest may be allowed as well as costs of litigation. 9C Am. Jur. 2d., Bankruptcy, §2103-2105.

5. Miss. Code Ann. §15-1-49, which provides a bar against actions after three years, applies to actions based on an alleged fraudulent transfer. Smith v. Orman, 822 So. 2d 975 (Miss. App. 2002).

6. Miss. Code Ann. §15-1-67 provides, however, that where a cause of action is fraudulently concealed, the cause of action shall be deemed to begin at the time when the fraud shall be, or with reasonable diligence might have been, discovered.

7. Bankruptcy. Under bankruptcy law, a transaction may be "avoided" (i.e., set aside) if it is deemed to be a "preference" (i.e., preferring one creditor over others of the same class) and occurs within ninety days prior to the filing of the petitioner or within one year if to an insider (e.g., close relative or related entity) of the debtor. 11 U.S.C.A. §547 (b). Also, transfers deemed to be fraudulent may be avoided if made within one year prior to the filing of the petition. 11 U.S.C.A. §548 (a). Under certain circumstances, a trustee in bankruptcy may utilize Mississippi's fraudulent transfer laws to avoid fraudulent transfers. A trustee would be inclined to do so where the state statute of limitation (three years) is for a longer "reach back" period than the one-year period under the bankruptcy statutes. 9C Am. Jur. 2d, Bankruptcy, §2103. In appropriate circumstances, the advantage of a longer state statute of limitations may be asserted in a separate action in state court.

1134/c/Fraudulent Conveyances and Some Ramification Thereof

The Hinds County Bar Association and the Jackson Young Lawyers Association invite you to join us for an

Evening Honoring the Judiciary

Thursday, May 12, 2005
at The Old Capitol Inn
226 North State Street
Reception at 6:30 p.m.
Dinner at 7:30 p.m.

Special Guests: Hinds, Madison and Rankin County State and Federal Judges

Speaker: The Honorable Judge Edith H. Jones of the United States Court of Appeals for the Fifth Circuit

Innovator Award Nominees

For the past five years, the HCBA has given an Innovator Award to a judge who has begun various innovative ways to improve the administration of justice, such as an approach to speed up the docket, to better communicate with the public, to advance technology in the courtroom, and many others.

Past recipients of the Innovator Award include Judge James E. Graves; the Mississippi Supreme Court, two-time award recipient, Judge Breland Hilburn; Justice Edwin Pittman, and Justice Bill Waller, Jr. The Innovator Award will be presented at the Evening Honoring the Judiciary on May 12, 2005.

The HCBA encourages your nominations for this Award. Please send nominations by March 10, 2005 to Pat Evans, HCBA Executive Director, 151 E. Griffith Street, Jackson, MS 39201.

Crisis du Jour: Bush Trades Iraq WMD for Social Security

by Captain Equity

Before even being sworn in for a second term, President George W. Bush hit the panic button again. Luckily, this time the looming crisis does not involve an imminent attack on the United States by Saddam Hussein with his arsenal of atomic bombs, poison gas and biological weapons, which the administration "knew" with absolute certainty, existed. Because of the new Bush doctrine of preemption, we were able to avert that crisis just in the nick of time. Oh yeah, there are a few untidy remnants like say 1350 dead American soldiers and 10,000 more with brand new Purple Hearts not to mention the tens of thousands Iraqi corpses, and millions of terrorized Iraqi citizens who can't thank us enough for helping to destroy their homes and neighborhoods. But, at least they are free. Oh, and I almost forgot, the administration quietly shut down the search for WMD on January 12 without finding so much as an unspent Roman Candle or bottle rocket. For that the taxpayers who are financing this ideological neocon rodeo should at least get a "Mp Bad" from the President, but no such luck.

So now the President wants to address another crisis. At least this one is domestic and does not involve body armor although it might before the issue is finally settled. I am speaking of Social Security, which is scheduled to go into the red in 2042 according to the Social Security Trustees. The President claims the date is 2018. I will not be at all surprised to learn in the weeks ahead that the entire fund will be wiped out by next August 16. That would be consistent with the candor and high quality of intelligence we received about the last crisis.

If you detect that I am just a bit skeptical of what the President tells me, you are right. You see, notwithstanding partisan ideology, credibility and truth are neither red nor blue. They are, however, essential to create a unified national will.

To start with, the word "crisis" when applied to Social Security is not the right term. "Serious problem if something is not done" is much more accurate. The facts are that the huge post WW II baby boom generation is getting ready to retire. Instead of the ratio of 16 workers to one retiree that existed when the program was created, we will in the years ahead see a three to one ratio, which will fall to nearly two to one in peak years. Today's problem will indeed evolve into a crisis if nothing is done. Of course, like all big political issues the devil is always in the details.

The hallmark of the President's solution is in creating "private individual accounts" for younger investors that would yield a greater return on investment of tax dollars than the present system of plowing it all into government IOUs. Had I not been burned by the President's last "crisis" not to mention rampant white collar crime. I might be a little more receptive.

Today, the cost of administering Social Security is less than one percent. Can you only imagine what Wall Street would rake off the top in fees, commissions, user charges etc. if allowed to get their hands on Social Security tax dollars in the name of private accounts, not to mention what kind of self serving investments they would push off on millions of unsophisticated workers? A review of my own investment experience from 2000 to 2003 screams NO THANK YOU.

Before one can formulate an intelligent response to the problem, a little history is in order. Social Security was created in 1935 in the midst of the Great Depression, which ironically was brought about in large part by the same kind of greed and irrationality on Wall Street that we recently witnessed. The purpose of Social Security was and remains to create a safety net for the elderly once they are no longer capable of working. It represents but one leg of the three legged retirement stool with the other two being employer pensions and personal savings. Unfortunately many employers are reneging on promised defined benefit pensions while employees either choose or are forced to live paycheck to paycheck with little or no savings for retirement.

One of the biggest changes since the advent of Social Security has to do with advances in medicine and nutrition. In 1935 life expectancy was 61.5 years while the retirement age was set at 65. Few recipients were living 15 or 20 years on Social Security. As of 2002, according to the National Center for Health Statistics, life expectancy is pegged at 77.4 years and is rising annually. People in their 80s are the fastest growing segment of the population. This would suggest that the age for receiving benefits should begin to rise with each new corresponding generation to reflect this reality, especially since people now routinely retain their health and ability to contribute to society well into their 70s.

Another part of the solution would be extending or removing the cap on earnings subject to FICA deductions. Last year the cut off was $87,900. This year it is $90,000. Even though I look forward to getting past the cap every November to finance Christmas shopping, it would be hypocritical not to revisit the cap given the alternative.

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Book and Travel Notes

by Nonie Joiner

I hesitated to write about my trip to England, since our usual travel editor, John Land McDavid, not only writes so well, but also goes to unusual and exciting places. We went to London, Stratford, Salisbury, etc., in other words, the usual tourist spots. However, I enjoyed this trip so much I decided to risk it and proceed anyway.

This trip differed from my prior trips to England since this time I was accompanied by my husband and stepson, whose interest in flower gardens, medieval history, and Jane Austen is, shall we say, somewhat less than mine. Fortunately we share an interest in the more recent history and literature of England, and since wherever one chooses to go in England, there are historical and literary associations, we were able to construct an itinerary which was agreeable to all of us.

One thing that contributed greatly to my enjoyment of this trip was that I actually liked our London hotel. My prior experience with London hotels had been that they were too hot, too cold, too loud, too expensive, had faulty plumbing or lighting or elevators or whatever. The DeVere Cavendish is located at the corner of Duke and Jermyn Streets in St. James's; the front door of the hotel faces the restaurant entrance to Fortnum and Mason (that fact alone would be enough for me). It is only one block off Picadilly, but there is little traffic on Duke Street or on Jermyn, home to many extremely upscale men's shops. Long-time watchers of Masterpiece Theater may remember the series *The Duchess of Duke Street*, about a woman who established and ran an exclusive hotel in 19th century London. This is that hotel, but she would not recognize it now. It has been renovated so that the only evidence of its history is the small size of the rooms. The decor is modern and slightly oriental - no chintz here. The bathrooms are tiny but with modern plumbing and Villeroy et Boch fixtures. It has four stars instead of five - I'm not sure why - so rates aren't totally ridiculous, though they're still slightly ridiculous. Service was excellent, it's within walking distance of major tourist and shopping sites, and they let us check in at 9 a.m. after arriving on that early morning Delta flight.

An excellent book about London has been written by Anna Quindlen, the columnist and, recently, novelist. Titled Imagined London, it was published in 2004. I strongly recommend it. She has been an avid reader of both "good" literature and popular fiction. On her first trip to London, in 1995, she was struck by the familiarity of it all. I had the same sensation the first time I went there. I knew where everything was, where to shop, where to eat, where tourist sites were, the history of buildings and streets, and none of this came from travel guides. It came from a lifetime of reading books set in London. Ms. Quindlen ties together the fictional London, the historical London, and present day London, and I can almost guarantee that anyone who has read much English literature, of any genre, will enjoy it.

Our trip somehow became focused on Winston Churchill. We visited the War Cabinet Rooms in London, which I had not seen despite six prior trips to London. A friend who had visited had told me that it was much like going to Madame Tussaud's, but that was not my experience. We were very fortunate during this trip, which was in early September, in that we never had to wait in line for anything, and the sun shone every day for two weeks. We were practically the only people in the War Cabinet Rooms, and the setting - with the rooms preserved as they had been during the war, with the sounds of London totally blocked out and with occasional air raid sirens and radio broadcasts about the war - was eerily realistic.

We also visited the Bloomsbury area, which in addition to the British Museum is of course also connected with the Bloomsbury group of artists and writers. The movie *The Hours* has, I was told by a local, caused a renewed interest and increased activity and improvements in the area. However, it seemed much the same to me. I never much liked those Bloomsbury people anyway, with the exception of Harold Nicolson, who really was one of them only by association. I read his Letters and Diaries: The War Years, edited by his son Nigel Nicolson, and became really quite fond of him. He was married to Vita Sackville-West and is perhaps best known for that, particularly since his son Nigel also wrote a book about Harold and Vita's unusual marriage (Portrait of a Marriage). However, Harold had a career of his own in the diplomatic service and later as a member of Parliament. I recommend Harold's The War Years, not only as a unique perspective on the war and on the attendant changes in British society, but for the excellent writing. The War Years is one of a trilogy; I've acquired the other two but haven't read them yet. I try always to have something held in reserve that I know I will like.

We went by train from London to Coventry, where we picked up a car and drove to Warwick and Stratford. Stratford was still tacky and touristy, but drinks outside at the Dirty Duck, overlooking the river, helped a lot. The theater was closed. We stayed overnight at a hotel purported to be the location for the first production of A Midsummer Night's Dream; however, the staff at the hotel was a little squirrely about details regarding that. I always like to go to Shakespeare's church, where he

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is buried. It is a functioning small church. The morning we were there, the rector and some church members were cleaning the church in preparation for the funeral of a woman who had recently moved to Stratford and wasn't well known in the parish. They were attempting to round up enough people to make a decent number at the funeral. I found this very comforting.

We went from Stratford to Blenheim Palace, another Churchill association, and from Blenheim to a country house hotel in Teffont Evias, near Salisbury, which seemed straight out of an Agatha Christie novel. The village is tiny and has thatched roof buildings and a thirteenth century church. The hotel was built in 1623 and had lots of chintz, no elevator, spiders, a much rosetted restaurant, and a garden with the best perennial border I've ever seen. We stayed several nights and in the late afternoons sat in the garden with our wine, waiting for Miss Marple to peep over the hedge. At dinner one night we were bumped from our usual table by a party of English people, who talked loudly and with very upper accents about the Duke and about their places in Scotland and Greece and their yachts and their property managers and who offered the best security systems. One of them proclaimed extra loudly that the food was excellent there and that the hotel is nice and quiet and that *whispered name* sometimes slips down for a long weekend. I wonder if the hotel paid them to do that? The whole experience was fun and I would like to go back, but it was almost like being on a stage set.

We went from there to Kent, where we stayed for the rest of the trip. We went to Chartwell, Churchill's home, which was very interesting, and to Sissinghurst, home of the Nicolsons (Nigel was in residence during our visit but died a couple of weeks later) and site of the famous gardens developed by Vita and Harold Nicolson. There had been some changes since my last visit, when I basically drove up and parked at the front door, but it was a short walk from the car park and the gardens were still lovely in September. We also went to Canterbury, but I confess I did not reread The Canterbury Tales in preparation. I did buy a video of *The Lion in Winter*, which should count for something.

We saw a number of other things as well, of course, and there are literary associations with almost all of them. The book jacket to Anna Quindlen's Imagined London says all roads lead to Rome and all English literature leads to London, but the entire country is so packed with historical and literary associations that it's almost overwhelming. My suggestion is to pick out some books that you love, reread them, and then go see the location in which they're set, or the home of the author, or both. That's lots more fun than just reading and following the suggestions of a travel guide book.

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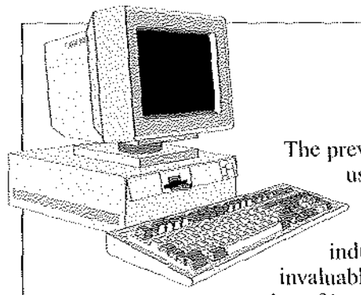
The President is probably correct that we could get a better return by investing some of the tax money in higher return, yet still conservative investments. But why does it have to be in individual accounts with high administration costs? That's why we have 401(k), 403(b) and IRA accounts. People should be encouraged to put them to greater use.

Finally, Congress should begin to gradually to convert the entire scheme from that of a transfer payment to a true trust fund not unlike a university endowment. At the risk of quoting Al Gore, the fund should be put in a "Lockbox." Only the trustees charged with fiduciary responsibilities would have a key. Congress and the President would be barred from ever accessing the fund as is regularly the case now. It is sad, but the legislative and executive branches of both major political parties have proven themselves untrustworthy stewards of our nation's retirement funds.

The ultimate solution to the problem should incorporate all the foregoing elements, but of course it will all be politicized on both ends of the ideological spectrum. That is too bad, but totally predictable. Given this reality, the President should find a way to appoint a non partisan panel to in turn appoint a separate non-partisan commission to recommend appropriate changes. Their report would be due January 21, 2009. In the meantime, the Presidential agenda for the next four years should be scaled back to have the country's Chief Executive preside over the annual White House Easter egg hunt, successfully throw out the first ball at RFK stadium to welcome baseball back to D.C. and conclude the year by throwing the switch to light up the White House Christmas Tree. This more modest agenda would surely spare us another gut wrenching and financially out of control Crisis Du Jour. One per eight years is quite enough.

Editor's Note: The viewpoints expressed in this column are solely those of Captain Equity and are not to be attributed to the Hinds County Bar Association, its officers and directors or its editorial board. We are not part of what Fox News calls "the liberal media elite".



On Computing

by Joel Howell

The prevalence of computer usage and internet access has created a new and growing industry providing invaluable services to the practice of law. Thanks to Law Technology News, here's a synopsis of internet access offerings used and recommended by LTN readers from California to Florida.

Among the most recommended resources is Google. When Fletcher James is in need of technical information or advice, he joins a Google Groups search saying information is more readily available there than on composed web pages. Jim Calloway and Bruce Dorner recommend the Google Deskbar . This function allows users to highlight text and view the search results in a small window. Craig Ball uses Google to track UPS and Fed Ex packages, translate foreign languages, send updates of news items and reverse phone numbers. If phone numbers are a concern for you, Jeffrey Brant recommends visiting www.reversephonedirectory.com and http://wireless.mapquest.com/palm/v3.0. . All of these functions and others offered by the site are reported most helpful and highly recommended by these practitioners.

For those who want to search the web quickly without all the whistles and bells, the Mozilla Foundation has created Mozilla Firefox 1.0. The default download for this system is equipped with Macromedia Flash and Adobe Acrobat to add speed to your browsing. This opens a wide field for your searches containing simplified buttons, search bars, and navigation tools that can be customized for your view through the Tools menu on the Theme Manager . Matthew D. Sarrel recommends using the Smart Keywords functions to gather information from weather to stock quotes. Dictionary.com allows you to check your grammar or receive word suggestions. The full suite, Mozilla 1.7, a free version, gives you a browser and the new email program, Thunderbird.

Another recommended website is www.dnsstuff.com. This website offers searches based on IP addresses and URL's. When sending a URL to a client, Carole Levitt recommends using www.tinyurl.com to permanently shorten the URL for you and make use of the URL easier for the receiving client.

Consultant George Socha and Public Defender Jeff Flax utilize the Way Back Machine . The Way Back Machine is an archive of websites dating back to 1996. Simply enter the URL and receive links to old versions of the website. This allows one to view how a company presented itself in the past or exonerate a client by showing he was on the old website in lieu of wrongdoing.

When your search is done and you need to begin your forms, Catherine Reach recommends www.roboform.com. The free version of this site remembers the passwords of up to thirty users The form filler allows users to have multiple identities and fills out forms with amazing accuracy. There are also Fee and Enterprise versions available.

Once your search is ended and your forms are completed, you may want to check out some music. Scott Mortensen recommends www.musicplasma.com to search various types of music. Once you find an artist you can type them in to see who is related to them or to find similar music of interest.

An interesting development in internet-based search engines has now been used to apply to software known as Desktop Search which can be used on your PC. Google, Microsoft, Yahoo, AskJeeves, and AOL have or will release a Desktop-Search tool, making it as easy to search your hard drive as it is to search the web. These are free programs which can be easily downloaded . Once they are installed, it may take several hours to index the machine, but that is not only when your machine is idle and updated indexing is relatively simple.

The Google Desktop Search (available at desktop.google.com) works inside your web browser. Just type keywords into the search field and it begins to search Word and Excel documents, as well as Outlook messages and more. It will, however, only recognize audio and video files by name.

Part of the MSN Toolbar Suite (beta.toolbar.msn.com) examines the meta data in multimedia files as well. The MSN program actually allows you to create different indices for separate user accounts.

A feature of the AskJeeves Desktop Search program (askjeeves.com) has a separate window for previewing files before opening them. Yahoo software will offer similar functionality. AOL Desktop Search, part of an upcoming AOL browser, will be free to members and nonmembers. Newcomer Blinkx (blinkx.com) has a unique approach. It automatically refers you to files that are relevant to what you are doing on the computer at that moment and lights blink at the bottom of the screen. This option will be great to those who wonder where that special file is kept.

Questions or comments? Email webmaster@hindsbar.com.

GOLF OUTING JUST FOR LAWYERS

(All Lawyers and Judges in Hinds, Rankin & Madison Counties are eligible.)

13th Annual

HINDS COUNTY BAR ASSOCIATION GOLF TOURNAMENT

Thursday, May 19, 2005

Shotgun Tee Off: 1:00 p.m.

Hamburger/Chicken Buffet 12:00 noon

Annandale Golf Course (Soft Spikes Required)

All proceeds from the tournament will go to the
MISSISSIPPI VOLUNTEER LAWYERS PROJECT

4 Person Scramble*

Limit 116 Persons

COST ONLY $125 Per Player includes Lunch and Post-Tournament Cocktail Party

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REGISTRATION FORM
DEADLINE, MAY 6, 2005

Name_____ Your Handicap_____

Address_____

Team Members	Handicap

Phone _____

*Each competing "4" must have a combined handicap of at least 40 or more with only 1 member having a handicap of 10 or less.

Must send check with registration, and checks should be payable to: Hinds County Bar Association, c/o Debra Allen, 812 N. President Street, Jackson, MS 39202. For more information call, Debra at 353-0001.

MISSISSIPPI COLLEGE LAW LIBRARY HOURS

January 11 - May 11, 2005

Monday - Thursday .....7:30 a.m. - midnight
Friday .....7:30 a.m. - 9 p.m.
Saturday .....9 a.m. - 9 p.m.
Sunday .....noon. - midnight

EXCEPTIONS

Spring Break

Friday, March 18th .....7:30 a.m. - 5 p.m.
Saturday, March 19th .....9 a.m. - 5 p.m.
Sunday, March 20th .....1 p.m. - 5 p.m.
Mon., March 21st - Wed., March 23rd ..7:30 a.m. - 5 p.m.
Thurs., March 24th - Sat., March 26th ..9 a.m. - 5 p.m.

EXAM SCHEDULE

April 29th - May 11th

Monday - Friday.....7:30 a.m. - midnight
Saturday .....9 a.m. - midnight
Sunday .....noon - midnight

Summer hours will begin May 12th.
Hours are subject to change without notice.

Correspondence regarding the newsletter should be directed to: HCBA Newsletter Editor, 151 E. Griffith Street, Jackson, MS 39201. Letters to the editor must be signed, but the writer's name will be withheld upon request. Telephone inquiries should be made to the Executive Director at 601-969-6097. The web site address is hindsbar.com.

Hinds County Bar Association, Inc.
151 E. Griffith Street
Jackson, MS 39201

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IMPORTANT!
HCBA Luncheon Meeting
12:00 noon,
February 15, 2005

HCBA

HINDS COUNTY BAR ASSOCIATION

MAKING OUR CASE FOR A BETTER COMMUNITY

OCTOBER 2005

President's Column

by Alveno N. Castilla

Hurricane Katrina: Facing the Aftermath

"Adversity almost always has a counterpoint. From scandal comes reform; from disease comes medical advance....The tragedy with which we are coping has revealed the bar's deepest character, and that character is admirable."

Evan Davis, Past President of the Association of the Bar of the City of New York, speaking about the NYC bar's response to 9/11

The Hinds County Bar Association joins the nation in mourning the loss of life and devastation resulting from Hurricane Katrina. We are particularly saddened and heartbroken by the destruction wrought on our own Mississippi Gulf Coast. The impact of Katrina will be far reaching and long lasting, and the challenges and needs are enormous. We extend our deepest sympathies to and continue to pray for all those who are suffering as a result of this tragedy. At the same time, our generous state and nation, and many others all over the world, are responding to this mass humanitarian crisis with an unprecedented outpouring of charitable contributions and volunteer efforts. (As I pen this column, Hurricane Rita is bearing down on the western Louisiana/Texas coastline and we fear that this season of tragedy may not be over.)

The HCBA, of course, wants to do as much as we can to help with post-Katrina rebuilding and we have responded with action, using our resources to make a difference. At our September 6 meeting, the HCBA board discussed at some length the issue of what our response should be to this tragic event that has disrupted and affected so many lives here in our state, and more directly, our legal profession. We wanted to focus on ways to be helpful, without duplicating efforts already underway.

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AUGUST MEMBERSHIP MEETING

Adam Kilgore (right), General Counsel for The Mississippi Bar, presented a one-hour CLE Ethics Seminar at the August Membership Meeting. He is being welcomed by Alveno Castilla, HCBA President.

HCBA LUNCHEON MEETING

Tuesday, October 18, 2005 Capital Club 12:00 Noon

HCBA Calendar of Events

Tuesday, October 18, 2005
HCBA Membership Meeting
Noon. Capital Club

Thursday, December 8, 2005
HCBA Christmas Party
5:00 - 7:00 p.m. Old Capital Inn

Tuesday, February 21, 2006
HCBA Membership Meeting
Noon. Capital Club

Tuesday, April 18, 2006
HCBA Membership Meeting
Noon. Capital Club

The Mississippi Humanities Council & The Mississippi College School of Law
present
Judge William C. Keady Distinguished Lecture VIII
Justice James E. Graves Jr.
Mississippi Supreme Court
"The Constitution and Judicial Independence"
October 24, 2005 - 7:30 p.m.
Mississippi College School of Law Conference Center
151 East Griffith Street
Jackson, Mississippi
A Reception Will Follow

The MHC is supported by Congress through the NEH and by the generosity of individual donors. The MHC does not discriminate on the basis of race, color, national origin, sex, disability, or age. Any views, findings, conclusions, or recommendations expressed at this event do not necessarily represent those of the NEH.

A Glass of Katrina: Half Full or Half Empty?

by Captain Equity

The working premise of this article is that hurricanes are an unfortunate fact of life that human beings cannot control. Like it or not, earthquakes, tornados, ice storms and forest fires will visit us from time to time. Like much of life, the imprint these natural occurrences leaves often depends on our personal and collective responses both before and after the arrival of these calamitous events. Of course, such a rational view changes radically when things get personal. The storm that blew away the Gulf Coast and much of Southern Mississippi and flooded New Orleans got about as personal as any natural disaster can. Having seen what Camille did to the coast in 1969, it was inconceivable that anything could be worse. This was worse; a lot worse. Like the 1927 Mississippi River flood, this was one of those life changing events that come once or twice a century. Thank goodness for that much.

Now, almost six weeks later, what are some of the lessons and life altering consequences of this watershed event? Let's start with half empty.

While dedicated readers know that I am not the President's biggest fan, I think we need to give him credit for putting a human face on the tragedy. After a painfully slow start, I think he helped the victims and the country deal positively with the aftermath. Unfortunately, the immediate federal response by the 170,000 person Department of Homeland Security of which FEMA is a part revealed yet again a dangerous trend toward impenetrable governmental red tape and massive incompetence. A case in point involves the near total absence of any disaster relief credentials and experience on the resume of FEMA Director Mike Brown. Recall that this is the same "Brownie" that was doing such a "heckuva job" according to the President while people in New Orleans begged for water at the Convention Center days after the hurricane. Brownie was appointed to his post by the President after a nine year run as a commissioner for the Arabian Horse Association. His primary qualification was being a friend of the President's 2000 campaign chairman. Understand that the President is not alone in this regard; this is just how things work in a country where at almost every level the political tail wags the dog that is the American people. The culture of patronage at the expense of competence desperately needs to change, but probably won't.

Beyond the immediate federal response, there was the allocation of resources and resolve to address the unique target of a major hurricane that was and is New Orleans. Everyone knows the city is below sea level. Everyone knew that it was only a matter of time before a Category 3 or higher storm hit the city causing the levee system to fail. Federal appropriations to strengthen the levee system were consistently paired back or denied the Army Corps of Engineers. The local New Orleans levee board diverted at least $20 million to develop casinos and dig up dirt on critics. Meanwhile, the pumps were not properly maintained and on and on and on. And yet, our elected leaders in Congress passed a bi-partisan $24 billion Federal Highway Bill only weeks before Katrina hit. It contained 6371 earmarked projects. One of them authorized the expenditure of $237 million to build a bridge from the Alaskan mainland to an island that is home to 50 people. How can this be you ask? Alaska's lone Congressman just happens to be Chairman of the House Transportation Committee. Just think about how much a quarter of a billion dollars could have done to strengthen the New Orleans levee system. I am confidant that no appropriately concerned Senator or Congressman will connect this particular set of dots despite the inevitable Congressional investigations and hearings.

Then of course there is global warming that according to many in power just does not exist. The EPA has documented this phenomenon with hard numbers. According to every scientist I have heard on the subject, the more heat in the atmosphere, the greater the conditions for more and bigger hurricanes. Likewise, when the Southern Gulf of Mexico is 92 degrees rather than 85, hurricanes have more fuel at their disposal. Given the fact that the United States has been joined by China, India and other developing countries in the use of fossil fuels, the outcome for future storms of greater and greater intensity is not comforting. Might Katrina have been a divine wake up call for us all in this regard?

And finally, as always there is the issue of race and poverty to stir the pot. What a surprise! To hear some clueless cable news commentators dressed in their Banana Republic hurricane garb talking about New Orleeens and Bylahxee, one would think evacuating the Ninth Ward of the Crescent City simply involved everyone loading up their SUVs and heading to the Baton Rouge Marriott. And beyond transportation logistics, consider the fact that a great many whites and blacks who have lived in poverty their whole lives in metro New Orleans haven't exactly followed the well

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Effect Of Hurricane Katrina On Mississippi's Legal System

by Kevin L. Humphreys

By now we are all aware of the devastation Hurricane Katrina caused in the form of human suffering and property damage on the Mississippi Gulf Coast and the city of New Orleans. The hurricane also wreaked havoc on the administration of justice in the state of Mississippi. The following represents a summary of what various courts in our state are doing to ensure that our legal system continues to operate in these affected areas.

State Trial Courts

On September 6, 2005, Mississippi Supreme Court Chief Justice James W. Smith Jr. appointed a judicial assessment committee to evaluate the damage to courthouses in counties affected by Hurricane Katrina. According to their preliminary report, court facilities in Hancock and Jackson counties suffered the heaviest damage. The Hancock County courthouse in Bay St. Louis suffered some roof damage and flooding and some Chancery court records received water damage. Some estimates were that it would be 30 to 60 days before the Circuit Court system could function again in Hancock County.

The story in Jackson County is similar. The Jackson County courthouse in Pascagoula received heavy floodwater damage and even some damage from the building's sprinkler system. The repair work is expected to take 3-4 weeks. Circuit and County courts are being temporarily relocated to the Civic Center. Although bench trials are expected to resume in October, it may be January before jury trials can resume, in part because so many potential jurors are homeless or otherwise displaced. Filings are being accepted at temporary locations—the old courthouse for Circuit Court filings, and a temporary office at the fairgrounds for Chancery Court filings.

The Harrison County Courthouse in Gulfport received only slight damage and is operational. The courthouse in Biloxi suffered some damage to its County courtroom.

Circuit judges in Second Circuit District of Hancock, Harrison and Stone counties have cancelled trials and hearings and extended filing deadlines. A Circuit Court order filed with the Mississippi Supreme Court on September 12 noted that all motions, trials and hearings previously scheduled for between August 29 and October 31 would be rescheduled as soon as practicable. Harrison County Circuit and Chancery judges and the offices of the court clerks were expected to be fully operational by September 19.

Court of Appeals and Supreme Court

Also on September 6, 2005, Chief Justice Smith signed an emergency administrative order on behalf of the Supreme Court addressing the following topics:

- For all cases on appeal to the Court of Appeals or the Mississippi Supreme Court from trial courts in the Second (Southern) Supreme Court District, all deadlines falling on or after August 29, through October 31 are extended for 90 days from the due dates set by rules, clerk's notices and orders.
- All oral arguments from the same district heretofore set but not held are cancelled and will be rescheduled by the appropriate appellate court.
- To prevent injustice, trial courts in this district were given the authority to extend deadlines and reschedule hearings and trials as needed (see above). Certain rules prohibiting the extension of time for taking appeals were also suspended.
- Because it lacks authority to extend statutes of limitation, the Supreme Court emphasized that none of the aforementioned extensions would serve to extend any statutes of limitation.

Federal District Court

A visit to the Southern District's website (www.mssd.uscourts.gov) reveals that its main Internet server, located in New Orleans, is down. However, a temporary server is providing access to the website.

By order dated September 2, 2005, Chief Judge Henry T. Wingate suspended operations in the federal district and bankruptcy courts in Gulfport and Hattiesburg for thirty (30) days. Individuals with business in either of those courts are to contact their respective clerk of court in Jackson for directions on how to proceed. Activities in other courthouses (Jackson, Meridian, etc.) are unaffected by this order.

By separate order, Judge Wingate deemed the dates of August 29 through October 17 to be dates when the clerk of court for the Southern District was unavailable as a consequence of Hurricane Katrina. Any document received during that time period and all notices of appeal required to be filed during that time period were "filed" October 17. Finally, any other filing deadlines that fell during that time period have been extended to October 17 as well.

Fifth Circuit Court Of Appeals

Not surprisingly, Hurricane Katrina forced the Fifth Circuit Court of Appeals to evacuate New Orleans

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Annals Of The Law

by Luke Dove

The Gander's Sauce

When he was 17, Kelvin Dycus brutally murdered a 76 year old lady. Dycus was tried and convicted of capital murder. The jury sentenced him to death. The sentence was upheld by the Mississippi Supreme Court. However, the U.S. Supreme Court recently decided the case of Roper v. Simmons which held that the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.

Dycus was remanded for re-sentencing in light of Roper. The Mississippi Supreme Court entered an order directing that Dycus be re-sentenced to life imprisonment without parole. However, six of eight participating Justices adopted a "specially concurring" opinion which quoted extensively from the dissenting opinion in Roper. The Dycus concurring opinion characterized the dissent as opining that "... the majority decision is legally flawed, lacks valid reasoning and defies historic precedent." However, the Mississippi Supreme Court did not stop there. The concurring opinion also included comments regarding the character and integrity of justices of the U. S. Supreme Court:

> "If personal whims ... are besetting the (U.S.) Constitution.... ignoring the rule of law, then those culpable of such conduct should either recuse themselves...or consider the honorable path chosen by former Justice ... Blackmun (resignation).... Courts are charged with the responsibility to interpret, not create law....It is not the Constitution which is changing, but only some individual justices (on the U.S. Supreme Court) rearranging a shapeless concept to fit their personal whims and declaring that to be the law du jour...The (U.S.) Supreme Court ...has (become) self-empowered to impose its independent moral judgment on constitutional issues....If blindly followed, this treatment of the Constitution shall most assuredly lead to the ruin and destruction of the noblest democratic experiment in the history of man." Dycus v. State, Mississippi Supreme Court, 2005.

One could argue that the Mississippi Supreme Court was merely recasting the language of dissenting opinions in Roper. However, it would not be unreasonable for the public to conclude that the Mississippi Supreme Court is of the opinion that at least five justices of the U.S. Supreme Court, acting in disregard of their oaths of office, decide cases merely on "personal whims" and "shapeless concepts"in order to create an arbitrary "law du jour" without reference to the Constitution, statutes or precedent. The public might also reasonably conclude the Mississippi Supreme Court believes these justices are intent on imposing their own (incorrect, of course) "moral judgment" on America, and are leading our great nation down the road to perdition and destruction.

Citizens have the First Amendment right to criticize judges, and judges should be thick skinned about such criticism no matter how uninformed or disrespectful. (Remember "Impeach Earl Warren"?) Lawyers are citizens too. But lawyers have a special responsibility to exhibit respect for the judiciary and the courts, even though we may not agree with a decision or ruling. This is certainly true in the case of pleadings which bear our signature and which we know will be available to the public. Pleadings which are disrespectful of the judiciary may foster a public impression that courts are not fair and judges are not honest.

Well-respected lawyers assert that the First Amendment right to be critical of public officials includes the right of both lawyers and litigants to criticize a court even during the course of litigation. Others argue that, at least in court, First Amendment rights should be subordinated to or limited by the need to maintain the "orderly process" of justice and the right of the highest court to regulate the legal profession within an integrated Bar.

The Mississippi Supreme Court fined a pro se litigant $1,000 for using "offensive and disrespectful " language including the charge that the Court was comprised of drunks and liars. (perhaps you recall certain newspaper articles and other publicity) Little v. Dept. of Human Services, 2003. The Court held Little had "attacked the integrity of this Court" and impugned the justices. He was ordered to show cause why he should not be held in contempt. In his response, Little inquired rhetorically: "you have the balls to talk to me about the 'integrity of this court?' "

The Mississippi Supreme Court recently imposed sanctions on a member of the Bar for disrespectful and disparaging language. In Welch v. Mounger, 2005 the Court held:

> "Our judicial system cannot properly function when lawyers demonstrate a pervasive lack of respect for judges, justices and the courts.

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After considering several alternatives and possible steps to demonstrate our support of the task of rebuilding lives, we decided on the following:

1. We immediately emailed our members notifying them of and calling for support of two Mississippi Bar assistance programs that were recently noted in the Bar's electronic newsletter: The Young Lawyers Division Disaster Legal Assistance Program, and the Mississippi Bar and Mississippi Bar Foundation Hurricane Katrina Lawyer Relief Fund. Young Lawyers Division officials indicated that they needed as much help as possible to quickly get the word out about the work of the Disaster Legal Assistance Committee and its need for volunteers. I have also asked our Pro Bono Committee to see if there is an opportunity for cooperative efforts between that committee's work and the YLD Disaster Legal Assistance Program. An email blast was one way to immediately help in that we hopefully reached some lawyers who, for whatever reason, did not get the word on this from the Bar's newsletter. The same holds true for getting the word out about the relief fund.

2. We approved a donation of $10,000 from our available reserve funds to go to the Mississippi Bar and Mississippi Bar Foundation Hurricane Katrina Lawyer Relief Fund. The consensus of the board was that given the fact that Katrina has proven to be the worst natural disaster in our state's history, as the state's largest local bar association, it was fitting and appropriate that we make a substantial contribution to this fund. Moreover, a donation to this fund (rather than to one of the more general relief funds such as the Red Cross, which seem to be garnering very good support thus far) will go directly to help fellow lawyers get re-established. Again, this will not impose a hardship on our budget. In this regard, we ask firms or individual attorneys to consider making a donation to the HCBA so that we can either pool these funds and pass them on to the Bar's Lawyer Relief Fund or help replenish the reserve used to fund our donation.

3. Finally, the strong sentiment of the HCBA board is that our organization should do something in addition to our monetary donation to help lawyers on the Coast get re-established as quickly as possible—e.g., by purchasing notebooks and setting up a computer loan bank, collecting and donating office furniture and supplies, etc. However, recognizing the logistical and operational constraints that the HCBA currently has in this regard, and the fact that things on the Coast are still very fluid and unsettled, we decided that the best course of action right now would be (a) for us to contact the Executive Director of the Mississippi Bar and let him know of our commitment to supporting the Bar's Law Office Resource Clearinghouse mentioned in its recent electronic newsletter, and (b) as needs and resources become more clarified, do something else to help through this program. This contact has been made and we will continue to monitor the clearinghouse's progress and be ready to step forward to assist as needed.

The legal needs arising from Katrina are varied and extensive. It is critical that the institutions making up the legal community in the affected Mississippi areas collaborate in thoughtful, comprehensive and creative ways. These institutions include the courts, bar associations, legal service organizations, the private bar, government attorneys, in-house counsel, and our two law schools. The post-Katrina environment affords our members the opportunity to assist with the legal, business and administrative burden relief efforts in many different ways. Some of the areas of assistance include helping victims apply for benefits from the many governmental and nonprofit relief agencies, identify non-legal professionals who are willing to offer free or reduced-cost services to Katrina clients, with real estate issues, in obtaining death certificates, and in obtaining insurance benefits. These efforts are certainly in keeping with the HCBA's focus this fiscal year on pro bono service.

Again, as lawyers, there are countless ways that we can help ease and heal the personal pain caused by Katrina and to help restore and rebuild our state. And, I know that much has been and is still being done by our members and the legal community in general. If you have not already done so, I urge you to identify an area of service—large or small—where you can make a difference and contribute to the admirable character of the bar as articulated by Evan Davis in the opening quote. You will not regret it.

Thanks for your support.

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entirely. The court is now presently housed at 515 Rusk Street, Houston, Texas. The court's website, www.ca5.uscourts.gov, also lists a new mailing address in Houston. The court will open for new filings on September 21.

Some filing deadlines were extended to October 3. These deadlines have now been extended even further, until October 10. For the purpose of serving and filing papers, the Court has decreed that October 11 is the first business day after August 26.

HINDS COUNTY BAR ASSOCIATION

151 E. Griffith Street Jackson, Mississippi 39201 Telephone (601) 969-6097

September 16, 2005

VIA HAND DELIVERY

Mr. Larry Houchins
Executive Director
The Mississippi Bar
643 North State Street
Jackson, MS 39202

Re: The Mississippi Bar Hurricane Katrina Lawyer Relief Fund

Dear Larry:

On behalf of the Hinds County Bar Association, I am pleased to deliver to you a check in the amount of $10,000 as a contribution to the recently established Hurricane Katrina Lawyer Relief Fund. The consensus of the Board of the HCBA was that since Katrina was the State's worst natural disaster in history, as the State's largest local bar association, it was fitting and appropriate that we make a substantial contribution to this fund. We believe it is important to have such a fund with the direct purpose of helping fellow lawyers get re-established. As I mentioned to you by telephone, there is also substantial sentiment among our Board members for doing something other than monetary to help lawyers on the Coast to get re-established as quickly as possible. To this end, we are committed to supporting the Bar's Law Office Resource Clearinghouse that is being set up and we will look forward to working with the Bar in this regard as needs and resources become more clarified.

We appreciate all that the Mississippi Bar is doing to help with the task of rebuilding lives of our fellow professionals on the Coast.

Sincerely,

Alveno N. Castilla
President

ANC/emk
c: Hinds County Bar Association Board Members
Joy L. Phillips, Esq., Mississippi Bar President
Ms. Patricia H. Evans

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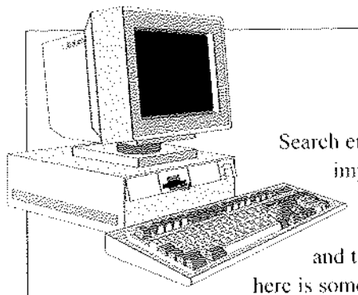

On Computing

by Joel Howell

Search engines continue to improve, as do saving and sharing results. With thanks to Tom Mighell and the Texas Bar Journal, here is some information that you may find of benefit.

Earlier columns mentioned improvements to the Google and Yahoo search engines themselves. Now, you can store the searches made with those engines.

To use Google's My Search History (www.google.com/searchhistory), you have to register for a free account and be logged in when conducting a search. Such searches are automatically saved to your history file. Search History will display a link to your prior searches, which you can query. You can also use calendar, which logs search activity on a daily basis. Use of a pause button temporarily halts the save process, and you can delete old searches.

Yahoo's My Web (http://myweb.search.yahoo.com) is similar, but enhanced. Besides saving a search history, you can share it by email, instant message, or by making your search folder public on the Web. Yahoo allows you to import your bookmarks directly into your search history. You can add "bookmarklets," to add a site via a button added to your toolbar, or you can succumb to the use of the Yahoo Toolbar (http://toolbar.yahoo.com), which lets you add a site by a click of an existing button. Yahoo also saves the path you used for a search, which is helpful by allowing you to see what you visited along the way. Just as with Google, you have to sign up for a no-fee account with Yahoo to use these features.

A new surfing trend is "social bookmarking." By going, for example, to del.icio.us (http://del.icio.us), and again, signing up for the obligatory but free account, you can share your favorite links with others, and vice versa. Your information is ordered by tags, or keywords descriptive of the link. You can also assign multiple tags to a site. Mr. Mighell's tags, for an example, are accessible at http://del.icio.us/tmighell.

Other sites, such as Net Snippets (www.netsnippets.com) and OnFolio (www.onfolio.com) allow web page capture which can be saved to your computer. Both provide for annotations about your capture for future reference. They operate as an additional toolbar on your browser. Free trial versions are available, but you'll pay a fee for continued use.

One of the supposed strengths of Microsoft's next operating system (formerly Longhorn, now Vista) is its desktop search capability. You don't have to wait until the end of next year or beyond, though. Most of the major search engines have free versions of this tool; Google, Yahoo, MSN, and Ask Jeeves all offer free versions of indexing products. Mr. Mighell prefers the free Copernic Desktop Search (www.copernic.com/en/products/desktop-search/index.html). All operate by indexing files of any type on your computer. Copernic then provides a search engine which suggests results as you type the letters of your search.

Questions or comments? Email webmaster@hindsbar.com.

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meaning advice and dictates of "The Man" all these years. This is so even when "The Man" is a person of color. In fact, there were people of every color and circumstance who still refused to leave weeks beyond the storm after the city had been turned into a lake. Anybody who has ever set foot out of the French Quarter and Garden District including the the Louisiana Governor knows it is an impossibility to totally evacuate New Orleans. This sad reality should have provided that much more impetus for shoring up the levee system to survive nothing less than a Category 5 storm. Unfortunately, because it doesn't make for compelling TV there was a lot of avoidable rural suffering in South Mississippi and outlying areas of Coastal Louisiana by people of all races and socio-economic classes.

As for the half full part, there is some good news; however it is of little solace to those individuals and businesses that were in the path of the killer storm. As was the case with Gulf Shores, Alabama after Hurricane Fredrick in 1979, the Mississippi Gulf Coast will be rebuilt. Governor Barbour has already created a commission charged with bringing about a renaissance on the Coast. As always, the devil will be in the details. Expect, a bigger and better casino industry with land based casinos. Also expect high rise condos to replace the charming homes that once existed on Highway 90 from Pass Christian to Biloxi. Zoning regulations could turn out to be the best friend or worst enemy of coast residents in the years ahead. Further inland, Jackson has a chance to be Baton Rouge lite when it comes to economic development. Already, Entergy, which was the only Fortune 500 Company to be based in New Orleans has temporarily moved its headquarters to the late World Com building in Clinton. I'm sure none of this is lost on Mayor Melton and his new economic development chief Jimmy Heidel. Once again, foresight and leadership will be needed to ensure that the metro area handles growth in a positive manner.

And finally there is New Orleans. It will no doubt come back. The question is what will it look and feel like when it does? It is truly an iconic American city. I can only hope that in the coming years it can be that again. The worst long range fear I have is that Coastal Louisiana and Mississippi will become just one more soulless strip mall where the almighty dollar rules at the expense the intangible qualities and unique sense of place that made New Orleans and the Coast special and irreplaceable. We'll see. In the meantime, God bless and watch over us all.

2005 - 2006
HCBA Committee Chair Appointment

Awards
Linda Thompson

Bench & Bar Relations
Barry H. Powell

Budget
J. Paul Varner

Community Grant
Melody McAnally

Diversity
Sharon Bridges- (co-chair)
LaKeysha Greer- (co-chair)

Golf Tournament
J. R. (Rob) Dodson, III

Hinds County Law Library
Ben J. Piazza, Jr.

Judicial Dinner
Roy D. Campbell, III

Law-Related Education
Jay Kilpatrick

Membership/Pictorial Directory
Linda Dixon Rigsby (co-chair)
(Additional co-chair still to be named)

Newsletter Editorial Board
Luke Dove

Nominating
Linda Thompson

Pro Bono
Venecca Green

Programs & Speakers
Alveno N. Castilla (co-chair)
Jimmie Wilkins- (co-chair)

Social
Pamela Ratliff

Technology
Joel W. Howell, III

Women in the Profession
Laura G. McKinley

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Lawyers are thus required to show respect for the position of judge and for the institution."

The Welch Court admonished lawyers it is our duty to exhibit the utmost respect for the judiciary and the Courts, even though we may disagree with an opinion. As the Court reminded the Bar, the judicial system itself will suffer if lawyers (presumably to include lawyers who are also judges) exhibit a lack of respect for the judiciary and the courts.

We even have a Rule which requires respect for the Court. MRAP 40 allows the Court to strike any Motion for Rehearing which contains disrespectful language and also to sanction the lawyer. At this moment there is a Show Cause Order pending before the Mississippi Supreme Court which requires an attorney to show cause why he should not be disciplined for using language considered to be disrespectful. The allegedly offending language includes the following:

"...to achieve the desired outcome, the opinion moves the Court from jurists to legislators...the opinion does a disservice to the Court...the opinion...does not accurately set forth the facts...(and) is unscholarly...the opinion contorts the law to achieve a certain outcome more in tune with a political philosophy..."

There is more than a small probability that, in the future, when the Mississippi Supreme Court seeks to sanction a litigant or an attorney for using disrespectful language, those words of the Dycus concurring opinion which impugn justices of the U. S. Supreme Court may be cited in response. No court should be accused in any pleading of deciding cases based on a "shapeless concept to fit ... personal whims". If a similar phrase appeared in a future pleading before the Mississippi Supreme Court, would the Court then say: "judges have a get-of-jail-free card"?

Respectfully, I submit it is self-evident that the duty to preserve and promote the integrity and dignity of our courts is a responsibility of all lawyers, including lawyers who happen to wear robes. It is proper to challenge the legal reasoning of an opinion. Most agree it is not proper to file legal papers which question the character or integrity of judges who wrote an opinion with which we happen to disagree.

For what it is worth, I am one of many in agreement with Roper. Despite the brilliant if sarcastic dissent of Justice Scalia, the Roper decision represents the majority and better reasoned view. The Dycus concurrence failed to mention that, in deciding Roper, the U. S. Supreme Court was affirming a decision of the Missouri Supreme Court. Surely we do not also think that the Missouri Supreme Court is salted with justices who decide cases based on shapeless concepts and mere personal whims.

May it please the Court, the Mississippi Supreme Court should consider sua sponte withdrawing all language from the Dycus concurring opinion which exhibits what the Court previously referred to as a "...lack of respect for judges, justices and the Courts." The Mississippi Supreme Court should itself set the standard, and that standard should be high. Lawyers (including those lawyers who find themselves elevated to the Bench) should exhibit the utmost respect for the integrity of the judiciary and the courts. The Good Book teaches that as we sow, so shall we reap. One thing we do not want to reap is any further erosion of public confidence in our courts. May it please the Court.

MISSISSIPPI COLLEGE LAW LIBRARY HOURS

September, 2005 - January 10, 2006

Monday - Thursday .....7:30 a.m. - midnight
Friday .....7:30 a.m. - 9:00 p.m.
Saturday .....9:00 a.m. - 9:00 p.m.
Sunday .....noon. - midnight

EXCEPTIONS

Thanksgiving

Wednesday, November 23rd.....7:30 a.m. - noon
Thursday & Friday (Nov. 24th & 25th) ..CLOSED

EXAM SCHEDULE

December 2nd - 14th

Monday - Friday.....7:30 a.m. - midnight
Saturday .....9 a.m. - midnight
Sunday .....noon - midnight

Christmas

December 15th & 16th.....7:30 a.m. - 5 p.m.
December 17th & 18th .....CLOSED
December 19th & 21st .....7:30 a.m. - 5 p.m.
December 22nd .....7:30 a.m. - 4:30 p.m.
December 23rd - January 1st .....CLOSED
January 2nd - 6th .....7:30 a.m. - 5 p.m.
January 7th & 8th.....CLOSED
January 9th & 10th..... 7:30 a.m. - 6 p.m.

Regular hours will resume Wednesday, January 11th.
For more information please call 925-7120
Hours are subject to change without notice.

HINDS COUNTY BAR ASSOCIATION

Correspondence regarding the newsletter should be directed to: HCBA Newsletter Editor, 151 E. Griffith Street, Jackson, MS 39201. Letters to the editor must be signed, but the writer's name will be withheld upon request. Telephone inquiries should be made to the Executive Director at 601-969-6097. The web site address is hindsbar.com.

Hinds County Bar Association, Inc.
151 E. Griffith Street
Jackson, MS 39201

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FIRST CLASS

IMPORTANT

HCBA Luncheon Meeting
12:00 Noon, October 18