CABA
Capital Area Bar Association

MARCH 2014

President's Column

By Collins Wohner

Congratulations to our election winners. On June 1, Meade Mitchell will become our new Secretary-Treasurer, putting him in line to serve as president in 2016–2017. Will Manuel and Meta Copeland will begin 2-year terms as Directors in posts 3 and 4 respectively. CABA thanks all the candidates who made out the excellent slate. Their willingness to stand for election and all their service to CABA is much appreciated.

Dean Jim Rosenblatt drew near-capacity crowd as the speaker at our February membership meeting, at which he updated us on developments at MC Law School. We are grateful to the Dean for filling the house, for his lively and informative presentation, and for all he has done for CABA, for the bar in general, and for our state during his tenure.

Letters have gone out inviting annual sponsorship support for CABA's main spring events—the Golf Tournament and the Evening Honoring the Judiciary. These are worthy causes. The Golf Tournament provides fun and fellowship for CABA members and guests and, more importantly, raises money for the good cause of the Mississippi Volunteer Lawyers Project (MVLP). Entry fees ($150) are priced to cover the cost of the tournament and, assuming a good turnout, to leave a surplus for the benefit of MVLP. Some sponsorship options include entry fees, but the contribution portion goes to MVLP.

The Evening Honoring the Judiciary is a way for CABA to recognize and thank state and federal judges serving in Hinds, Madison and Rankin counties for their hard work and public service. Sponsorships make it possible for judges and their guests to dine as guests of CABA. Annual Platinum, Gold or Silver level sponsorships provide important early support for both these events. CABA has already received commitments from Brunini, Butler Snow, Wise Carter, Baker Donelson and Watkins & Eager to be Platinum sponsors, and from Bradley Arant to be a Gold sponsor. Their prompt and generous support for these causes is greatly appreciated.

The Golf Tournament is scheduled for Monday, April 28, at the Jackson Country Club. This year's date is later in the season than last year. Tax day will be out of the way, and hopefully the weather will be fine. Golfers, please put the date on your calendars, and plan to play and bring guests.

Brad Moody at Baker Donelson has

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Inside

Upcoming Events

April 28
22nd Annual CABA Golf Tournament
Jackson Country Club

The views expressed in the articles published are solely those of the authors and do not represent the views of CABA, its officers, directors, or staff.

CABA Luncheon & CLE Meeting

Wednesday April 16, 2014

Lunch at 11:30, Speaker at 12:00 • Butler Snow Conference Room
1020 Highland Colony Parkway, Suite 1400 • Ridgeland, MS

$15 Lunch

$15 for members & law clerks,
$18 for guests

Meet the Speaker
Sherri Davis-Garner

Click for Speaker Bio

> *Ms. Davis-Garner [our April Speaker] will speak about career management issues, including those addressed by her recent book, "Choose to Stay or Choose to Go".*

graciously agreed to chair the Golf Tournament this year. In a few weeks, firms who have not signed on as annual sponsors will begin hearing from Brad and his committee about tournament-specific sponsorship options. Please remember that these sponsorships are for the benefit of MVLP. Last year's tournament raised $8500 for MVLP (kudos to Mary Margaret and Kevin Gay for chairing that effort). Please help us do the same or better this year by encouraging your firm to be a Hole Sponsor ($150), or better yet a Birdie Sponsor ($625, which includes entry for one golfer).

Have you ever written a personal check to MVLP as a charitable gift? Here's your chance. As an additional fundraising option, CABA will recognize individual donors who make charitable gifts directly to MVLP in recognition of the tournament as Honorary Sponsors of the Golf Tournament.

Make your personal check out to MVLP at one of the following levels: $150 — Honorary Hole Sponsor; $300 — Honorary Double Hole Sponsor; $625 — Honorary Birdie Sponsor; $1000 — Honorary Eagle Sponsor. Note the CABA Golf Tournament on the memo line.

Mail the check directly to:
MVLP (P.O. Box 1503, Jackson, MS 39215–1503), or to CABA (P.O. Box 14065, Jackson, MS 39236) for delivery to MVLP.

MVLP will acknowledge the gift with a tax receipt, and CABA will recognize the donors as honorary sponsors of the tournament.

On other fronts, Ben Piazza continues to do yeoman's work as chair of the CABA library committee. The library committee handles the important statutory job of monitoring the county library law fund and making recommendation to the board of supervisors about how to use the fund in keeping with statutory purposes (*see* Miss. Code Ann. § 19–7-31). Several contracts for the use of the library funds were up for renewal this year. Ben prepared detailed recommendations and draft contracts and presented them to the CABA board in early January and later to the Hinds County Board of Supervisors. The Board of Supervisors approved all the recommendations after only a minor change or two to some contractual wording. Thanks to Ben and his committee for their hard work carrying out this important statutory responsibility on behalf of the association.

We'll be trying something new for our next membership meeting: a new day of the week and a Madison County location. The meeting will be on *Wednesday*, April 16, and for the first time, in Ridgeland, at the *Butler Snow Conference Room*, 1020 Highland Colony Parkway, Suite 1400. Our speaker will be Sherri Davis-Garner, owner of *Styling Your Life*, an executive and leadership coaching company. Ms. Davis-Garner will speak about career management issues, including those addressed by her recent book, *Choose to Stay or Choose to Go*. Her presentation will provide an hour of CLE credit. See our website for more details.

The departure from our traditional practice of meeting on Tuesdays is just a one-time change to avoid tax day. The new location, on the other hand, is the result of several years of thought and discussion about ways to make meetings more convenient to the increasing percentage of CABA's membership that is now based outside of downtown Jackson. The search for a suitable alternative location has been daunting. Repeated efforts to find a hotel or restaurant with the capacity and flexibility to handle our meetings at reasonable cost have met with frustration.

We are grateful to Butler Snow for stepping in to solve the problem by making their large conference room available for this special meeting. Rest assured CABA has no intention of abandoning downtown Jackson, or our old friend the Capital Club, which has served us so well for so long, for most meetings. But we will continue to welcome opportunities to take an occasional meeting to other parts of the capital area, for the convenience of the membership.

To allow an hour for the CLE program, the April meeting will begin with lunch at 11:30. The program will begin at noon and conclude by 1:00. The cost is $15 for members (CLE included) and $25 for non-members. Lunch will be catered by Mama Hamil's — so make an extra trip or two the gym in advance and bring an appetite.

Finally, it is a great pleasure to announce that Chief Justice Bill Waller has agreed to be the speaker at the Evening Honoring the Judiciary, which will be held Tuesday, May 6, at the Jackson Country Club. We look forward to having him.

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2014 HOLIDAYS

April 28 . . . . . Confederate Memorial Day
May 26. . . . . National Memorial Day & Jefferson Davis' Birthday

Mississippi, Law, and the Decade of the 60s

By Fred L. Banks, Jr.

Fred L. Banks, Jr. Phelps Dunbar LL Chair, Advisory Commission to the Mississippi Department of Archives and History for the Mississippi Civil Rights Museum

On October 24, 2013, hundreds of school children, state leaders, and civil rights veterans gathered to break ground for The 2 Mississippi Museums Project: the Museum of Mississippi History and the Mississippi Civil Rights Museum. Visitors heard speeches from civil rights hero Myrlie Evers, Governor Phil Bryant, former governors Haley Barbour and William Winter, and others. Currently, crews are working to construct the two museums, which are scheduled to open in December 2017 during the bicentennial celebration of Mississippi's statehood.

The Museum of Mississippi History will cover the full sweep of our state's history. The Civil Rights Museum will chronicle the progression of black Mississippians from slavery to second-class citizenship under Jim Crow to the struggle for civil and voting rights. It will focus upon the latter, during the period between 1945 and 1975. Its core values are as follows:

Truth

A factual account of the history of the civil rights struggle and an affirmation of the dignity retained by African Americans throughout the period of slavery, emancipation, and attainment of civil rights.

Identity

The identity of the museum, and in particular its exhibits, will be forthright in providing human identity for the struggle by placing names and faces on the enslaved and emancipated people and others who were noteworthy in their persistence and quest to attain full civil rights.

Place

The prominent role Mississippi played in the struggle for civil rights offers insights into the shaping of people by place and circumstance, and frames through example the opportunity for all to pursue ongoing change for the betterment of the common good.

Memory

The telling of the collective stories of the struggle, both individual and group, to provide a sense of the influence of the past on the present.

Several legal milestones will be a featured thread in the exhibits. This article will recount some of the pertinent legal history and the setting in which it was made.

While some anti-discrimination laws had been on the books since Reconstruction, neither the states nor the federal government began to enforce them until the 1960s. In the first half of the 20th Century, separate but equal education was a sham, lynchings—with or without court "trials"—were rampant and the basic act of citizenship, voting, was suppressed by both "legal" and extra-legal means. Almost one hundred years after the Civil War, our state continued as one of many in which a black person had no rights "that a white person need respect." [1]

Changing the legal landscape was a central strategy for the National Association for the Advancement of Colored People (NAACP). Beginning in the 1930s, the NAACP took on education and voting through litigation. It brought suits to gain admission for black students in institutions of higher learning and to eliminate racially restricted primaries in elections. The well-chronicled initial strategy in education was litigation within the framework of "separate but equal" with a goal to demonstrate that providing truly equal resources would prove too expensive to maintain separate facilities. This effort moved gradually to elementary and secondary education, culminating in *Brown v. Board of Education* in 1954.

In the meantime, there were demographic changes in our nation, which affected the political landscape and an horrific world war that modified our world view. Complacency in the face of a stark example of genocide could not be universally tolerated. A direct result was the courage and activism of returning black World War II veterans, including Medgar Evers, Clyde Kennard, Aaron Henry, Amzie Moore, to name a few in Mississippi. Black women of courage like, Gladys Noel Bates, Myrlie Evers, Winson Hudson, Vera Pigee and Fannie Lou Hamer, in Mississippi, and Ella Baker and Rosa Parks, elsewhere in the south were also "sick and tired of being sick and tired." And, thus, a national activist movement was sparked and came to fruition in the 1960s in our nation and, especially, but not exclusively, in Mississippi and the rest of the south.

That decade and that movement also brought about a change in the legal landscape and the face of our bar. We saw the passage of new landmark legislation—the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968, and the resurrection of old post-Civil War statutes which lay dormant such as, 42 U.S.C. §§ 1981 and 1982. A series of events, many of them in Mississippi, provided the impetus for the new legislation and fresh application of the old.

In 1959, a black law student named Bruce Boynton boarded a Trailways bus from Washington, D.C. to Alabama. During a stop in Richmond, Virginia, he was asked to leave the dining car's white section but refused to do so. He was arrested, charged with a misdemeanor, and fined ten dollars. Boynton sued, arguing that as an interstate traveler, he had suffered racial discrimination, and his arrest violated due process and commerce clauses of the U.S. Constitution. The State of Virginia contended

that the Trailways contractor that operated the dining area was not subject to federal regulations on interstate commerce established in 1887.[2] With the help of the NAACP, Boynton filed suit against the State of Virginia. The case eventually went to the U.S. Supreme Court, which ruled in Boynton's favor in 1960. It also banned segregation of terminal facilities serving interstate passengers.[3]

In 1961, an interracial group of activists from the Congress of Racial Equality (CORE) and the Student Nonviolent Coordinating Committee (SNCC) tested the *Boynton v. Virginia* ruling as they traveled throughout the Deep South on the "Freedom Rides."[4] The Riders faced threats, violence and jail time all along the way. Most notably, in Alabama, a bus was firebombed and Riders were dragged off of another bus and beaten. Riders who continued in the face of mob violence arrived in Mississippi to be immediately arrested and held in county jails and Parchman Penitentiary. From August to September, the Riders were arraigned and tried in Jackson. They were uniformly found guilty of breach of peace. Many refused to pay fines and opted instead to fill up the jail to continue the protest. The rides ended in the fall, but they established momentum for enforcement of federal desegregation law in interstate transportation. In *Bailey v. Patterson* (1962), brought by Sam Bailey a Jackson civil rights activist, the Supreme Court ruled that no state could require segregation in interstate transportation services.[5]

The Freedom Rides also brought activists to the state who stayed and inspired, and drew inspiration from, young activists already here.[6] Alongside more mature local civil rights leaders, mostly affiliated with the NAACP, they began a concerted effort to end racial oppression in Mississippi. Our state responded by continuing to distinguish itself as among the worst of the worst, through murders and other physical and economic punishments inflicted upon its citizens who would dare to challenge the status quo. In the present decade then, we annually, commemorate a 50th anniversary of some despicable act or acts aimed at preserving white supremacy.

In 1962, James Meredith became the first black student to enter the University of Mississippi. That event provoked a riot by white protestors from around the state who gathered at the University. The riot resulted in the loss of two lives and was stopped only when the United States Army was called in to occupy the campus.

A white history professor at the University, James Silver, was moved to write a book, *Mississippi, A Closed Society*, which accurately described the prevailing atmosphere at the time. He was forced to leave the state following this deviation from the white supremacist orthodoxy of the state. Other white citizens who dared to speak out in a manner which deviated from the prevailing view suffered retribution as well. For example, Rabbi Perry Nussbaum's home was bombed. Hazel Brannon Smith's newspaper office was bombed and another publisher, Oliver Emmerich, had his office attacked as well. Edwin King, the white chaplain at Tougaloo College and an activist in the Civil Rights Movement was almost murdered when his automobile was rigged.[7]

On June 11, 1963, two events drew international attention to the struggle for equal rights. In a televised address, President Kennedy declared that the nation faced a "moral crisis." He called for Congress to pass legislation addressing voting rights and nondiscrimination. Later that evening, Medgar Evers was assassinated outside his home in Jackson, Mississippi. As Mississippi field secretary for the NAACP, Evers had led the

CABA Membership Meeting *Photos*

February 2014

Dean Jim Rosenblatt, Mississippi College School of Law, was the featured speaker at the February 18th CABA Membership meeting.

He is pictured with CABA officers Collins Wohner, President; Pat Evans, Executive Director; and Amanda Green Alexander, Vice President

fight for equal rights in Mississippi for that organization since late 1954. Kennedy's speech and Evers' assassination sparked a national debate on the need for civil rights legislation, but there was still more work to be done.

An historic project began in June 1964 to educate Mississippians about their inalienable rights as U.S. citizens, specifically their right to vote. Mississippi had brutally suppressed black voting rights since the end of Reconstruction. Federal protections were limited and the Hayes-Tilden compromise removed all federal troops from the old Confederacy, leaving the newly enfranchised black citizens vulnerable to violence and intimidation. Black political activity was violently suppressed, and, in 1890, a new state constitution was adopted with the express purpose of eliminating black voters. It was successful and, for the next 70 years, black political participation was nil. Of the more than half million black citizens eligible to vote, only less than 30,000 were registered in 1963. That was not by choice. The 1955 murder of Rev. George Washington Lee in Belzoni is but one post-World War II example of the lengths to which the white establishment would go to suppress the black vote. Another is the murder of Herbert Lee (no relation), a voter registration activist in Amite County in 1961.

In 1964, veteran activists like Robert Moses formed a coalition of civil rights veterans and organizations that led an integrated group of civil rights workers and student volunteers, mostly well-to-do white students from northern universities. (Moses' activism dated from 1961, when he initiated a voter registration project in southwest Mississippi, of which Herbert Lee had been a part.) The 1964 coalition traveled the state with the message of economic, educational, and political freedom. The effort was called Freedom Summer. Organizers and volunteers, not unexpectedly, faced harassment and violence. The most notorious event was the murders of James Chaney, Andrew Goodman, and Michael Schwerner on June 21, 1964. The murders shocked the nation, but movement leaders and countless volunteers continued the fight in Mississippi.[8]

During the Freedom Summer campaign, the first major federal civil rights bill since Reconstruction was passed. On July 2, *The Civil Rights Act of 1964*, which was originally introduced by President Kennedy, was signed by President Lyndon B. Johnson, who ushered it to passage. It was,

> [a]n act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States, to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and, July 2, 1964.[9]

The act outlawed segregation and discrimination in places of public accommodation such as hotels, schools and restaurants, schools, and it barred employment discrimination.[10] The act addressed not just racial discrimination, but also discrimination based upon gender, color, national origin, and condition of previous servitude. It also authorized the United States Department of Justice to bring enforcement actions and provided for attorney's fees for private enforcement actions.

The Freedom Rides, Medgar Evers's assassination, Freedom Summer, the murders of Goodman, Chaney and Schwerner, and others, throughout the south, and the passage of the Civil Rights Act all linked to form a chain of change by 1965. Movement leaders kept the pressure up by challenging the seating of Mississippi's congressional delegation early that year, compiling hundreds of affidavits documenting voter discrimination. The push for legislation was gathering momentum. In March of 1965, Martin Luther King led thousands on nonviolent marches from Selma to the state capitol in Montgomery, Alabama, to campaign for voting rights. State troopers attacked the peaceful marchers on the Edmund Pettus Bridge in Selma. The Ku Klux Klan murdered civil rights worker Viola Liuzzo, who was shuttling marchers. Then, on March 15, President Johnson gave a televised address calling for equal voting rights, repeating the movement slogan "We shall overcome." The Congress finally overcame southern lawmakers' resistance, and passed,

> [a]n act to enforce the fifteenth amendment to the Constitution of the United States and for other purposes, August 6, 1965.[11]

President Johnson signed the Voting Rights Act into law in August 1965. The law prohibited poll taxes and the use of widely abused literacy tests to deny voter registration applicants. Federal examiners were authorized to review voter qualifications and register voters, and federal observers authorized to monitored county polling places. Finally, it provided for United States Attorney review of all laws affecting voting in certain jurisdictions with a history of racial discrimination in voting. [12]

Sadly, the carnage over voting rights did not end. Mississippi witnessed still another tragedy when a civil rights leader was slain. Hattiesburg native and businessman, Vernon Dahmer, was a prominent and outspoken figure in the local movement. Because of his voting rights activism, cowardly klansmen torched his grocery store and his home late one evening in January 1966. Dahmer's family escaped as he fought with the murderers, but Dahmer died later that night from smoke inhalation.[13]

In the final piece of 1960s Civil Rights, legislation, Congress continued to reinforce equality for all with the Fair Housing Act of 1968 (also known as Title VIII of the Civil Rights Act). The act prohibits discrimination based upon race, sex, religion, color, or national origin in renting, selling, or financing of a home. This reiterated equal property rights in Section 1982 of the Civil Rights Act of 1866.[14] Congress also resurrected Section 1981 of the act to provide equal rights under the law, specifically in contractual agreements.[15]

Prior to the 1960s, there was little on the civil rights litigation front in Mississippi. There was a dearth of black lawyers and those who were here faced both the threat of violence to their clients and themselves and the same economic and other pressures which would be visited upon white lawyers, who dared to challenge white supremacy or even stand-up for fundamental fairness. That too, began to change in the decade of the sixties. Only two pre-1960 attempts at affirmative litigation for equality and fairness are reported.

In the late 1940s, the NAACP brought

its equalization strategy to Mississippi. It filed a lawsuit to equalize the salaries of black and white teachers. The plaintiff, a Jackson teacher, Gladys Noel Bates, was promptly fired and rendered unable to find employment in Mississippi. Mrs. Bates moved to Colorado. In order to keep the suit alive, R. Jess Brown, then a Lanier High School teacher, became a substitute plaintiff. Brown was fired as well. The lawsuit was eventually dismissed on a technicality,[16] and teacher salaries were not to be equalized for several years. Jess Brown, however, went on to become a lawyer and was heavily involved in civil rights litigation in the sixties and beyond. Jess Brown, Jack Young, Sr., and Carsie Hall were the only local lawyers who dared to appear in civil rights cases in that era. All three were in their forties when they were admitted to practice. During the late 50s and early 60s, there was only one other black lawyer practicing in the entire state.

Admitted to the bar in 1953, Jess Brown was counsel in the only other affirmative civil rights action prior to the sixties. In 1958, he brought a suit on behalf of Jefferson Davis County black residents challenging Mississippi's restrictive voter laws.[17] That suit was also ultimately dismissed, requiring black citizens to wait a few years into the sixties to have the courts finally declare the challenged practices unconstitutional, and the passage of the Voting Rights Act, to insure access to the franchise.

Jess Brown and Jack Young also played a role in two other prominent events of the late fifties and beginning of the decade of the sixties. They both illustrate the point of danger to their clients. They represented Mack Charles Parker, a young black man accused of rape in Pearl River County in 1959. Soon after they appeared on his behalf, a mob was allowed to remove him from the jail and murder him.

The other involved Clyde Kennard. In the later 1950s, Kennard, another military veteran and NAACP youth leader in Hattiesburg, had the temerity to repeatedly apply for admission to what was then Mississippi Southern College, in his home town. Our state's response, through its Sovereignty Commission, was to frame him for the theft of chicken feed, convict him and send him to prison. Jess Brown defended Kennard at his criminal trial, and when Medgar Evers protested the verdict, Brown along with Jack Young defended Evers against charges of contempt of court. They were successful in getting Evers' contempt conviction overturned, but Kennard was to remain in Parchman for several years, his medical problems unattended to until he was released, his body riddled with cancer and having little time to live.[18]

White Mississippi lawyers were not available to challenge the status quo in the 50s and early 60s. There was one exception, William "Bill" Higgs, a 1955 Harvard Law graduate from Coahoma County. He counseled with lawyers defending the Freedom Riders, advised James Meredith in this quest to enter Ole Miss, and, in 1961 represented Rev. R. L.T. Smith in a suit to abolish the Sovereignty Commission. For his trouble, he too was run out of the state.[19]

These events and the growing activism of the 1960s pointed out the glaring need for lawyers who would stand up against injustices based on race, to both defend civil rights activists and enforce civil rights law and the constitution of the United States. The less than one handful of black lawyers in the state could not possibly meet the need. Jess Brown, Jack Young and Carsie Hall did their best but, eventually, that need required the assistance of volunteer lawyers from northern and western states, affiliated with organizations such as the NAACP, the ACLU, the National Lawyers Guild, and others. President Kennedy called on the American Bar Association to accept the challenged. The Lawyers Committee for Civil Rights Under Law was formed and began sending lawyers to Mississippi in 1963. It opened an office in Mississippi in 1965. The Lawyers Constitutional Defense Committee, affiliated with the ACLU, opened an office in 1964, as did the NAACP Legal Defense and Educational Fund. These were all a direct response to the violent resistance in the south and the lack of judicial responsiveness to the violence and flouting of the law. They were necessary to give some semblance of protection to those who were risking their lives to change a system of racial oppression.

It was not until 1967 that the first black student graduated from the University of Mississippi law school.[20] The only other law school in the state was private and segregated well into the 1970s.[21] Gradually, then, Mississippi-based lawyers, black and white, took on and

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continued the fight for racial equality and justice. And, finally, in 1965, economic rights legislation, the "War on Poverty" brought the advent of legal services programs, beginning with North Mississippi Rural Legal Services. Through these programs, more Mississippi lawyers, black and white, found a vehicle, for a while, from which they could serve the poor and the cause of racial and economic justice.[22]

There was still much to be done. Despite the 1964 Civil Rights Act, the Voting Rights Act of 1965 and all that followed, as late as 1969 and into the seventies one could still see "White" and "Colored" water fountains, in the **county courthouses,** cases were still being reversed for purposeful systematic jury discrimination, and some restaurants, even in the city of Jackson, refused to serve mixed groups of blacks and whites or any white male with long hair or facial hair suspected of being a civil rights activist or sympathizer. Redistricting litigation to remove remaining barriers to black citizens electing persons of their choice to participate in our government on an equal basis was yet to come.

Most of that is, thankfully, behind us now, almost 50 years later. But much remains. Hate has not been cured. It is not even in remission. Vigilance is required of those of good will. It is the goal of the Civil Rights Museum, which will be funded by both the state and private donations, to tell the story of the many who sacrificed and who risked life and limb, lest we forget, in order to illuminate generations to come and to aid the continuing process of reconciliation among our citizens.

1. *Dred Scott v. Sanford*, 60 U. S. 393 (1857)
2. http://www.ourdocuments.gov/doc.php?doc=49, Interstate Commerce Act (1887). Accessed January 24, 2014.
3. The Road to Civil Rights: Boynton v. Virginia (1960). Accessed January 22, 2014. http://www.fhwa.dot.gov/highwayhistory/road/s25.cfm
4. The Road to Civil Rights: Waiting for the ICC. Accessed January 22, 1214. www.fhwa.dot.gov/highwayhistory/road/s30.cfm
5. Bailey v. Patterson, 369 U.S. 31 (1962). Accessed February 6, 2014. http://supreme.justia.com/cases/federal/us/369/31/case.html
6. There was earlier direct action civil rights activity. For, example, in March of 1961, nine students from Tougaloo College had "sat in" at the segregated Jackson Municipal library and been arrested. Jackson State students in support of the "Tougaloo Nine." For a report on those events from participants go to the following link. http://www.jacksonadvocateonline.com/?p=5955
7. Rev. King observed that whites were imprisoned themselves by their own codes and Gov. William Winter has frequently observed that the Civil Rights Movement freed both blacks and whites.
8. The murderers were eventually caught after an anonymous tip which was conveyed to the FBI, **in secret**, by a white Mississippi highway patrolman. No state charges were brought against the perpetrators until 40 years later. Some of them were convicted on federal criminal charges for violating the victims' civil rights. It was Bill Waller who first took on the task of seriously prosecuting a civil rights murder when he twice sought to convict Byron De La Beckwith for the murder of Medgar Evers. With the help of the Sovereignty Commission and the support of Gov. Barnett, De La Beckwith was able to escape punishment until 30 years later as the 1960s trials ended with hung juries.
9. Enrolled Acts and Resolutions of Congress, 1789-; General Records of the United States Government; Record Group 11; National Archives, accessed January 31, 2014, http://www.ourdocuments.gov/doc.php?flash=true&doc=97
10. Civil Rights Act (1964), accessed January 30, 2014. http://www.ourdocuments.gov/doc.php?flash=true&doc=97
11. Enrolled Acts and Resolutions of Congress, 1789-; General Records of the United States Government; Record Group 11; National Archives
12. In 2013, the Voting Rights Act was in the national spotlight once again as several clauses were challenged in the U.S. Supreme Court. At the center of the case was whether racial minorities still faced voting barriers in states with a history of discrimination. On June 25, the Court ruled that Section 4 of the act, which lists which states that must receive federal pre-clearance to change voting procedures, such as redrawing electoral districts, was unconstitutional. Chief Justice John Roberts stated that the provision was based upon history not concurrent with present conditions.
13. John Dittmer, *Local People: The Struggle for Civil Rights in Mississippi* (Urbana: University of Illinois Press, 1994), 391.
14. The Fair Housing Act. Accessed Feb 5, 2013. http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/progdesc/title8
15. Civil Rights Act of 1866. Accessed February 7, 2014. http://uscivilliberties.org/legislation-and-legislative-actions/3601-civil-rights-act-of-1866.html.
16. 187 F. 2d 982 (5th Cir. 1952)
17. *Darby v. Daniel*, 168 F. Supp. 170 (S. D.. Miss. 1958)
18. *Kennard v. State*, 128 So. 2d 572 (Miss. 1961) and Evers v. State, 131 So. 2nd 753 (Miss. 1961); Also, see the following links for more regarding Clyde Kennard and late 1950s civil rights activity: http://mshistory.k12.ms.us/articles/60/the-mississippi-civil-rights-movement-1955–1970-when-youth-protest; http://mshistory.k12.ms.us/articles/349/clyde-kennard-a-little-known-civil-rights-pioneer
19. In 1963 Bill Higgs was accused in a moral charges and found guilty in absentia. For more on Bill Higgs and the Sovereignty Commission see: http://cds.library.brown.edu/projects/FreedomNow/themes/resist/index.html; See also, http://cds.library.brown.edu/projects/FreedomNow/themes/resist/index.html; http://www.thecrimson.com/article/1964/3/4/bill-higgs-peight-years-ago-mississipian/
20. The first to graduate was Reuben Anderson. The first to be admitted was Cleve McDowell. McDowell was expelled during his first year when his firearm fell from his pocket. Mississippi's fascination with the 2nd Amendment did not extend to him. Later, McDowell finished the Texas Southern Law School. When he applied to take the bar the Board of Bar Admissions refused to allow him to do so. That decision was contested. Professor John Fox from the University of Mississippi law school wrote a letter favorable to McDowell and the Board relented. The author represented McDowell during those proceedings.
21. The Jackson School of Law was owned and operated by the Satterfield Law Firm. In 1968, the author was denied access to the bar review course provided by the school based on race. At the time, it was the only bar review course available. Only the Jackson School of Law students, applicants who were proctored by lawyers and out- of state law school graduates were required to take the bar. Ole Miss Law graduates had the diploma privilege. The Jackson School of Law admitted its first black law students in 1972. In 1975 the school was acquired by Mississippi College and became the Mississippi College School of Law.
22. The University of Mississippi Law School Dean during the mid and late 60s, Joshua Morse, deserves a great deal of credit for this change. He personally recruited Reuben Anderson and the other African Americans as well as progressive law faculty to the law school and established the North Mississippi Rural Legal Services Program at a time when the organized Mississippi Bar was resisting legal services programs. North Mississippi Rural Legal Services was involved in civil rights litigation with Mississippi bred white lawyers, like John Maxey. Meanwhile a group of Jackson lawyers, including Francis Stevens, Barry Powell and Spencer Gilbert were instrumental in establishing Community Legal Services in Jackson and named John the first director. A few years later Barry Powell resigned from the Board and took over as director when John went into a labor law practice. These programs were also instrumental in attracting keeping black legal talent from other states, including John Walker and Victor McTeer and giving native Mississippians like Ed Blackmon, Johnny Walls and Willie Bailey there first jobs.

CHRISTMAS Social

The CABA/JYL Christmas Social was held December 5, 2013 at the Old Capitol Inn in Jackson. Members made donations to Toys for Tots and enjoyed a festive evening.

Arthur Johnston Appointed to Southern District of Mississippi

By Terryl Rushing

When Arthur Johnston reported for duty as a Clerk Designee in early December, he answered every inquiry into his well-being with, "Scared." These days, he's starting to look less like a deer in the headlights and more like a … well, he looks like a deer in the headlights who is daring you to hit him. Having tried, unsuccessfully, to persuade his predecessor, J. T. Noblin, to accept an unpaid position as *Clerk Emeritus*, Arthur has manfully shouldered the responsibility for running the United States District Court for the Southern District of Mississippi.

Reminiscent of J. T.'s tenure as Clerk, Arthur faced a water crisis early on, only his water came in a more solid form — snow and ice. With the prospect of Southern Mississippi blanketed by snow, and with treacherous road conditions stretching as far north as Jackson, Arthur boldly directed his staff, in the early morning hours of January 28, to notify employees that the Court would close for the day. "Arthur was right on top of it," according to Chief Judge Guirola. "He was in touch with emergency operations personnel all over the state and made a decisive call." In his short time with the Court, Arthur has weathered two judges' meetings and associated receptions (one of which included a near-catastrophic easel failure that sent a retiring judge's portrait flying across a dining room), selection of new Magistrate Judge, and, not one, but two snow events. He's currently involved in a change-of-command audit and probably wondering when things are going to get really busy.

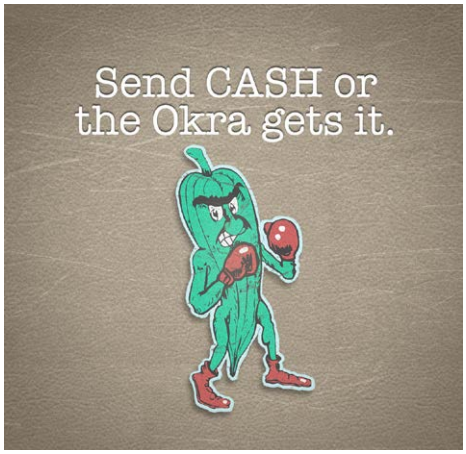
Arthur's work history should have prepared him to wear the mantle of Clerk with ease. He has served as Madison County's Chancery Clerk, Clerk of the Board of Supervisors, County Treasurer, and Auditor. He was instrumental in adapting the federal electronic court filing system for use in state court, making Mississippi the only state whose electronic filing system is based on the federal model. For his efforts, Arthur received the Chief Justice Award at the annual meeting of the Mississippi Bar Association.

In addition to his professional accomplishments, Arthur was known in his Madison County office as a cooperative and compassionate manager. Chancery Judge Cynthia Brewer feels like she's lost an appendage. In her opinion, Arthur was no less than a miracle worker, able to procure, at least most of the time, whatever was needed. (She's still upset about the bulletproof glass, Arthur.) Judge Brewer related that, when an employee in another office, who was new to Madison County, lost a close relative, Arthur took his entire staff to the funeral.

A native of Cleveland, Mississippi, and a cum laude graduate of Delta State University (and more about the Fighting Okra later), Arthur is also a graduate of the University of Mississippi School of Law, where he was the associate editor of the Law Journal. He was in the private practice of law for ten years before his election as the Madison County Chancery Clerk. Arthur and his wife, Beverly, have three daughters — Abby, Anna, and Avery. Beverly is the Principal of Madison Station Elementary School, and, in Madison, she is probably the more recognized of the two. With a wife whose job stresses likely mirror his own, Arthur has a well-developed "can do" attitude toward doing his part to keep things running. He could be referred to in female circles as "well-trained."

Arthur's management style can be described as intense, but relaxed and inclusive. As would be expected from a man so knowledgeable about electronic filing, he has impressed the Court's IT Department with his knowledge of, and enthusiasm for, systems management. According to IT Manager Melvin Sawyer, Arthur has immersed himself into the installation of the National IP Telephone Service at the Gulfport courthouse. His enthusiasm is a double-edged sword, however, as Melvin made that comment while nearly hidden by piles of documents and to-do lists for new project implementation.

His extraordinary work ethic notwithstanding, Arthur has endeared himself to his employees by declaring the aforementioned snow day. Additionally, he has embraced the lighthearted moments enjoyed by his office by announcing receipt and disbursement of a king cake (he's already figured out which employees should be delayed in reaching the festivities so as to preserve cake for all) and an ice cream send-off for an employee leaving for out of state employment (because "it's never too cold for ice cream"). He's still getting used to his co-workers' humor and penchant for practical jokes, as when, knowing his loyalty to Delta State, one of them seized the stick-on Fighting Okra from his old office and held it for ransom:



We suspect that Arthur is fully capable of dishing out an equal volume of good humor; he's just holding back. In Madison County, he was known for the flowery entreaties that accompanied his requests for approval of his fees. Judge Brewer provided the following one: (see next page)

Your Honor,

Please look with favor upon your humble & ob't serv't and consider affixing your golden signature to the attached. Your fond treatment of the undersigned in such respect will enable him to feed and clothe his issue this month.

With deep respect & admiration, etc. etc.
—Arthur

At a recent Federal Bar luncheon, Arthur unveiled (á la David Letterman) ten reasons why it's better to be District Court Clerk than Chancery Court Clerk. Some of the advantages are obvious—he will never have to seek or make a campaign contribution again. Some are puzzling—does he really believe that working for fifteen judges is better than working for two?

He'll never process another civil commitment, true enough, but he may be ready to volunteer for his own in a few months.

At any rate, Arthur seems pleased to be here, and we are, as we say in the Delta, tickled to have him. He has lifted the melancholy that settled over us all on J. T.'s departure and shown himself to be a capable manager and a duct tape ninja. Our new Clerk may not be a J. T. Noblin, but he's a pretty darn good Arthur Johnston.

PRO BONO SERVICE

with the Mississippi Volunteer Lawyers Project

By Tiffany M. Graves

As our nation faces continued economic uncertainty and underfunded legal services programs threaten access to justice, it is more important than ever for us to do what is right as lawyers. Pro bono work reminds us of why we became lawyers in the first place.

Every day, pro bono lawyers provide access to justice for thousands of Mississippians. Many of those lawyers choose to provide pro bono service by volunteering with the Mississippi Volunteer Lawyers Project (MVLP). Formed in 1982, MVLP represents the nation's first formal association of a state bar association and the Legal Services Corporation (LSC). Even before completing its first year of operation, MVLP was recognized by the American Bar Association and the National Legal Aid and Defender Association as the country's single most outstanding program among state bar associations.

Prospective MVLP clients are thoroughly screened by MVLP to determine whether they qualify for MVLP's services. If a potential client is deemed eligible for the program's services, the client is matched with a volunteer attorney who will represent him or her on behalf of MVLP. MVLP clients have legal matters in the following areas: uncontested divorces, emancipations, simple wills, adoptions, guardianships, name changes, birth certificate corrections, child support contempt matters, child support modifications, conservatorships and visitation matters.

MVLP provides clients with free legal services through direct representation, legal clinics, community outreach workshops and other programs. MVLP carries professional liability insurance on all volunteers who provide any of these services to MVLP clients. It is important to MVLP that attorneys not be precluded from volunteering because of liability concerns. MVLP acknowledges that a number of its volunteers do not regularly practice in the area of domestic relations. To support volunteers with handling cases outside of their general practice areas, and with the help of thirteen Jackson Metro area firms, MVLP developed a Pro Bono Attorney Manual which provides substantive outlines, sample pleadings and other case documents in bound or electronic form. MVLP also developed a Pro Bono Attorney Guide which steps volunteers through every phase of pro bono representation with the organization.

MVLP hosts a number of CLE workshops and attorney training sessions across the state throughout the year. These sessions are provided for free or at very low cost to attorneys who volunteer with MVLP. MVLP also recognizes the important contributions of the attorneys who volunteer with awards and other public acknowledgements. MVLP is so grateful to its volunteers for the sacrifices they make to change the lives of those in need. Without the contributions and support of volunteers and partners, MVLP could not have reached out to so many Mississippians in the broader effort to ensure equal access to justice for all.

To volunteer with MVLP, view a list of upcoming events, review MVLP's open cases, or make a financial contribution to the organization, please visit MVLP's website at http://www.mvlp.net.

Tiffany M. Graves is the Executive Director and General Counsel of the Mississippi Volunteer Lawyers Project. To volunteer with MVLP, email Tiffany at tgraves@mvlp.org or call her at 601–960-9577.

Book Review

Reflections on Posner's *Reflections on Judging*

Review by Jimmy Robertson

I first heard of Richard Posner in the Fall of 1962. "Last Spring a guy named Posner tied Brandeis for the highest grades in history!"

No transcripts produced, nor secondary authority. Just a moment in the shock and awe of that first month as a 1L at the Harvard Law School. Never mind the apples to apples problem of comparing the grades of Louis D. Brandeis, Class of 1877, with those of Richard A. Posner, Class of 1962.

I recalled that '62 moment a decade later when those practical social scientists called economists started talking to lawyers. And to judges, sometimes the least practical of persons. Law and Economics had been born.

Richard Posner put a big foot in both camps, linked in the public mind with Ronald Coase, George Stigler and Aaron Director (24) (the first two Nobel laureates, while Director was merely famous and highly influential) in economics; also an intellectual descendent of Brandeis, Holmes, and more immediately Learned Hand and Henry Friendly, and other luminaries in the law.

Posner's writings in the '70s left no doubt he "was under the influence of Chicago-style free market economics." (26)[1] His *Economic Analysis of Law* (1972) was a watershed event. The day had passed when only tax and antitrust lawyers needed the basics and tools of economics.

Soon, many law schools had L & E programs. Bill Page, now at the University of Florida, had joined the faculty at Mississippi College School of Law. Gary Myers came to Ole Miss. He is now Dean of the University of Missouri School of Law.

The burden of production and persuasion had shifted to those who argued that the law should tolerate (or ignore altogether) excessive transaction costs, social costs and other inefficiencies in order to secure more perfect due process, equal protection and justice generally, much less to do equity.

Richard Posner was the Force and the Face of Law and Economics.

The Poster Child For The Reagan Reformation

Within days after the 1980 election, the new Reagan administration let it be known that and how it planned to reform the federal judiciary. Richard Posner became the poster child for that transformative mission. "I had enthusiastically voted for Reagan." (26)

The Economics of Justice (1981) had just hit the bookstores. "Posner has an apparently willful coldness in assessing, among other things, the sometimes forbidding consequences of his own theories," according to one reviewer.[2]

On Dec. 1, 1981, Judge Posner took the oath of office and his seat on the Seventh Circuit (Chicago). I remembered that '62 moment. I felt an unease. A few more Posner-types on the federal appellate bench, and even the post-Warren era would be at an end.

Given *Gregg v. Georgia*, 428 U.S. 153 (1976), all it would take was one weighty study, full of algorithms and regression analyses, suggesting that at some point in the past execution within a year of sentence statistically significantly reduced the murder rate, and habeas corpus and other post-conviction inefficiencies would be out the window.

The Posner problem was and has always been that informed, fair-minded and candid persons have to concede "that his ideas are often very persuasive."[3] I read Posner. I was soon hooked, my misgivings and disagreements notwithstanding.

An English Major, Too

A funny thing happens to a person who has been a specialist in this field or that, when suddenly he becomes an appellate judge and starts drinking from a fire hydrant that produces cases that involve every kind of human aspiration, fear, failing and practical problem within the jurisdiction.

Soon it became clear that the Richard Posner who may or may not have tied Brandeis at Harvard Law was consuming far more than the fire hydrant delivered, and producing more than just hard edged judicial opinions. He seemingly wrote a book a year, in time publishing, *inter alia*, *The Economic Structure of Tort Law* (w/Landes, 1987); *Sex And Reason*, (1992) to *The Economic Structure of Intellectual Property Law* (2003), *Not A Suicide Pact: The Constitution In A Time Of National Emergency* (2006), and *The Crisis Of Capitalist Democracy* (2010).

In the mid-1980s, Posner started remem-

bering that he was an English major in college; hence, *Law and Literature* (3 eds. since 1988). And in every book since. "I majored in English at Yale." (9, 19) A backhand way of reminding us that he is largely self-taught in Economics!

The Essential Holmes (1992) is a wonderful compendium of the wisdom and words of our wisest judge. *Cardozo, A Study In Reputation* (1990) is less memorable.

Oh, yes, Judge Posner not only pulled his oar on the Seventh Circuit. As a rookie judge, he famously infuriated his new colleagues by volunteering to take on extra case assignments to help the Court with its backlog.

Economic Analysis of Law, now in its 8th edition (2011), and exceeding 1000 pages, sustains Posner's preeminence in the field he mid-wifed 40 years ago. Throughout he has remained a Lecturer in Law at University of Chicago School of Law.

And Now, *Reflections on Judging*

Thirty plus years into his judicial career, Richard Posner has now given us his *Reflections On Judging* (2013). Reading Posner, I always sense that "this book needed one more good edit." *Reflections* is no different.

Brandeis may well have been a "Thayerian Justice," but he was not "on the *Lochner* Court" (173) with Holmes in 1905, as Posner well knows. [I know; picky, picky] The law in general and federal courts in particular may well be stumbling in the wake of "rising complexity," (1) but that is hardly a thesis that brings coherence to *Reflections*, which serves up quite a potpourri.

And a useful potpourri it is, if we leave it at that. For example, Posner offers a savage attack on the *Blue Book*. Judge Posner has never seemed squeamish about the death penalty, and he makes it quite clear that the current stewards of the 511 page *Blue Book* should be hanged, resurrected and flogged. (96–104) [Tee, hee! I love it!] And those responsible for today's *Chicago Manual Of Style* should suffer a similar fate. (101) Still, these are best left a free standing topic.

He spends many pages debating Justice Antonin Scalia and co-author Bryan Garner over formalism and textualism vs. realist and pragmatic judging. A worthwhile topic, but it requires that I read carefully Scalia and Garner's *Reading Law* (2013). I suspect Posner is exaggerating Scalia, if not caricaturing him, as lawyers often do when speaking of courtroom rivals.

Richard Posner Makes Real Readers Think

Reading Posner makes me think. He never fails to make me doubt some pearl or approach of which I have long been sure. I recall a Posnerian influence on my concurring opinion in *Attorney M v. Mississippi Bar*, 621 So.2d 220, 228–29 (Miss. 1992), an objective, no nonsense approach to the ethics *vel non* of lawyers taping interviews with witnesses. I doubt I would have written that had Posner not taught me how to think.

The same of my concurrences in *Leatherwood v. State*, 548 So.2d 389, 403–06 (Miss, 1989) (the death penalty never fits the crime of non-fatal rape, even of a child), and in *Billiot v. State*, 478 So.2d 1043, 1047–49 (Miss. 1985) (the law's approach to execution of the insane is itself insane); and *Groseclose v. State*, 440 So.2d 297, 302–06 (Miss. 1983) (mental illness of the accused is relevant to sentencing, custody and treatment, not legalistic guilt or innocence).

Of course, Posner bears no responsibility for the substance of my views, only for exposing me to a no nonsense way of thinking about hot potato issues.

Footnote 3 (an economics approach to negligence) in *Maryland Casualty Co. v. City of Jackson,* 493 So.2d 955, 960 (Miss. 1986) came from reading Posner. In a prior life, I often cited his work, *e.g., McGowan v. Miss O & G Board*, 604 So.2d 312, 316 fn. 3 (Miss. 1992); *UHS-Qualicare v. Gulf Coast Comm. Hosp.*, 525 So.2d 746, 755, 757 (Miss. 1987), as did others, *e.g.*, *Andrew Jackson Life Ins. Co. v. Williams*, 566 So.2d 1172, 1174 fn. 4, 1179 fn. 9 (Miss. 1990) (Prather, J.).

More recently, Judge James D. Maxwell of the Mississippi Court of Appeals quoted Judge Posner's take on Fed.R.Evid. 403, concurring in *James v. State*, 124 So.3d 693, 703 (¶33) (Miss.App. 2013).

Posner Style Pragmatism Includes the Internet

Reflections' most important contribution is Judge Posner's continued elaboration of his pragmatic approach to judging, sometimes realist judging. He first challenged judges with such views a generation ago — "the brand of pragmatism that I like emphasizes the scientific virtues (open-minded, no-nonsense inquiry)" (6) — in *The Problems of Jurisprudence* 28 (1990).

Then came *Overcoming Law* (1995), *The Problematics of Moral and Legal Theory* (1999), *Law, Pragmatism and Democracy* (2003), and *How Judges Think* (2008).

The indispensable vehicle for pragmatic judging today? The Internet, of course, at least in substantial part. It is hard to overemphasize the importance of *Reflections'* discussion of "Internet Research by Judges," (134–43) though I wish it had been revised and extended; it so badly needs "one more good edit".

In *Reflections*, Judge Posner discusses several cases in which Internet research enriched the Court's understanding of the circumstances and context. (134–42) I note only one.

Gilles v. Blanchard, 477 F.3d 466 (7th Cir. 2007) was a free speech case in a college setting, Vincennes University. None of the three judges on the panel was from Indiana and none knew anything about Vincennes University (139), which lies near the Wabash River in Southwest Indiana.

Judge Posner searched the Web for Vincennes University and insists his "gleanings … enriched the opinion," (139), though "[n]one of my gleanings from the Web influenced our decision." (139)

Judge Posner scoffs at appellate judges' "traditional reluctance to 'go outside the record.'" (143) "If judges lead the way [in Internet use], lawyers will follow, however, reluctantly, and the knowledge base of appellate adjudication will expand." (143)

The Posnerian Imperative the Judges Understand the Facts

Appellate judges often act in ignorance of the facts, according to Judge Posner, that is. In tough cases, many judges don't even understand what facts they need for a good decision.[4]

Think, conceptually, if pragmatically—but not formalistically—of the three step process that Miss. R. Evid. 702 mandates as the route to reliable expert opinions. Reliable judicial opinions require running the same three step gauntlet.[5] According to Posner, today's appellate judges founder at step one: the facts, though not just the evidentiary facts.

"Judicial knowledge deficits are great" (79) most particularly when it comes to "real world activities that give rise to … litigation." (80) Most appellate judges "can puzzle out a legal doctrine but, without understanding the activity to which the doctrine is to be applied, can't produce reliable reality-based decisions." (80)

Early on, Posner challenges judges to be realist judges and have "a much greater interest in fact[s] … than what a judge can glean from a trial transcript." (6) The process of appellate adjudication has its equivalent to Fed. R. [Miss. R.] Evid. 703, the second sentence of which begins "If of a type that should reasonably be relied upon …"

Reflecting on *Reflections* yields a powerful insight embedded in that sentence. The courts should be open to any process "that should reasonably be relied upon by experts in the particular field in forming opinions or inferences upon the subject."

Today, appellate adjudication just may be the *only* particular field in which experts *do not* rely heavily on the Internet in forming opinions or inferences on the subject under scrutiny!

No doubt under the Posner influence, I have long thought "we enhance the chance the law will well play its instrumental role when and to the extent that we relate it to, and premise it upon the empirical and social realities of the phenomena [the law] seek[s] to regulate. Those phenomena are natural; they are behavioral; and they are economic."[6]

And never has judicial understanding of those empirical and social realities been more accessible than today and through the Internet!

Posner's point gets its punch when we recognize that "a judge's inescapable duty is to decide." (115) Or as the late Justice Armis Hawkins put it, "[w]hen we have a case before us in which we have the lawful authority to decide [subject matter jurisdiction], we have *no authority not to decide it*."[7]

A *Reflections* reviewer adds, "Unlike the rest of us, judges must make decisions that enforce their understanding—or misunderstanding—… onto millions."[8]

The Consequences of Judicial Action

Posner admires judges who emphasize "the consequences of judicial rulings … consider[ing] systemic as well as case-specific consequences." (5) He abhors what he calls "shortsighted justice—justice responsive only to the 'equities' of the particular case." (5)

A case in point from my distant past. Because of *Wilson v. Gamble*, 177 So. 363 (Miss. 1937), I was born in Greenwood, Mississippi, some 55 miles from where my parents lived, rather than at the King's Daughters Hospital, only 11 blocks from our home in Greenville.

Dr. Hugh Gamble won his case. Dr. R. E. Wilson, a pediatrician and his ob/gyn colleague, Dr. John F. Lucas, had to leave Greenville and relocate in Greenwood. Family lore is that my mother was furious—she was not about to quit Dr. Lucas—and made a mad 95 mph dash across Highway 82 on a hot July afternoon in 1940 so that I could make my grand entrance with the assistance of Dr. Lucas, and not some curmudgeon that Dr. Gamble's clinic was trying to protect and foist upon her.

I have read *Wilson* many times. One point always stands out. Nothing suggests my interests were considered.

To be sure, *Wilson* exposed both my mother and me to not insignificant risks. As I grew up, I became aware of contemporaries and their mothers who had been similarly situated (in addition to my younger brother and my two younger sisters), and whose interests were similarly ignored.

What Would *Wilson* Have Done With What Was New?

Wilson dispatches its central issue (and my interests) in a single paragraph.[9] "The authorities … are legion, and it would be impossible for anything new to be added …"[10]

But there was something new. Concern over the consequences of non-compete clauses was reflected on the agenda at the American Medical Association. In 1933, the AMA House of Delegates approved a Judicial Council resolution which declared that contractual provisions that interfered with reasonable competition among physicians or "the free choice of a physician" were unethical.[11]

Neither the Court nor counsel may be faulted for not knowing of this, of which yours truly learned via the Lexis discovery of a law review article a few years ago. Today, counsel would do an appropriate Internet search of AMA policies and pronouncements.

It is less clear—what to Judge Posner is quite clear—that the court would understand **its** duty to google the AMA and related websites, to see what (else) is there, and to use appropriately what may be found, whether the lawyers cited it or not!

Rooting Out the Facts that Matter

"The limitation on time [five years] and space [a five mile radius] is undoubtedly here reasonable …"[12] *Wilson* says this at a level of generality and with glibness.

The Posnerian point is this. Superficially, Drs. Wilson and Lucas' five mile radius area exclusion might not seem unreasonable. Nothing in *Wilson* explains that in the mid-1930s there were no viable alternative locations for a combination ob/gyn and pediatrics clinic closer than Greenwood, then some 55 miles away, city limits to city limits.

A five mile radius legal exclusion was in practical effect a 50 mile radius exclusion. I know this because I grew up in Greenville and practiced law in Delta courthouses for 14 years. But there was no Internet in the mid-1930s. Justice Sydney Smith, who wrote *Wilson*, should have had a clue of these important background facts; he haled from Holmes County.

Having practiced law in Lexington, Justice Smith likely realized that people in his rural area would benefit from access to the services of Drs. Wilson and Lucas, if they had to move to Greenwood. Nothing in *Wilson* lets on either way.

Whether it be in the record or not, there can be no doubt that Judge Richard Posner

would have insisted that the *Wilson* Court look out the window. Or today log on to the Internet. And learn about Leland eight miles to the East, but hardly an option. And the same for Indianola, Hollandale, Cleveland and others.

"[O]penness to facts not limited to those found in judicial records is what I want to stress." (6)

Don't Know Much About Monopolies

On another outcome determinative point in that long outcome determinative *Wilson* paragraph, Justice Smith simply says "the evidence discloses that … the number of physicians in Greenville is amply sufficient … and that no monopoly was either contemplated by the contracts or will result from their enforcement." [13]

No clue offered that Justice Smith or anyone on the *Wilson* Court knew the practical economics of monopolies, e.g., how to define a market (product, service or territorial) or what market power is, or what barriers to entry are and how they function in "the activity" implicated in the particular case. Or had made an effort to learn about the practical economics of monopolies. Or whether and to what extent these notions apply and are measured in a such a small economy.

Just one dimension of the "real world activities that [gave] rise to … litigation." (80)

Nothing in *Wilson* suggests whether the Justices had a clue regarding the sufficiency of ob/gyn services in Greenville, or what it might take to give Dr. Gamble's clinic a practical monopoly in that service market, or what the *Wilson* decision was doing to physician-patient relationships, or the patient's right to choose his or her physician, and have that choice respected in the practical world.

Or had made an effort to look out the window and see what could be learned on these important points on which the record was silent.

The Posner spell, of course, has taught me that my personal interests in such a matter are not nearly the trump card I once thought. Still, the public interest — and the judicial oath! — demanded that all relevant interests and factors be searched out — whether in the record or not — and understood, considered, weighed and balanced with competing factors, and in an objective, practical and no nonsense way.

And only then that the Supreme Court of Mississippi may with legitimacy tell affected persons and interests whether Dr. Lucas would have to leave Greenville, if he wished to continue to practice medicine over the next five years.

"The consequences of judicial action are often difficult to predict. But the attention to consequence has a disciplinary force, slowing the rush to an emotional judgment." (122) Judges should "investigate consequences systematically." (122) But how do judges do that? And what of appellate judges who do not consider it at all self-evident that they should do that?

Economic impacts are not only important, but inevitable, as Posner would be the first to say. Appellate court decisions and the precedents they set often impose great social costs. That's what tort reform was all about, however blunt the ultimate (and still evolving) instrument.

Regulators are told to prepare economic impact statements before they promulgate new rules and regulations. Miss. Code §25–43-3.105. Why not the appellate courts (who make law in spite of themselves)? On what grounds do appellate courts willfully blind themselves to the broader societal consequences of their actions?

And if they remove their blinders, as Judge Posner would have them do, how do appellate courts access reliable economic analyses and chose among those that conflict or differ?

The Inevitability of Judicial Legislation

Wilson was and remains judicial legislation; make no mistake about it. *Wilson* is still quoted and applied today.[14]

And so a question for those who believe so fervently that judges should not legislate. What is the Common Law except a lot of judge-made law, augmented by the judge-made rule of precedent?

What is the so-called canon of construction that "statues in derogation of common law shall be strictly construed" other that the ultimate instance of anti-democratic judicial arrogance, grounded in the prejudice that judges make much better laws than do legislatures?

In 1978, Justice Robert Sugg devastated this derogation myth,[15] after which one would have thought a judge would be embarrassed to take it seriously, at least in public. Otherwise sensible judges still cite it,[16] suggesting that judicially created nonsense is more difficult to inter than the political variety.

Judge Posner reminds us that, "Judges tend not to be candid about how they decide cases. They like to say they just apply the law — given to them, not created by them — to the facts. They say this to deflect criticism and hostility … that they are … legislating." (106)

Like it or not, judges are "sometimes compelled by circumstance to legislate from the bench." (106) And it will be ever thus, at least until the judge made rule of precedent is repealed. Judicial legislation is particularly prevalent and important in state courts of last resort with their plenary appellate jurisdiction.

Recall how well Holmes put the point in 1881, in an era of few statutes and when the Common Law reigned.

> "[I]n substance the growth of the law is legislative. And this in a deeper sense than that what the courts declare to have always been the law is in fact new. It is legislative in its grounds. The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned."
> —Holmes, *The Common Law* 35 (1881)

Holmes saw quite desirable "a more conscious recognition of the legislative function of the courts." *Id.*, at 36. Posner adds, "Judges' beliefs that they don't make law dulls their critical faculties." (122)

The Inevitable Judicial Reliance on Legislative Facts

It is hardly surprising that Judge Posner presents matter-of-factly his view of legislative facts. "These are facts that bear on the formulation or interpretation of legal

doctrines. Judges are permitted to rely on such facts without evidence and without having to satisfy the conditions for taking judicial notice of a fact," (137) referring to Fed R Evid [and Miss R Evid] 201.

Astute appellate courts across the country have long accepted the practice of drawing on legislative facts as an important part of the process of appellate adjudication. This state is no exception.[17]

Considering legislative facts is "an inherent part of the judicial process," [18] because judicial legislation is an inherent part of the judicial process.

Even more readily, courts resort to legislative facts on judicial review of agency action, *viz.*, "The reviewing court is charged to study the [administrative] record and the legislative facts to which the challenged order points and divine a rational basis on which the administrator may have acted." [19]

As aged and honored as is the "Brandeis brief" and the correlative practice of judicial resort to legislative facts, there remain those who react with horror that the court is "going outside the record." The Supreme Court of Mississippi has formally approved just that "as an inherent part of the judicial process," [20] but how many know it, and understand?

This view comes from Fed. R. Evid. 201 which has long carried a comment explaining, that the appropriate

> view which should govern judicial access to legislative facts … renders inappropriate any limitation in the form of indisputability, any formal requirements of notice other than those already inherent in affording opportunity to be heard and exchanging briefs, and any requirement of formal findings at any level. It should, however, leave open the possibility of introducing evidence through regular channels in appropriate situations. *See Borden's Farm Products Co. v. Baldwin*, 293 U. S. 194, 55 S.Ct. 187, 79 L.Ed. 281 (1934), where the case was remanded for the taking of evidence as to the economic conditions and trade practices underlying the New York Milk Control Law.

"Regular channels" today mean both Federal and Mississippi versions of Rule 702, authorizing experts passing muster under the reliability criteria of the rule to "testify in the form of an opinion **or otherwise.**" [emphasis added]

An expert may "testify by giving an opinion or any other form of testimony, such as an exposition," [22] a narrative[22] or background information or principles.[23] By analogy to Rule 703, "regular channels" should also include the Internet. See above.

Still, the appellate court—particularly the court of last resort—should accept its opportunity and duty to scrutinize with a grain of salt the parties' self-interested use of regular channels or the Brandeis brief.

Justice Hawkins was within his prerogatives (and, arguably, his duty as well) when he read and cited medical texts not cited by the parties or their medical experts in *Samuels*, 608 So.2d at 1182, 1184. Justice Hawkins could have discharged his duty far more efficiently and reliably if the Internet had been available to him.

But there is more. As with *Wilson* there are so often non-represented third party and public interests whose only protection and hope is that appellate judges will look out the window, and to so much more than just "the 'equities' of the particular case." (5) And because those unrepresented third party and public interests will suffer consequences and effects no matter how desperately the judges might try to limit their focus to the 'equities' of the particular case." (5)

One familiar—and at times fatal—fallacy of the adversary system is that there are only two points of view on how the defective widget should have been made. Judgment calls by counsel as to what in the interests of their clients the court should and should not be told only complicate the fallacy. Another reason we so badly need good Posnerian pragmatic judging in our courts.

I could go on.

Sober Notes for the Path Ahead

A half century ago, Professor Kenneth Culp Davis recognized what should be obvious.

> "[J]udge-made law would stop growing if judges, in thinking about questions of law and policy, were forbidden to take into account the facts they believe, as distinguished from facts which are 'clearly . . . within the domain of the indisputable.' Facts most needed in thinking about difficult problems of law and policy have a way of being outside the domain of the clearly indisputable."

Davis, *A System of Judicial Notice Based on Fairness and Convenience*, 55 Harv.L.Rev. 364 (1942) and in Perspectives Of Law 82 (1964). Comment (a) to Miss.R.Evid. 201 invokes Prof. Davis' "now famous article."

Thirty years ago, the Fifth Circuit explained the use of legislative facts in consolidated cases arising in this state. *Dunagin v. City of Oxford*, 718 F.2d 738, 748–49 fn. 8 (5th Cir. *en banc* 1983). The Court considered "question[s] of social [and scientific] factors and happenings which may submit to some partial empirical solution but is likely to remain subject to opinion and reasoning. [citation omitted] That reasoning is the responsibility of legislators and judges, assisted by scholars

and social scientists." *Dunagin*, at 748, fn. 8. In more traditional hard[er] science" contexts, "unscientific values, interests and beliefs" are often "transcendent." *Dunagin*, at 749, fn. 8.

Those who would challenge the legitimacy of judicial resort to legislative facts must confront the alternative. Posner suggests the reason the U. S. Supreme Court is perceived as a political court "derives from the fact that the Justices form confident views without any empirical basis for them." (83) Decisions are "shaped by ideology (including religion), temperament, race and sex, upbringing, and other personal characteristics that differ across judges and Justices." (83) "Fact-free constitutional adjudication is abetted by constitutional lawyers (prominently including professors of constitutional law), who 'know little about their proper subject matter — a complex of political, social and economic phenomena.'" [24] (83)

But is it enough to ground major constitutional doctrine in the famous footnote 11 in *Brown v. Board of Education*, 347 U. S. 483, 494 (1954)? And set the stage where several generations later more new and more controversial learning may by a 5 to 4 vote be seen to ground new and different constitutional doctrine?

A Postscript

This essay has been a once over lightly of my take on a central dimension of Posnerian realist or pragmatic judging. In *Wilson* and elsewhere, I have added a local and personal flavor. The number of cases needing the benefits of such judging is far greater than even soft textualists and formalists like yours truly dare let on.[25] There is much more in *Reflections* worth reading and thinking about. And applying to day-to-day life within the Mississippi judiciary, and not just its federal variety.

More valuable than any particular point, however, is the cold, dispassionate, no nonsense reasoning Richard Posner (usually) brings to bear, and how it steels the open mind to take with more than a grain of salt the passionate polemics of both the legal Right and the Left. And of those fearful judges who dare not open their minds to new and available paths to a higher quality of justice. All too many are content to see the law as O'Neill saw life when he had semi-autobiographical Jim Tyrone insist that "there is no present or future, only the past, happening over and over again, now." [26]

I'm not sure how one would know whether Posner was as good as Brandeis at Harvard Law School, or that it matters. I'm pretty sure the Reagan White House had no clue what a bully pulpit it was giving Richard Posner back in 1981. If only other appellate judges taking the bench since were so open to thinking and rethinking, though the fire hydrants they drink from serve up ever "rising complexity." (1)

If only we had a law that the foremost qualification for appellate judicial office was that the nominee have been an English major.

I am sure the only excuse one might have for not reading *Reflections* and Posner's other books is that he writes them faster than most of us can read. But, then, as The New York Times reviewer put it, a part of the Posner problem is "that Posner's best is significantly above the mean." [27]

That moment in the Fall of '62 has proved prophetic.

1. Numbers in parentheses refer to the page in Posner's *Reflections On Judging* (1913) where the quote may be found.
2. Schmalbeck, *The Justice of Economics: An Analysis of Wealth Maximization As A Normative Goal*, 83 Colum. L. Rev. 488, 489 (1983).
3. Schmalbeck, *id.*, at 490.
4. Here and below, I join Judge Posner in making clear we are not talking about the "many cases [that] are appealed that can be and are resolved by conventional legal analysis," (106) "cases [that] can be decided satisfactorily by straightforward application of known and definite law to the facts of the case." (107)
5. *See Boardman v. USAA*, 470 So.2d 1024, 1029–30 (Miss. 1988).
6. Robertson, *The Law Of Business Torts In Mississippi*, 15 M. C. Law Rev. 13, 40 (1994).
7. *Shewbrooks v. A. C. & S., Inc.*, 529 So.2d 557, 560–61 (Miss. 1988).
8. Kenji Yoshino, "Holding Court," The New York Times (Nov. 8, 2013); http://www.nytimes.com/2013/11/10/books/review/richard-a-posners-reflections-on-judging.
9. *Wilson*, 177 So. at 365–66.
10. *Wilson*, 177 So. at 365.
11. AMA, Digest Of Official Actions 1846–1958 at 123 (1959).
12. *Wilson*, 177 So. at 366.
13. *Wilson*, 177 So. at 366.
14. *See, e. g., Timber Lake Foods, Inc. v. Estess*, 72 So.3d 521, 525 (¶13) (Miss. Ct. App. 2011); *Raines v. Bottrell Insurance Agency*, 992 So.2d 642, 645 (¶9) (Miss. Ct. App. 2008).
15. *McCluskey v. Thompson*, 363 So.2d 256, 262–64 (Miss. 1978).
16. *See, e.g., Howard v. Harper*, 947 So.2d 854, 859 (¶15) (Miss. 2006); *Warren v. Glascoe*, 880 So.2d 1034, 1037 (¶11) (Miss. 2004).
17. *Samuels v. Mladineo*, 608 So.2d 1170, 1183–86 (Miss. 1992).
18. Comment (a) to Miss. R. Evid. 201.
19. *Harrison County Bd. Of Sups. v. Carlo Corp.*, 833 So.2d 581, 583 (¶6) (Miss. 2002) (quoting earlier cases).
20. "Adjudicative facts are easily understood; they are specific to the litigation. Legislative facts, on the other hand, are more amorphous. To determine legislative facts one must look at public policy or policies involved in judge-made law . . . A court's judicial notice of legislative facts is more an inherent part of the judicial process rather than an evidentiary matter."
21. Official Comment to Miss. R. Evid. 702, quoted in *West v. State*, 553 So.2d 8, 21 (Miss. 1989).
22. *Slay v. ICGRR*, 511 So.2d 875, 877 (Miss. 1987) (opinion "in narrative form")
23. 4 Weinstein's Federal Evidence § 702.02[2] (2d ed. 2013).
24. Posner is quoting from his own *Overcoming Law* 208 (1995).
25. I have thought hard about these issues in days past, having learned from Judge Posner and many others. See "An Interpretive Stratagem" and "The Decline of Malice and Intent" in my *The Law Of Business Torts In Mississippi*, 15 M. C. Law Rev. 13, 24–57 (1994). Rereading those pages, in the light of *Reflections* and much more, I'm sure I could put the points better today, twenty years later.
26. Eugene O'Neill, *Moon For The Misbegotten*, Act III, page 77 (1945).
27. Kenji Yoshino, "Holding Court," The New York Times (Nov. 8, 2013); http://www.nytimes.com/2013/11/10/books/review/richard-a-posners-reflections-on-judging.html

POINT MADE

By David Maron

The writing of legal briefs, motions and court opinions share at least one common purpose — to effectively communicate an idea — whether an argument (motion) or statement of law (court order or opinion). Occasionally, the writing rises to new levels. The following are some examples.

A Nov. 1, 2013 USA Today article describes a forceful, if not creative, response to a motion in limine. The prosecution had asked the court to prevent the defense attorney from referring to the State's attorneys as "the Government." But as the article reports the defense attorney:

> fired off his own motion in response. It included conventional references to case law, the First Amendment — technical stuff that one would expect in a court filing. And then he got creative … [H]e demanded his client no longer be referred to as "the Defendant," but instead be called "Mister," "the Citizen Accused" or "that innocent man" — since all defendants are presumed innocent until a judge or jury finds them guilty. As for himself, clearly "lawyer" or "defense attorney" wouldn't do him, well, justice.
>
> Rather, counsel for the Citizen Accused should be referred to primarily as the 'Defender of the Innocent' … Alternatively, counsel would also accept the designation 'Guardian of the Realm,'" [he continued] And since prosecutors are often referred to formally as "General" in court, Justice, in an effort to be flexible, offered up a military title of his own.
>
> Whenever addressed by name, the name 'Captain Justice' will be appropriate.[1]

Click here to view the motion and response from the case, *State of Tennessee v. Powell*.[2]

According to the article, the court denied the prosecution's motion in limine holding that the word "the Government" was not derogatory.[3] The response was humorous and effectively made a point. No doubt a win for the defense — and perhaps for creative writing; but is there a limit? Let us hear from you.

Well-placed and forceful sarcasm no doubt may bring home a point better than 10 pages of cogent argument. But use good judgment, please. And what may be appropriate in one situation isn't in another.

The Mississippi Supreme Court made this point years ago when considering whether a pro se litigant's response was sufficient to overturn an entry of default. In *Wheat v. Eakin*,[4] the court included a complete copy of Wheat's response. Without question it made a point. A copy is included here. But the court further explained that "[w]hile the form and language the appellant's response are less than desirable and more frank than customary" it was sufficient as a general denial. But, the court cautioned, "If an *attorney* had used such language in a pleading to the court, he would have been subject to discipline by both the Court and the State Bar."[5]

Sarcasm isn't only for lawyers. In *Gonzalez-Servin, et al. v. Ford Motor Co.*[6] noted jurist Richard Posner chastised a lawyer for completely ignoring adverse, dispositive precedent in its response brief. Judge Posner wrote that "when there is apparently dispositive precedent, an appellant may urge its overruling or distinguishing or reserve a challenge to it for a petition for certiorari but may not simply ignore it." And he punctuated his point with pictures (included here on page 5) accompanied by the observation: "The ostrich is a noble animal, but not a proper model for an appellate advocate … The ostrich-like tactic of pretending that potentially dispositive authority against a litigant's contention does not exist is as unprofessional as it is pointless."[7]

1. *See*, Brian Haas, ***Move in response to prosecutors' motion to references to them as 'the government***, USA Today, Nov. 1, 2013, at http://www.usatoday.com/story/news/nation/2013/11/01/defense-attorney-demands-to-be-called-captain-justice/3341623; see also Brian Haas Just Call him 'Captain Justice,' The Tennessean, Nov 1, 2013, A1 available at The Tennessean archives: http://pqasb.pqarchiver.com/tennessean/doc/1447663947.html?FMT=FT&FMTS=ABS:FT&type=current&date=Nov+1%2C+2013&author=Haas%2C+Brian&pub=The+Tennessean&desc=Just+call+him+%27Captain+Justice%27&pf=1
2. *State of Tennessee v. Powell*, In the Criminal Court of Williamson County, Tennessee, Case No. I-CR086639B
3. *Id.*
4. *Wheat v. Eakin*, 491 So. 2d 523, 527 (Miss 1986).
5. *Id.* at 526.
6. *Gonzalez-Servin, et al. v. Ford Motor Co.*, in the United States Court of Appeals for the Seventh Circuit, No. 11–1665 (November 23, 2011).
7. *Id.* at * 5 (citations omitted).

We'd love to hear from you!

Email us your comments and other published examples of "Point Made" writing to info@caba.ms

or mail them to: Capital Area Bar Association, P.O. Box 14065, Jackson, MS 39236

Book Review

Bonhoeffer: Pastor, Martyr, Prophet, Spy

by Eric Metaxas (Thomas Nelson 2010)

Review by John C. Henegan

Over the west door of Westminster Abby is a panel depicting ten religious martyrs of the 20th century from all faiths. Included is a statue of Dietrich Bonhoeffer, a German Lutheran minister who is also one of the imminent protestant theologians of the 20th century. In 1939 he turned down a faculty position at the prestigious Union Theological Seminary in New York City and returned to Berlin to be with his fellow church members who opposed the Nazi party's takeover of the German Lutheran Church. He was later taken without formal charges from his home on April 5, 1943, and after being shuttled from prison to prison for two years, the SS of the Third Reich executed Bonhoeffer and several others in Flossenberg, Germany, for their participation in the failed attempt in July of 1944 to assassinate Fuhrer Adolph Hitler. There was no trial. Hitler delivered the order of execution when Germany's defeat was a foregone conclusion, only a month before he committed suicide in his Berlin bunker.

Bonhoeffer studied under Karl Barth and Reinhold Niebuhr. He was a neo-orthodox, whose Christology is central to his theology. Yet he famously and controversially spoke of a "religionless Christianity," a term he believed was misinterpreted and misunderstood and is still debated. His works include *Letter and Papers from Prison, Life Together, The Cost of Discipleship, and Ethics*, an unfinished piece on which he was working until his death. All are in print. They are the subject of devotional books, are read and studied in colleges, seminaries, and Sunday school classes, and are quoted in lectures, speeches, and sermons. His work is examined in theological studies, and his life is recounted in biographies, memoirs, films, and plays.

BONHOEFFER—PASTOR, MARTYR, PROPHET, SPY by Eric Metaxas (Thomas Nelson 2010) (591 pp.), a bestseller that was included on several notable book lists of 2011, examines the events of his life and death. How could a theologian who took the teachings of the Sermon on the Mount to love one's enemy and to turn the other cheek as a literal command—not as a metaphor or an aspirational guide—later decide to take part in a conspiracy to assassinate his fellow Germans, even if they were in the highest ranks of the Nazi command?

Bonhoeffer was born on February 4, 1906, the youngest of four sons, a few minutes before his twin sister, Sabine, into what became a large, distinguished Berlin family. He was too young to serve in the German military during World War I. He was fluent in several languages, played the piano, traveled extensively in Italy, and worked at a German church in Barcelona, Spain. By 23, Bonhoeffer had earned two doctorates in theology. His doctoral theses are still studied today. These works drew so much acclaim within the German Lutheran Church that Bonhoeffer was recommended for a fellowship at Union Theological, an interdenominational seminary, next door to Columbia University in Manhattan, New York.

Bonhoeffer could not be ordained in the Lutheran Church until he became 25. He postponed a German lectureship, accepted the fellowship, and went to Union in the fall of 1930 to study for a year under, among others, Reinhold Niebuhr, author of the best seller, *Leaves from the Notebook of a Tamed Cynic*, about his years as a church pastor in Detroit. Bonhoeffer took two courses under Niebuhr, who would later become known as this country's most prominent 20th-century theologian. In one course Niebuhr introduced Bonhoeffer to the poetry of Langston Hughes and Countee Cullen, members of the Harlem Renaissance. But Bonhoeffer often disagreed with Niebuhr's religious views, and he complained to his faculty advisor at Union, "There is no theology here."

When Bonhoeffer arrived at Union in 1930, the conflict between the liberals and the fundamentalists of the mainline churches in New York was at its zenith. The leading figure of the liberals was the Reverend Henry Fosdick, who made the cover of Time for his sermons at Riverside Church (built by John D. Rockefeller) and taught homiletics at Union. The leading fundamentalist was Dr. Walter Duncan Buchanan, who preached at Broadway Presbyterian Church. The churches were within walking distance of Bonhoeffer's Union dormitory. Upon arriving at Union, he attended Sunday services at both but was unsatisfied with their message—from his perspective either irreligious or too diluted. He wrote that "they preach about virtually everything, only one thing is not addressed, … the gospel

> *"Later reflecting on his year abroad, Bonhoeffer said that he had been a religious person in Germany but became a Christian in America."*

of Jesus Christ, the cross, sin and forgiveness, death and life."

Frank Fisher, a graduate of Howard University and a fellow Union seminarian from Birmingham, Alabama, heard about Bonhoeffer's discontent. Fisher invited Bonhoeffer to attend Abyssinian Baptist Church, where Fisher interned as part of his seminary field work and went to Sunday services. Abyssinian Baptist, located in Harlem, was formed during President Jefferson's administration when its members left First Baptist Church of New York City over its segregated seating policy. The Reverend Adam Clayton Powell, Sr., whose parents had been slaves, preached at Abyssinian Baptist, and he frequently spoke about his mid-life St. Augustine-like conversion.

Abyssinian Baptist Church had over 14,000 members and was one of the largest churches in the nation. According to Metaxas, at Abyssinian, "Bonhoeffer found a theological feast that spared nothing. Powell combined the fire of a revivalist preacher with great intellect and social vision. He was active in combating racism and minced no words about the saving power of Jesus Christ … For the first time Bonhoeffer saw the gospel preached and lived out in obedience to God's commands." Bonhoeffer purchased vinyl phonographs of the African-American spirituals that he heard and sang while at Abyssinian and took them back to Germany where, as a professor of theology, he would play them to his seminary students and his family. Bonhoeffer not only worshipped there for the rest of the school year, but he taught a Sunday School class of young boys, just as he had in Barcelona, and a Wednesday night women's Bible study, and preached from the pulpit before returning to Germany in 1931.[1] Several of his fellow seminarians have written in detail about how enthusiastically he embraced this time, and he would share his experiences at Abyssinian at length with them.[2] Later reflecting on his year abroad, Bonhoeffer said that he had been a religious person in Germany but became a Christian in America.

During the Thanksgiving Holidays of 1930, Bonhoeffer traveled with Fisher and two other seminarians to Washington, D.C. They toured the Capitol, the Washington Monument, and the Lincoln Memorial and visited Howard University. There he confronted Jim Crow for the first time. Writing his parents about his trip, he told them that he "lived completely among the Negroes and through the [seminary] students was able to become acquainted with all the leading figures of the Negro movement, was in their homes, and had extraordinarily interesting discussions with them … The conditions are really rather unbelievable. Not just separate railway cars, tramways, and buses south of Washington, but also, for example, when I wanted to eat in a small restaurant with a Negro, I was refused service."

He later wrote one of his brothers about the infamous Scottsboro case, which received nationwide attention in March of 1931, reflecting in his letter "whether I have perhaps spent too much time on this question here, especially since we don't really have an analogous situation in Germany, but I have just found it enormously interesting, and I have never for a moment found it boring." When he returned to Germany, one of his students later wrote that Bonhoeffer had talked about "the piety of the negroes" in America and that, as Bonhoeffer was about to return to Germany, Fisher had told him: "'Make our sufferings known in Germany. Tell them what is happening to us, and show them what we are like.'"

Two days after Bonhoeffer had arrived in America on September 14, 1930, the Nazi Party catapulted from the smallest to the second largest political party in the German Reichstag. Within three years, Hitler was sworn in as the democratically elected Chancellor of Germany. Shortly afterwards, the Reichstag caught fire, and the next day Hitler persuaded Hindenburg to suspend those parts of the German Constitution that guaranteed civil liberties. The Nazis blamed the Communist Party for the fire; arrested, convicted, and beheaded one person as part of a larger conspiracy to overthrow the German Reich; and exiled the leading local Communists to the Soviet Union. On March 23, the Reichstag adopted the Enabling Act, which transferred the complete power of the Reichstag for four years to Hitler and his cabinet. On March 30, Hitler announced that there would be a boycott of Jewish stores in Germany to prevent the international press from spreading propaganda about the German government.

Shortly afterwards, the Third Reich announced that the Aryan Paragraph, which provided that only persons of "Aryan" descent could work for the government, which included the German Church, would take effect on April 7. On May 10, the Nazis sponsored a nationwide book burning of all anti-German books, including the works of Helen Keller and Jack London. The adoption of the Aryan Paragraph meant that all Jews and their descendants would be barred from state employment. Incredibly, a large group within the German church known as German Christians supported the Aryan Paragraph and advocated that those Jews and their descendants who were baptized Christians could form their own church separate from the German church.

Bonhoeffer, who had seen the effects of a separate but equal society in America, publicly opposed the Aryan Paragraph. He argued that this was a defining moment in history and that the German Church must confess the Gospel of Jesus Christ. In Metaxas's words, according to Bonhoeffer, it was "the duty of the church to stand up for the Jews," explaining that "the church must question the state, help the state's victims, and work against the state, if necessary," all of which Bonhoeffer would do in time.

The Nazi party soon took over the leadership positions within the German National Church. They stood silent as Jews were deported and murdered in concentration camps and as disabled and handicapped Germans who were unable to take care of themselves were relocated and also murdered. Private statements and diaries of Nazi leaders revealed later that they viewed Christianity as incompatible with the Fuhrer principle of leadership and that their ultimate goal was to destroy the Christian church in Germany. Over 800 persons who left the German

Church and became pastors or lay leaders in the Confessing Church based on the principles of the Barmen Declaration were in 1937 arrested or imprisoned. As these atrocities slowly came to light, a group of prominent Germans, which eventually included Bonhoeffer, organized a determined but nonetheless failed plan to assassinate the leaders of the Nazi party and remove the rest from power.

The encounter between Bonhoeffer and Albert Franklin Fisher brings to mind the passage in Acts about Phillip and the Ethiopian, only the roles are very much reversed. There appears to be no evidence that Bonhoeffer and Fisher ever communicated after Bonhoeffer left America in 1931 and returned to Germany or during the two months in 1939 when Bonhoeffer returned to Union. Fisher graduated from Union. He taught religion for several years at Morehouse College and became chief pastor at West Hunter Street Baptist Church in Atlanta. He was arrested in 1957 along with several other Atlanta pastors and Dr. Martin Luther King, Jr., for attempting to integrate the Atlanta public bus system. Fisher passed away in 1960, and the Reverend Ralph Abernathy took over his pastoral duties at West Hunter.[3] There is no indication that Fisher ever referred to Bonhoeffer in any of his writings. There is no evidence that Phillip and the Ethiopian had any subsequent communications either.

Metaxas's work is a richly detailed portrait of the life and personality of Dietrich Bonhoeffer that does a superb job of placing him into the historical context of his country and explaining the timeless quality of his thinking and the courageous nature of his actions. Bonhoeffer's entire life was characterized by a singularity of purpose and focus upon the working out of the Gospel of Jesus Christ within the world as he encountered it. He had a capacity for opening up his heart and mind to others regardless of their race or gender or the circumstances in which he met them whether in Germany, elsewhere in Europe, or across the Atlantic. His work and studies and experiences living outside Germany before returning the final time in July of 1939 plainly transformed his religious thinking and his life. Metaxas convincingly brings to life the strength of Bonhoeffer's intellect and character and how as a result of his religious convictions he would not withdraw or retreat from or stand mute in the face of the events of the world as overwhelming as they must have seemed.

1. Charles Marsh, "From The Phraseological To The Real": Lived Theology And The Mysteries Of Practice, Vanderbilt Conference on Faith and Practice 22 (PDF undated) (accessed at www.practicingourfaith.org—Mar. 2, 2014) ("C. Marsh").
2. *Id.* 22–25.
3. *Id.* 26–27.

BAR-ISTER *A Lounge Review*

By Will Manuel

In Sept 2013, a new watering hole burst onto the Jackson scene. Fondren Public opened with much social media fanfare and began serving exotic brews from a shopping center on Old Canton Road, tucked in the corner between Cups and Rainbow Foods. The interior makes you feel as if you have landed in a pub in the village outside of Downton Abbey. Dark wood, mirrors, shelves of curious books and hardwood flooring surround patrons. However, Lady Mary might be slightly confused by the establishment's Galaga/Ms. Pac Man machine and the projection TV on the patio. Said patio also includes a unique feature to the Jackson bar scene—two bocce ball courts. The courts are fronted by several murals that were painted by local artists when the location housed the Swellophonic store. Sunny afternoons will find numerous patrons trying their hand at a bocce game or maybe a cornhole match. This bar is very popular with the young professionals crowd. (I think that several of our firm's associates have cots there.)

The primary focus of Fondren Public is beer. The bar sports 24 ales, IPAs, stouts and other brews on tap—many which are new to the state. This selection is supplemented by a plethora of bottled beers. For those who prefer a less hoppy beverage, the menu provides many wines and a full bar. Fondren Public also sells growlers (large bottle for storing beer—not pit bulls) of its beers on tap. One thing that should not be ignored at Fondren Public is the food. In addition to standard bar fare like mini-corn dogs and sliders, Fondren Public has some of the most unique fried cheese in town. (This writer's redneck palate cannot do a description justice.) In addition, the Public Chips are their creative take on nachos and are not to be missed.

Fondren Public has hosted events with several local breweries since opening last fall. Both Tin Roof and Southern Prohibition have held tastings and giveaways there. Fondren Public also recently hosted a fantastically-titled "Bacon and Brews" event that benefitted the Mississippi Burn Association. Several alumni associations have held sports viewing parties there. I was also told that the patio is available for rent for private functions—just call to reserve.

Since this article is supposed to be a critique, I will have to posit two minor issues with Fondren Public. The first, and probably most troublesome, is the parking. Cramming new numbers of beer enthusiasts into an already packed shopping center parking lot has resulted in some frustration. Some patrons would tell you that the answer is to arrive early and leave late. The second thing I would change the bar's operating hours. Fondern Public does not open until 4 p.m. Monday–Friday and 11 a.m. on Saturday. Closing time is 2 a.m., when I am told it is packed. For an older lawyer like me, no way I make it up that late. It is closed on Sunday, which denies its fans the opportunity to watch football on the patio and wash down a few hard-to-find beers. Other than those two small hiccups, Fondren Public is a welcome addition to the lawyer happy hour scene. I hope to see you there.

2014 Mississippi Senate Election

By Jere Nash & Andy Taggart

Jere Nash (left) and Andy Taggart (right) are authors of *Mississippi Politics: The Struggle for Power, 1976–2008* and *Mississippi Fried Politics: Tall Tales from the Back Room*. They offer weekly political commentary on WLBT TV3's "Red Blue Review".

Not since 1954 has a sitting United States Senator from Mississippi faced a serious primary challenge. In that year, Carroll Gartin, then an up-and-coming Democratic politician, decided to oppose Jim Eastland in their party's primary. The last time a sitting United States Senator from Mississippi had his age and tenure in office questioned by a challenger was 1982, when Republican Haley Barbour mounted a general election challenge against 82-year-old John Stennis. In neither case did it turn out well for the challenger.

Now three months out from this year's Republican primary election for U.S. Senator, virtually all of the beltway pundits contend state senator Chris McDaniel's campaign against Thad Cochran represents a serious challenge in the form of an unprecedented intra-party and intra-political family contest.

Here's what we believe.

As with any race involving an incumbent, this primary fight is a referendum on Thad Cochran. In other words, the June 3 primary election is Cochran's race to lose. So long as he controls the campaign dialogue, stays on the offense with his own positive message, and educates voters about McDaniel's record and positions on the issues, then Cochran will win. If Cochran fails to accomplish any of those campaign imperatives, then we could be looking at a long election night come the first Tuesday in June.

As we see it, the voters who are supporting McDaniel fall into two categories. The first are those who simply oppose Cochran's record of directing federal spending to programs and projects in Mississippi. As McDaniel told those attending his campaign kick-off, "The national debt is the greatest moral crisis of this generation. So, let's go forth from this place making it perfectly clear that the era of big spending is over. The age of appropriations must end." Historically, Mississippi voters who adhere to that view inside the voting booth have been few. The second group includes younger voters who aren't necessarily opposed to Cochran's record of earmarks, but who believe it is time for a fresh face and new energy at the nation's capital. It is that second group of primary voters whom Cochran has to persuade that seniority in Washington, DC is far more important than youthful energy and sparkling oratory.

Virtually every statewide Republican party official or elected official in Mississippi is backing Cochran's re-election campaign. They are doing that out of respect for his service to the state and his party and the strong possibility that he could become chairman of the Senate Appropriations Committee if the Democrats lose control of that chamber in November (which your Republican co-author believes is more of a possibility than your Democratic co-author). And, of course, even while serving in the minority, Cochran has just demonstrated his political stroke by helping to write and then pass a farm bill reauthorization that will be plenty good for our state. His challenge might prove to be that beyond a relatively small circle of governmental and business leaders—and residents of South Mississippi with recollections of federal relief after Hurricane Katrina—there is a generation of Mississippi voters who know little of Cochran's achievements. In the absence of knowing what he's done and can continue to do, it is no surprise these voters might be willing to consider a fresh face.

The other major factor in this senate primary is the role of so-called Super PACs, out of state political action committees (thus, the abbreviation "PACs"), willing to spend millions of dollars in advertising that is not connected to either the McDaniel or Cochran campaigns. Several of these Super PACs made clear early on their intention to support McDaniel over Cochran. These same PACs backed challengers in GOP primaries throughout the country in 2012 and are doing so in Kentucky, Kansas, Texas, and other states this year. A million dollars can buy a lot of television in Mississippi. If these PACs choose to make that kind of commitment on behalf of McDaniel, then that factor would certainly make the race more competitive. Conversely, at least one newly created Super PAC is already spending significant amounts on an ad campaign opposing McDaniel.

If Cochran and his campaign are energized by McDaniel's challenge and choose to set the tone of the contest, then we believe Cochran will be handily re-elected.

After June, the question becomes what effect this primary will have on the Mississippi Republican Party going forward. Will voters who backed McDaniel, many of whom are in fundamental disagreement with the public policy priorities of their leadership, continue to cause discord within the party? Your Democratic co-author is, of course, more fascinated by this prospect than your Republican co-author. And it is for that reason that the Democrats have recruited former first district Congressman Travis Childers to serve as their party's nominee in the general election, in the hopes that he will be able to take advantage of any hard feelings lingering after the Republican primary. The national Democratic party has made financial commitments to the Childers campaign to make real that advantage.

Your Republican co-author believes recent history likely provides a guide, and that the primary result will signal a coming together rather than a driving apart of Mississippi Republicans. In 2010 and in 2012, for example, current incumbent Republican members of Congress faced primary challenges from the right, and in each case, the current incumbents easily won nomination and easily won their general elections. Your Democratic co-author thinks otherwise and believes there is a chance this primary upends history and generates enough discord within the state GOP to give the Democrats their first real shot at a Senate seat since 1988.

More Apps to Consider

By Joel Howell

Thanks to lawyer Joseph Hada and Technolawyer, here, among other things, are some available presentation tools and pointers.

While PowerPoint used to be *de rigueur*, there are now many more options.

For example, Prezi is a free web-based presentation tool. Usable on the iPad and other tablets, Prezi has a Google Earth-type zoom feature, which means you aren't limited just to slides.

Timeline 3D is what it says it is. Enter events, add media, and you have a three-dimensional timeline for presentations. Track the timeline and pull windows as needed for events.

Keynote is more PowerPoint-like. In fact, you can even import PowerPoint presentations. It works on the principles of slides, but they can be previewed before display, You can also jump to other slides without leaving presentation mode.

During trial and hearings, open presentation tools are now available and offer as much or more flexibility than PC-based options.

Trial Director is a free iPad app (there is a full PC version, but it's $695.00). You can move call-outs to the side and individually close them. Trial Director also has assisted drawing for circles, boxes, and straight lines to frame text or images, with color options.

TrialPad is a a bit pricey for an app at $89.99 has more features than Trial Director. You can rotate pages, redact in black or white, store in color or icon-coded folders, and add or edit custom exhibit stickers.

Presentation hardware is more mobile than ever. While Apple has complicated life with the Lightning connections for the new iPads, you can get such adapters as Lightning/30-pin to HDMI, Lightning/30-pin to VGA, and HDMI to VGA.

Probably the best way to present from an iPad is Apple TV, a four inch square box that lets you mirror your screen on a television or projector screen using a wireless network. It has its own special place in the Apple Web Store, so doubtless new features will be coming along.

A few other miscellaneous apps are also helpful.

Goodreader is a $4.99 app for document management and offline access. You can also display and annotate documents.

Whiteboard apps are free. They can be better than standard poster boards when used with mirroring. Baiboard HD lets you add to the whiteboard, draw or annotate it, and flip between pages.

VLC is a free video player which integrates with Google Drive and Dropbox, as well as supporting Dropbox streaming. It plays video in any format, not just Apple.

Questions or comments?
Drop me an email: jwh3@mindspring.com

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2014 LIBRARY HOURS

January 2 – May 16

Monday – Thursday . . . . . 7:00 am – midnight
Friday . . . . . 7:00 am – 7:00 pm
Saturday . . . . . 9:00 am – 7:00 pm
Sunday . . . . . noon – midnight

EXCEPTIONS

SPRING BREAK

Fri, March 7th . . . . . 7:00 am – 5:00 pm
Sat, March 8th – Sun, March 9th . . . . . CLOSED
Mon, March 10th – Thurs, March 13th . . . . 7:00 am – 5:00 pm
Fri, March 14th . . . . . 9:00 am – 5:00 pm
Sat, March 15th – Sun, March 16th . . . . . CLOSED

EASTER

Fri, April 18th . . . . . 9:00 am – 5:00 pm
Sat, April 19th . . . . . 9:00 am – 5:00 pm
Sunday, April 20th . . . . . CLOSED

Summer hours begin May 19.
Hours subject to change without notice.

IT'S HARD TO BE OPTIMISTIC THESE DAYS

Take your pick. National Politics, State Politics, Jackson City Governance, Bullying, Racism, Guns, Crime, Drugs, Fires, Snake Handling, Antitrust-Not; and I am only getting started. One would think that 50 years after the Beatles appeared on The Ed Sullivan Show we would have made more progress as a nation, state, and city and as individuals, but the facts suggest otherwise. About the only saving grace is that North Korea, much of what used to be the old Soviet Union and most of the Middle East are effectively making the case for American Exceptionalism even though a close look in our own mirror reveals a sometimes ugly and overall dispiriting image. Predictably, the four building blocks of the human experience are working overtime to explain the current state of affairs. They are: Ignorance, Prejudice, Ego and Greed. Top it off with so called leaders a/k/a serial hypocrites who have perfected the art of public denial, selective memory loss and an ever mounting sense of self importance often referred to as the "Me, Me, Me Syndrome." Then wrap it up in a shiny package financed by Super Pac money and you have the New American Template. So, where to start…?

National Politics

So what's the problem with the straight talking GOP Presidential hope for 2016, New Jersey Governor Chris Christie? But for his top aides closing down four lanes of the world's busiest bridge to exert political retribution on a northern New Jersey mayor who didn't support Christie's recent run for reelection, nothing. Christie told us he didn't know anything about it despite his reputation as a micro-manager. End of story, right? I mean, can you think of a politician who has actually lied to the American People when denying charges of abuse of political power or reckless behavior? So this is where Ignorance, Prejudice, Ego and Greed come into play. The biggest factor is Ignorance.

In the new frontier of digital America, everybody is just too busy with Facebook and Twitter to pay attention to real issues. They are eagerly waiting for a sentence fragment from some self promoting celebrity (let's just hypothetically pick Justin Bieber out of the millions that play the social media game). But the most telling statistic that confirms America's obsession with digital Bread and Circuses for the masses is the fact that 93 million Americans play an interactive game called "Candy Crush Saga" one billion times a day. I mean, who has time to pay attention much less cast an informed vote if they even bother to vote at all? That's exactly how you get the political class we've got.

And then there is the ever expanding overlay of prejudice (the more benign versions are arrogance or blind belief based on nothing more than the familiar phrase, "I'm right and anybody who disagrees with me is wrong, period." Some of the leading exponents of this degree of subjective knowledge are Ted Nugent, Donald Trump, Reverend Al Sharpton (does anybody know where he went to divinity school?) and Bill O'Reilly, to name only four out of countless people who never let inconvenient facts get in the way of their opinions.

And speaking of the Rev. and Bill O, the 24/7 Cable Echo Chamber which provides both with a forum is nothing if not predictable when it comes to the George Washington Bridge shenanigans. PMSNBC (name attributed to Rush Limbaugh) spends all of its time excoriating Christie on Bridgegate while Fox Noise (name attributed to Keith Olbermann) just ignores it as you would expect. The really sad thing is that the closest thing we have to an "Actual Fair & Balanced" cable news channel is Aljazeera America (formerly Current TV). No kidding. As far as Ego and Greed goes, just focus on the New Jersey Governor and those who stand to gain from him being in charge. Oh yeah, I almost forgot to mention Ted Nugent, Donald Trump, the Rev. and Bill O and their pronouncements from on high.

And so, what is the truth about Bridgegate? Given what we know and the realities of hardball New Jersey politics, it doesn't look good for the Governor. One piece of evidence pointing to this conclusion is an official vetting of Christie by the Romney Campaign who assessed him as a potential running mate in 2012. Let's just say that the report turned out badly for the Governor which helps explain why Paul Ryan was on the ticket and Christie was not. Add to this the Governor's Chief of Staff sending out an e-mail which said, "Time for some traffic problems in Fort Lee." The immediate response from a Christie appointee to the Port Authority was, "Got it." Days later, there were indeed severe traffic problems in Fort Lee. I'm sure that Chiefs of Staff everywhere freelance all the time on risky issues without their bosses' approval. This is especially the case when the act is so reprehensible and the potential fallout so negative that public knowledge of

the truth could be considered a career ender. Can you say Carlos Danger?

Now if this were just another Nixon "I'm not a Crook" declaration or a Clinton "That depends on what the meaning of the word 'is' is," then maybe I would not be sharing my cynicism quite as ardently as I am. But once a pattern emerges and repeats itself endlessly, cynicism sets in. I refer you to the words and actions of other self absorbed hypocrite politicos such as Spiro Agnew, the aforementioned Anthony Weiner, John Edwards, Tom Delay, Rod Blagojevich, Larry Craig, Elliot Spitzer, David Vitter, Ray Nagin. (Ooops, I am pushing my word count toward 10,000 so I have to stop now. Trust me, I have not even scratched the surface).

State Politics

When Senator Thad Cochran's Republican Senate seat is no longer safe, there is a problem. It is even a bigger problem when the primary challenger is Republican Tea Party State Senator Chris McDaniel a/k/a "Ted Cruz Lite." Electing the crusading Senator McDaniel is one of the very few ways that the Congressional Approval Rate of 9% could fall any lower. First, there is ignorance. If you haven't been paying attention, Mississippi is on the bottom of almost every economic and educational category that are used to measure states. Fortunately, friendliness and genuine compassion of its people are not among these indicators. Having lived and worked in other states, these are two of the biggest reasons why I live here. But when it comes to objective criteria, Mississippi is at the top of the list of recipients of federal dollars. Senator Cochran, formerly known as the King of Earmarks, is a big reason for that. It's kind of like Social Security and Medicare. Too many white conservative seniors in this state decry all things Washington, but you better not even think of touching their Social Security and Medicare. This is where Ignorance and Greed team up. Undoubtedly, Ego drives the Chris McDaniels of the world, but thanks to a television ad being aired by an anonymous Pro Cochran Super Pac, the reality appears to be that the challenger is just one more ambitious hypocrite whose words and actions don't always mesh. A hypocritical politician? No! Say it ain't so.

Jackson City Government

I can sum this one up with a quick *Res Ipsa Loquitur*. No wonder Southwest Airlines is pulling out. Greyhound or even Mega Bus might be next. Besides the Phantom Developments of Farish Street, Old Capital Green, The District at Eastover et al. and more geysers than Yellowstone National Park, all one needs to do is watch a Jackson City Council Meeting on Public Access Television to realize "the thing speaks for itself." You also have the option to simulate rough and tumble desert off roading by taking your car for a spin on Jackson's state-of-the-art, turn-of-the-first-millennium streets. Or, if you fancy yourself as a part-time archaeologist and love charcoal you have plenty of abandoned and/or burned out houses to explore. And depending on your tolerance for adventure there will surely be random homicides, robberies and burglaries all around to make your explorations all that more exciting. But then, if you prefer a more sedate environment with all the amenities any land developer could ever imagine (but never actually build), you could leave Jackson and move to Harbor Walk … Ooops. Or maybe the Town Square at Lost Rabbit. Ooops again. Okay, at least Jackson has a Whole Foods now. Maybe you could pitch a tent in the organic produce section of the store until the manager calls the cops.

Bullying, Racism, Guns, Crime, Drugs, Fires, Snake Handling

Here's a little game. Match the topic above with the following name or scenario (1) Richie Incognito. (2) What too many Right Wing Ideologues think and say when Barack Obama is linked to anything from a birth certificate to the Affordable Care Act. (3) Michael Dunn, the guy in Florida who shot into a car ten times killing a 17-year old claiming self defense. He didn't bother calling the police in favor of ordering a pizza and then was shocked when he was arrested and convicted on three counts of attempted murder while the jury could not reach agreement on first degree murder. (4) What we learn about every night on the 6:00 p.m. local Jackson television news (definitely not from the *Gannett Ledger* which only recycles *Chicago Tribune* editorials and publishes local human interest stories). (5) Phillip Seymour Hoffman. (6) The Salvation Army Thrift Store. (7) The Pastor in Kentucky who got bit, refused treatment and died. Note: Some categories have multiple answers.

Antitrust—Not

It has become quite apparent that Antitrust Law has simply become a subdivision of legal history. Consider the recent Comcast buyout of Time Warner Cable. Or, if you have flown recently, you know all about the merger of American Airlines and U.S. Airways, Delta and Northwest, United and Continental, and many more before that. Are prices down and customer satisfaction up? And even though all of these conglomerates have an army of ill labeled Customer Service Specialists to assure you that "your call is very important to them," excuse me for harboring more than a little doubt about this, especially when the message betrays an accent that is much more familiar with Mumbai than the Capital City of Mississippi. The truth is that the corporate world could care less about you. Its one concern is about the money they can suck out of your pocket or purse. Because big seems to be better these days (or at least legal), Corporate America doesn't have to care. Thanks to the U.S. Supreme Court's *Citizen's United* decision, indirect bribery of public officials under the guise of free speech and political fundraising is now legal. If you think we have income inequality now, just wait while the Koch Brothers and all of the other greedy plutocrats continue to buy a government that will do their bidding while fooling people in poor states like Mississippi to continue to vote against their own interests.

Otherwise, things are just great!

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