CABA
Capital Area Bar Association

DECEMBER 2015

President's Column

By Mike Malouf, Jr.

As the holidays approach, we often think of those less fortunate than ourselves. It is hard to believe that just a few blocks away from your law offices, many families are struggling just to put food on the table and simply cannot afford Christmas gifts for their children. Our Capital Area Bar Association is working to ensure that no child wakes up on Christmas morning without a gift. CABA is partnering with Toys for Tots and will be placing donation bins at the Mississippi Bar Center and numerous law firms. We anticipate this will be our largest effort to provide gifts for the children in our community. CABA has placed donation bins in local law firms, and we will also collect toys at our Christmas social on December 3rd at the Old Capitol Inn. That evening, CABA will present the toys to the U.S. Marine Corps. Through the overwhelming generosity of our association, we will help hundreds of families. I look forward to everyone's participation, and I hope you will attend our Christmas social and the presentation.

The holiday season is a time of giving, and in this issue of our newsletter, we profile some of the ways that CABA members have recently given back to our legal community and the greater Jackson community. CABA members joined with other local attorneys to provide free legal assistance to expunge prior criminal convictions. Our members met with clients and prepared petitions and orders for expungement of eligible criminal charges. The CABA Women's Initiative co-sponsored the first ever Policy Summit in Jackson, where guest speaker Anita Hill addressed issues that impact the economic security of women in Mississippi. You can read more about these events in this issue of the newsletter.

CABA will celebrate our accomplishments not just during the holidays but throughout the coming year. CABA has an active social media platform through Facebook and Twitter. I encourage each of you to help us build our social media presence by following us, liking us, and commenting. You can also comment on the articles in our newsletter using a new comment feature at the end of each article. Let us know what you think!

Inside

SOCIAL MEDIA

Follow Us on Facebook & Twitter!

Statistics show that 90% of organizations now maintain social media profiles, and CABA is among that majority. You can find the Capital Area Bar Association's page on Facebook and find us on Twitter (@CABALaw). Social media is a simple way to improve communications within our organization, but we need our members to help to build an effective social media presence. If you are currently on Facebook or Twitter, please engage. Whether you like us, follow us, or comment on posts, you are helping build CABA's social media profile.

CABA Honored
as Pro-Bono Competition Winner

CABA has been recognized as a competition winner by ABA President Paulette Brown for our pro bono event (the Expungement Legal Clinic at the Metro Center Mall) during National Pro Bono Celebration Week!

CLICK HERE FOR MORE INFO AND TO VIEW PHOTOS

RESULTS FROM BAR EXAM TURN HEADS FOR WRONG REASONS

By Blake Smith

The scores from the July 2015 Mississippi bar exam are in, and the results are turning the heads of more than just the individuals who failed it.

The Mississippi Board of Bar Admissions initially released the results last in September, and law school graduates in Mississippi suddenly jumped to the top of a national list for reasons less deserving than others.

As Pepperdine University School of Law Assistant Professor Derek Muller reported on his blog "Excess of Democracy" at the time, only 51% of test takers had received a passing score. For a moment, it looked like the bar passage rate in Mississippi had sunk a dramatic 27 points compared to the relatively robust 78% it had been the previous year in July 2014, according to Muller.

But at least for now, the story proved to have somewhat of a happier ending. Earlier in November, the Mississippi Board of Bar Admissions released an updated list of results from the July 2015 exam. This time the news was better: 70.2% of test takers received a passing score.

Although the numbers are better, they continue to reflect a decrease when compared to the previous year in July 2014. For what it is worth, disappointed would-be Mississippi lawyers who failed the bar are not alone in this regard. The decline in the bar passage rate in Mississippi from July 2014 to July 2015 is part of a recent national trend—one that might not be over if some critics are correct.

For example, Muller notes on his blog that compared to July 2014, results from the July 2015 bar exam also fell in twenty other the following states: Alabama, Colorado, Connecticut, Florida, Georgia, AL, CO, CT, FL, GA,Louisiana, Kansas, Missouri, Montana, New Mexico, New York, North LA, KS, MO, MT, NM, NY, NC, Carolina, Oklahoma, Oregon, Pennsylvania, Tennessee, Vermont, Washington, West Virginia, and Wisconsin. OK, OR, PA, TN, VT, WA, WV, and WI. The national trend towards lower passage rates on state bar exams—and any controversy surrounding it—started even before then.

Back in August 2015, Natalie Kitroeff for *BloombergBusiness* reported on the fallout that had occurred the previous year after the National Conference of Bar Examiners ("NCBE") released results for the multiple-choice section of the July 2014 bar exam. In her article "Article Lawyers Getting Dumber?" Kitroeff explained scores on the multiple-choice part of the bar exam hit their biggest annual drop in the entire history of the test from July 2013 to July 2014.

According to Kitroeff, the fallout began when NCBE President Erica Moeser wrote law school deans and said students who sat for the July 2014 bar exam comprised a less-able group when compared to those who previously took the test in July 2013.

As Kitroeff explained, a furious debate ensued: some blamed the bar exam; a few pointed to a software malfunction; and others said graduating law students were less prepared.

At one point, the recent July 2015 bar results in Mississippi and elsewhere might have had the potential to prove one or more of them right once and for all. Yet the only thing they have made clear since then is that no one still seems to agree on what the problem is in the first place.

Consider a recent study by Law School Transparency. According to the nonprofit organization, overall law school enrollment is down 28% since 2010. As a result, the study contends a growing budget crunch is spreading across law schools and providing an appetite for incoming students with lower average LSATs and GPAs. The net effect, according to the study, is that "many law schools are enrolling students who face substantial risk of failing the bar exam to keep their doors open."

Studies like the recent one from Law School Transparency seem to lean in favor of Moeser's side of the debate. In September 2015, writing a follow-up piece titled "Bar Exam Scores Drop to Their Lowest Point in Decades," Kitroeff quotes Moeser in *Bloomberg Business* as saying the fact the average score on the multiple-choice portion of the July 2015 bar exam fell to the lowest it has been since 1988 was not unexpected and that law schools had been admitting less qualified students. On the other hand, the same article shows indications that the disagreement lingers; another source in it cites the addition of a new section on civil procedure to the bar exam as one explanation for the drop in test scores from July 2014 to July 2015.

There is no reason to think that results from the February 2016 Mississippi bar exam or any other one after that are likely to settle the score once and for all. But the fact the debate exists at all does present an opportunity for all members of the bar to reflect on important questions about the status and condition of the legal profession as whole in the effort to make it a better one for the lawyers of today and for the lawyers of tomorrow.

09.24.2015

FALL SOCIAL

at Iron Horse Grill

The CABA/JYL Fall Social was held September 24, 2015 at Iron Horse Grill. Chairmen were: Tammra Cascio and Margaret Smith.

CABA Membership Meeting/CLE *on October 20*

The program was a panel discussion on professionalism featuring Chancellor John Grant, Judge Kent McDaniel, and William Wright, pictured with Jennie Eichelberger, Program Co-Chair, and Mike Malouf, Jr., CABA President.

CABA Honored

as Pro-Bono Competition Winner

CABA has been recognized as a competition winner by ABA President Paulette Brown for having a pro bono event during the "And Justice For All: ABA Day of Service" during the National Pro Bono Celebration Week! We tied for first place as a bar association with between 500 and 5000 members. As you all know, we hosted the Expungement Legal Clinic at the Metro Center Mall on the Day of Service, October 30.

CABA recently joined with the Mississippi Access to Justice Commission, the Mississippi Association for Justice, Senator Sollie Norwood and the City of Jackson to host an expungement workshop and legal clinic. Publicity was provided by television coverage on WLBT and WAPT, media coverage in the Clarion-Ledger, and a press release by Beverly Kraft, Public Information Officer with the Mississippi Administrative Office of Courts.

A record number of attendees attended the expungement workshop on October 13, 2015. Dan Kitchens led an informational workshop for 216 people at Metro Center Mall. After the workshop, thirteen pro bono volunteers met individually with potential clinic clients. Between 6:15 and 8:00 p.m. these thirteen volunteer attorneys qualified 102 applicants for the expungement legal clinic.

Expungement clinics were held at Metro Center on October 30th and November 10th. CABA members and other lawyers from the Jackson community volunteered to assist clients with pro bono expungements. Before the first clinic, Faye Peterson gave a CLE for volunteers. Peterson, Tiffany Graves, and Jennie Eichelberger answered questions and provided assistance to pro bono volunteers during the clinic. "The total count for both legal clinics was 52 – a very impressive number indeed," says Tiffany Graves, Executive Director of the Mississippi Access to Justice Commission.

The Mississippi Access to Justice Commission's next expungement workshop will be on Monday, March 21, 2016 at 5:30 pm, followed by a legal clinic on Friday, April 8, 2016 from 9:00 am-1:00 pm. Both will be held at the Metro Center Mall. Mark your calendars and contact Tiffany Graves at tgraves@msbar.org to get involved!

PHOTOS ON NEXT PAGE

MISSISSIPPI ACCESS TO JUSTICE COMMISSION'S EXPUNGEMENT CLINIC

EVENT PHOTOS

Shown are scenes from the workshop, pre-screening, and clinic.

THE CONFESSION OF JUSTICE THOMAS PICKENS BRADY

By Jimmy Robertson

On June 26, 2015, *Obergefell v. Hodges*[1] created a firestorm. A person wishing to marry another of the same sex had a right to do so. So said the Supreme Court of the United States [SCOTUS].

At least since *Marbury v. Madison*, it had been "the province and duty of the judicial department to say what the law is."[2] The Constitution of the United States is law in every real and practical sense, the highest law there is in this country.

Never mind that *Obergefell* made clear that "religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned."[3]

Before tempers had a chance to cool, the Fifth Circuit delivered a counter-punch to Mississippi's midriff.[4]

The firestorm reignited on November 5, 2015. Two justices of the Supreme Court of Mississippi suggested the opinion of the five Justice *Obergefell* majority just might be so dubious that state judges were not bound to enforce it.[5]

The matter needs to be discussed. First and foremost is the matter of how to discuss it so that the heat is turned down, not ratcheted upwards. And how to bring some perspective to the discussion.

Five-to-Four Decisions

Five-to-four SCOTUS decisions have been a fact of life for at least a century. Everyone knows of more than two or three such decisions thought to be wonderful, and the same number if not more thought to be terrible.

Men have been hanged on five-to-four decisions[6] and men have been reprieved on five-to-four decisions.[7]

The Supreme Court of Mississippi has announced major constitutional doctrine by five to four votes.[8]

That *Obergefell* was a five-to-four decision, without more, can't justify the brouhaha that has ensued.

Obergefell was not Justice Kennedy's first 5–4 decision

Justice Anthony Kennedy authored the controlling opinion in the five-to-four *Obergefell* SCOTUS decision which has been met with such vitriol and angst. But what about the fact that several years ago the same Justice Kennedy authored the controlling opinion in the five-to-four SCOTUS decision in *Citizens United*[9] which, if this is possible, has been met with as much vitriol and angst.

What is one to make of the fact that some ninety-plus per cent of those who approve of Justice Kennedy's *Obergefell* opinion disapprove of his *Citizens United* opinion, and vice versa?

And that the same ninety-plus per cent applauding *Obergefell* will quickly explain that and how *Citizens United* has raped the Constitution and substantially damaged the republic, and vice versa for those who applaud *Citizens United* and despise *Obergefell*?

Without turning up the heat, how should we deal with the fact that neither side will consider the fact that it just might be wrong? This thought is a function of one of the *Czekala-Chatham* dissenters telling of his encounter with the work of a street artist in New Orleans who had placed signs around town "in simple back and white, 'Think that you might be wrong.'"[10]

Pro-*Obergefell* folk will cheerfully pose that question to *Citizens United* supporters,

1. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).
2. *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, 177, 2 L. Ed. 60 (1803). On its merits, *Marbury* concerns the authority of the SCOTUS to adjudge the constitutionality—and thus the enforceability—of acts of Congress. *Obergefell* concerns the Supremacy Clause. "The Constitution [as construed and applied by the SCOTUS] is the supreme law of the land, and judges in every state shall be bound thereby." U. S. Const. Art. VI, §2.
3. *Obergefell*, 135 S. Ct. at 2607.
4. *Campaign for Southern Equality v. Bryant*, 791 F.3d 625 (5th Cir. 2015). Not unreasonably, the Attorney General of Mississippi advised the Fifth Circuit that after *Obergefell* the State knew of no grounds on which Miss. Const. art. 14, § 263A and Miss. Code Ann. §§ 93–1-1, 93–1-3, might be upheld.
5. *Czekala-Chatham v. State*, No. 2014-CA-00008-SCT, decided November 5, 2015, see pages 6–15, 26–36.
6. *See, e.g., Burns v. State*, 729 So.2d 203 (Miss. 1998).
7. *See, e.g., Burns v. State*, 729 So.2d 203 (Miss. 1998).
8. *See, e.g., Fondren v. State Tax Commission*, 350 So.2d 1329 (Miss. 1980).
9. *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010).
10. *Czekala-Chatham*, at page 30 (¶6).

but not to themselves. Pro-*Citizens United* folk will cheerfully pose that question to *Obergefell* supporters, but not to themselves.

The *Czekala-Chatham* case in Mississippi

The two *Czekala-Chatham* dissenters treat their readers to lots of quotations, from Alexander Hamilton in the Federalist Papers, from John Marshall, from Oliver Wendell Holmes, Jr., and from Justice Benjamin Curtis dissenting in *Dred Scott*.[11]

And, of course, they cite and quote from the four *Obergefell* dissenting opinions. As if they'd never felt the barb of the old adage that by and large all a dissenting opinion accomplishes is making clear the position that the majority rejected.

The apparent sincerity of the *Czekala-Chatmam* two suggests another view of a dissenting opinion: that it should be seen as "an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into to which the dissenting judge believes the court to have been betrayed."[12]

With this in mind, consider the quotations the *Czekala-Chatham* two offer. The great majority are stated at a level of generality that they would be equally at home (or out of place) in an opinion reaching the opposite result. In *Daubert* parlance, there is too great an analytical gap that these quotations may lead to a reliable adjudication.

Take, for example, "the Constitution 'is made for people of fundamentally different views,'" lifted from Holmes' famous *Lochner* dissent.[13] Holmes is talking about fundamentally differing views of the meaning of "liberty" within the Due Process Clause of the Fourteenth Amendment. It is easy enough to imagine Justice Kennedy using that one in expounding "liberty" in his *Obergefell* majority opinion.

Some might think the quote out of place in both opinions. "General propositions do not decide concrete cases."[14] Holmes' very next sentence in *Lochner*. His graceful way of saying there is "too great an analytical gap."[15]

On being hoist upon one's own petard

But it's worse than that. How can a competent jurist familiar enough with *Lochner* to cite Holmes' dissent be unaware that the "fundamentally different view" clause is only half of the sentence? The balance of the sentence reads: "and the accident of our finding certain opinions natural and familiar or novel or even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States."[16]

We should not be too hard on the dissenting justice in *Czekala-Chatham*.[17] He was quoting the Chief Justice of the United States. The Chief Justice's failure, however, to recall the rest of the sentence — from the most famous and oft discussed opinion of the entire three year curriculum at his alma mater, the Harvard Law School[18] — leaves him, in Shakespeare's words, "hoist with his own petard."[19]

Yes, there is constitutional textual support for *Obergefell*

This leads to another problem. The *Czekala-Chatham* dissenters seem not to have checked behind the Chief Justice's argument that there is nothing in the Constitution that supports the right the *Obergefell* majority finds.[20] What the Chief Justice argues simply is not so.

Justice Pierce's commendable concurrence quotes the heart of Justice Kennedy's majority opinion, citing the liberty prong of the Due Process Clause of the Fourteenth Amendment, and also the Equal Protection Clause, explaining that the two "are connected."[21]

There are hundreds of Due Process Clause cases deciding major constitutional questions with like or less textual grounding, but no one fusses about those. *International Shoe*[22] comes to mind.

Sensible, fair minded readers may not be convinced by Justice Kennedy's *Obergefell* conjunction of the Equal Protection Clause and the liberty prong of the Due Process Clause.[23]

But saying the Constitution affords no textual basis for so arguing is not playing fair, unless it is at least coupled with a serious suggestion that the listener read and study Justice Kennedy's opinion, and then make up his own mind.

Obergefell is no more judicial legislation than the SCOTUS engages in fifty times each term

Then there is the tired argument that the SCOTUS was legislating. Of course, the adjudication in *Obergefell* has a legislative component. So has every constitutional decision in SCOTUS history, starting with *Marbury v. Madison*.

The SCOTUS does not grant certiorari on a constitutional issue unless it has the collective conscious intent to legislate on some point of important public interest, or to reconcile some point of conflict among the U. S. Courts of Appeals.

A few days ago the SCOTUS announced it had granted certiorari to decide the constitutional enforceability *vel non* of Obamacare's

11. *Dred Scott v. Sandford*, 60 U.S. 393, 620–621 (1856).
12. Charles Evans Hughes, The Supreme Court of the United States 67–68 (1928).
13. *Lochner v. New York*, 198 U. S. 45, 76 (1904) (Holmes, J., dissenting).
14. *Lochner*, 198 U. S. at 76 (Holmes, J., dissenting).
15. *See, e.g.*, Gen. Elec. Co. v. Joiner, 522 U.S. 136, 146 (1997); Denham v. Holmes *ex rel.* Holmes, 60 So. 3d 773, 788 (¶ 54) (Miss. 2011).
16. *Lochner*, 198 U. S. at 76 (Holmes, J., dissenting).
17. *Czekala-Chatham*, at page 28 (¶4).
18. Justice Holmes' *Lochner* dissent would in time be dubbed by another high profile Harvard Law School graduate as "possibly the most famous and influential of all of his opinions." Posner, The Essential Holmes, page xvii (Posner ed. 1992). Judge Posner later provided an extended analysis and critique of Holmes' dissent, concluding "It is merely the greatest judicial opinion of the last hundred years." Posner, Law and Literature 346 (3d ed. 2009).
19. Shakespeare, *Hamlet*, Act III, Scene 4, line 207. ("hoist with his own petard").
20. *Czekala-Chatham*, at page 9, 13, 14 (¶¶8, 15, 16), at page 27, 35 (¶¶3, 14)
21. *Czekala-Chatham*, at 3 (¶2).
22. *International Shoe Co. v. Washington*, 326 U. S. 310 (1945).
23. *Obergefell*, 135 S. Ct. at 2597–2605.

contraception coverage consistent with the religion clauses of the First Amendment. Can there be any doubt that the SCOTUS intends to engage in clarifying or corrective judicial legislation, constitutional variety?

Here's betting a nickel that the case will be decided five to four, and will have a legislative component, with neither side having any greater textual support for its position than Justice Kennedy relied on when he exempted religious groups from having to accept same sex marriages.[24]

Justice Brady's Confession

It is well to recall the very public career of Thomas Pickett Brady.[25] Back in the late 1950s, while a circuit judge in Southwest Mississippi, Judge Brady attacked *Brown v. Board of Education* with a mean spirited passion that makes the four dissents in *Obergefell* and the two dissents in *Czekala-Chatham* seem quite mild.

In 1963 Gov. Ross Barnett appointed Judge Brady to the Supreme Court of Mississippi. Within a couple of years, Justice Brady came to an understanding of his oath that bears repeating in full.

Justice Brady was smart man. He was smart enough that he had come to see the part he and others had played along the road to September 30, 1962.

> We acknowledge that all courts are fallible and their decisions are subject to acrid criticism. Nevertheless, this Court is under the authority of the United States Supreme Court. Our attitude toward a decision of that Court does not authorize or control its rejection or acceptance. We must follow the decision until it has been abrogated by constitutional and legal procedures. Irrespective of how erroneous it may appear, or how odious it is, a decision of the United States Supreme Court is still the ultimate in judicial determination and is binding on the tribunals and citizens of the respective states in comparable cases. As a self-governing agency it is imperative that this state operate under law, and law alone. The perversion of the law, regardless of the objective, can lead only to confusion, violence and anarchy. Just as water always seeks its own level, so absolute law will expose and punish its long submerged desecrations which have been committed in the name of justice. For the foregoing reasons, the judgment of the circuit court is reversed and the appellant is discharged.[26]

Thomas Pickens Brady, the man, was as unrepentant as ever. Justice Thomas Pickens Brady had learned that his oath and his state required more of him. To make sure that one and all understood that he understood the different prerogatives of citizen and a justice, he repeated his admonition a couple of years later.[27]

A Postscript

The Mississippi Constitution says "the people of this state have the inherent, sole and exclusive right to regulate the internal government and police thereof" with one great big exception.[28] The people can change their form of government in any way they wish "whenever they deem it necessary to their safety and happiness," with the same great big exception.

"Provided, Such change be not repugnant to the constitution of the United States."[29]

To make sure there is no doubt of the practical meaning of this great big exception, the Constitution declares "nor shall any law be passed in derogation of the paramount allegiance of the citizens of this state to the government of the United States."[30]

In their paramount allegiance to the government of the United States, the citizens of this state are obliged to respect and honor the Constitution of the United States, and what the SCOTUS says it means, even when it speaks only by a five-to-four margin.

Perhaps the day will come when we no longer fight old issues fought over and lost time and again. If Justice Brady can concede, can't the rest of us? But, then, Justice Brady was educated at the Lawrenceville School and at Yale.

24. *Obergefell*, 135 S. Ct. at 2607.
25. https://en.wikipedia.org/w/index.php?title=Thomas_Pickens_Brady&oldid=686521297; also https://en-wikipedia.org/wiki/Thomas_Pickens_Brady.
26. *Bolton v. City of Greenville*, 178 So.2d 667, 672 (Miss. 1965).
27. *Watts v. State*, 196 So.2d 79, 82–83 (Miss. 1967).
28. Miss. Const. art. 3, § 6.
29. Miss. Const. art. 3, § 6.
30. Miss. Const. Art. 3, § 7.

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JUDICIAL REVIEW COMES TO MISSISSIPPI, AND STAYS

By Jimmy Robertson

The Road to *Alexander*[1] in 1983

No clause in the Mississippi Constitution confers upon the judiciary the authority to declare legislative enactments unconstitutional, and thus unenforceable. Nor was there any such clause in the Constitutions of 1817, of 1832, or of 1869.

Yet the practice of state constitutional judicial review has been bedrock for close to 200 years. State judicial exercises of judicial review have impacted the lives of thousands, if not millions of Mississippians.

In 1982, Attorney General Bill Allain went to court. He attacked a massive legislative usurpation of executive powers. The Supreme Court of Mississippi unanimously sustained General Allain's case.

The Court traced its authority to adjudge this intra-state constitutional case back to an otherwise obscure decision made in 1823.[2] In one of those nice fortuities of fate and history, Chief Justice Neville Patterson of Lawrence County found his footing in a less momentous Lawrence County case that was approaching its 160th birthday.

Runnels v. State presents a second fortuity. The core issue was whether a bottom rung court appointee could keep his job. Twenty years earlier another bottom rung judicial appointee's struggle to keep his job in the District of Columbia set the stage for John Marshall's justly famous opinion in *Marbury v. Madison* delivered in 1803.[3]

Straddling the turn of the year 1824–1825, Mississippi had a second and less elegant clash over the intra-state practice of judicial review. More than a few stuck their necks out in *Cochrane & Murdock v. Kitchens* and its aftermath, each in his way fueling, controlling or putting out the fire.

By February 1825, the *Runnels* principle of judicial supremacy in state constitutional law had not only endured, it had prevailed.

The Four Judge Supreme Court

In 1823–1825, four judges served on the Supreme Court.[4] These included Chief Judge John P. Hampton of Wilkinson County, and Judges Powhatan Ellis of Wayne County and Richard Stockton, Jr., of Claiborne County. Judge Louis Winston of Natchez served until his death in August of 1824. Shortly thereafter, Judge Edward Turner, also of Natchez, began a long term of service on the court.

Judges Ellis and Stockton were front and center in *Runnels* and in *Cochrane & Murdock*. There is no record of dissent from the other judges as to any aspect of the two cases.

Judge Powhatan Ellis

Powhatan Ellis (1790–1863) was born and raised in Virginia.[5] He was educated at what is now Washington & Lee University, at Dickinson College in Pennsylvania, and he studied law at William and Mary College in 1813–1814. Ellis moved to Natchez to practice law in 1816 and in short order moved easterly to Winchester, now a ghost town in Wayne County.

In time Ellis became an avid follower of Andrew Jackson. Our concern is with his first public office, that of Judge for the Fourth District, including service on the Supreme Court of Mississippi from 1818 until September of 1825.

Years later a eulogist recalled Ellis telling of those days, of "his journeys, as he and the lawyers practicing before him traveled on horseback from court to court, through a region in its primitive state, but thinly settled, and partly occupied by Indians — many of whom became his warm friends."[6]

Historian James Daniel Lynch reported that "Judge Ellis was a pure and upright judge, and a popular and useful member of society; true to his friends and devoted to his official

1. *Alexander v.* State *of Mississippi By and Through Bill Allain, Attorney General*, 441 So.2d 1329 (Miss. 1983).
2. *Runnels v. State*, Walker (1 Miss.) 146, 148 ** 2, 1823 WL 543 (1823).
3. *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, 170, 2 L.Ed. 60 (1803).
4. The organization and practices of the supreme court were quite different in those days. See particularly the Act of June 29, 1822, Miss. Laws 76–85 (1822).
5. The Powhatan Indians occupied the lands in coastal Virginia where the English landed and settled as Jamestown. Pocahontas is said to have been the daughter of a Powhatan chief.
6. Eulogy entitled "Hon. Powhatan Ellis of Mississippi," reproduced and online at https://archive.org/stream/honpowhatanellis00elli/honpowhatanellis00elli_djva.txt., page 9 of 30.

duties."[7] Lynch opined that Ellis' "decisions are illuminated by his integrity, and his conclusions are just and correct."[8]

Judge Ellis' judicial product has otherwise drawn faint praise. U. S. District Judge Michael P. Mills cites the view of Ellis as "extremely indolent" to exclude him as the possible author of an unsigned opinion showing an enlightened (for the times) view of the rights of slaves.[9]

The Second Richard Stockton, Jr.

Richard Stockton, Jr. (1791–1827) grew up in New Jersey. His grandfather signed the Declaration of Independence.[10] The first Richard Stockton, Jr., (1764–1828) was briefly a U. S. senator and later served a term as a congressman from New Jersey.[11]

The future Judge Stockton was a complex man. Bipolar would be a likely label today. He pursued as many dubious activities as he followed honorable paths. The second Richard Stockton, Jr., was educated at Princeton, A.B. 1810, where he graduated with "first honors."[12]

Still at home, Stockton was described as "charming in manner, an able lawyer, when he chose to work, but more given to enjoying the advantages of his position than to accepting its responsibilities."[13] Other bad habits included gambling[14] and in time, dueling.[15]

In his young adulthood, Richard Stockton, Jr., and his father are known to have quarreled. In his late twenties, Richard, Jr., abandoned his home and law practice in New Jersey and moved to Mississippi.

In 1880, James Daniel Lynch reported that "Judge Stockton was an eminent lawyer and a man of ability. He was remarkably modest and unassuming in his manners."[16] Governor Walter Leake appointed Stockton judge for the First District in August, 1822.

By 1823 Judge Stockton may have reconciled with his father back in New Jersey. He wrote his father that he was "on circuit,"[17] no doubt referring to his holding court in trial level proceedings in Warren, Claiborne, Jefferson and Hinds Counties. Judge Stockton added that he had "the friendship of some of the best gentlemen in the state [of Mississippi]."[18]

In a later letter Stockton told his father "[t]hat the lawyers in that part of the country were so ignorant…that his attainments were 'superior' to theirs."[19]

In the end, Richard Stockton, Jr., was his own worst enemy. He died in a duel with John P. Parson in New Orleans in early February of 1827.[20]

The *Runnels* Case Plays Out

In 1817, the Mississippi Constitution had been formally enacted and provided, in relevant part,

> Each court shall appoint its own clerk, who shall hold his office during good behaviour, but shall be removable therefrom for neglect of duty, or misdemeanor in office, by the supreme court, which court shall determine both the law and fact.[21]

In 1822, Harmon M. Runnels was "regularly inducted into office, under all of the requirements of the act of 1821."[22]

Soon thereafter, the legislature abolished the separate office of clerk of the probate court. The probate judge himself would thenceforth "enjoy all the rights, privileges and emoluments, and discharge all the duties which were of right appertaining to, and required of the clerk."[23]

In time, the circuit court ordered Mr. Runnels to turn over all papers, books and records which he held as clerk to the probate judge. Mr. Runnels took offense. His case reached the supreme court in the December Term of 1823.

There seems to be no doubt but that

7. James Daniel Lynch, The Bench and Bar of Mississippi 88 (1880).
8. Id.
9. Mills, *Slavery Law in Mississippi From 1817–1861*, 71 Miss. L. Journ. 153, 178 fn. 130 (2001).
10. Richard Stockton, the signer, was born October 1, 1730 and died February 28, 1781.
11. Stockton Family Historical Trust, at http://www.stockton-law.com/genealogy/stockton5.html.
12. James Daniel Lynch, The Bench and Bar of Mississippi 92 (1880).
13. Alfred Hoyt Bill, A House Called Morven; Its Role In American History, 1701–1954, at page 84 (Princeton University Press, 2015).
14. Id. at page 85.
15. Mississippi House Journal, pages 143–144 (Jan. 23, 1827).
16. Lynch, supra.
17. Bill, supra.
18. Bill, supra.
19. Id.
20. For several versions of the story leading to the duel in early February of 1827, see https://en/wikipedia.org/wiki/Columbia_Springs, at page 4 of 10; http://www.nerc.com/~rfsesq/genealogy/stockton5.html; J. W. Stockton, A History of the Stockton Family page 38 (1881); Skates, A History of the Mississippi Supreme Court, 1817–1948, 97 (1973); Bill, supra, at page 85.
21. Miss. Const. art. 5, §11 (1817).
22. *Runnels v. State*, Walker (1 Miss.) 146, 148 ** 2, 1823 WL 543 (1823).
23. Id.

Harmon M. Runnels took his office, call it register or clerk, and along with it the protections set out in Article V, Section 11. He was to "hold his office during good behaviour." He could be ousted only "for neglect of duty, or misdemeanor in office." No one suggested that Runnels had neglected the duties of his office or that he had committed a misdemeanor in office. Nor does there appear a charge that Runnels behaviour was anything but exemplary.

Runnels presented what today is known as an "as applied" constitutionality challenge. No one was questioning the legislative prerogative of passing a law abolishing the office of probate clerk and conferring those clerk duties on the probate judge himself.

Runnels, however, was in office. The Constitution spoke to the terms of his service and possible discharge. The question was whether Runnels could be ousted from office other than by the constitutional criteria.

The Court Rules for Runnels

Judge Ellis spoke with wording common to the times. He called the matter before the court "this momentous question,"[24] not so much whether Mr. Runnels may be sent home, but whether he may be so sent for reasons other than those found in the Constitution. On the latter view Judge Ellis and the supreme court could "not feel insensible either as it regards the 'magnitude of the case,' or the delicacy of our situation."[25]

Regarding the constitutionality of a legislative act, Judge Ellis said he had "on occasions more than one…expressed the diffidence and reluctance, and consequently 'the caution and circumspection,' with which I approach such investigations. I have repeatedly said it was unwise and inexpedient to declare law unconstitutional, where there is any doubt, and when they might be reconciled to the spirit, if not the letter of the constitution."[26]

What is implicit is made more expressed when Judge Ellis adds "[b]ut, the people of this state have formed a paramount rule of action for themselves, and they have declared" the now familiar tripartite separation of legislative, executive and judicial powers.[27]

Judge Ellis held that Harmon M. Runnels was indeed being improperly discharged as probate clerk. He then had this to say: "If the Legislature in the exercise of an unlimited discretionary power, can overleap the barriers of the constitution,…then,…we shall, in the language of a distinguished statesman,[28] 'be called upon to curse our revolution as a great fountain of discord, violence and injustice.'"[29]

Harmon M. Runnels had won his case.

Cochrane & Murdock Start a Ruckus

In June Term of 1824, the Supreme Court again undertook judicial review of recent legislation.

In January of that year, overriding the veto of Gov. Walter Leake, the General Assembly had passed a comprehensive "act to extend further relief to debtors."[30] Section 7 set out the process the sheriff should follow when holding an execution sale to satisfy a judgment debt. If the property could not be sold at least for two-thirds of its appraised value, the new law authorized the sheriff to "sell the same, to the highest bidder on a credit of twelve months, taking bond with good and sufficient security."[31] In other words, the judgment creditor would hold a secured debt payable in one year.

On April 4, 1822, Cochrane & Murdock had sued in the circuit court of Claiborne County and secured a judgment for an unpaid debt of Benjamin Kitchens. On February 11, 1824, several weeks after the new act became effective, a sheriff's sale was held. No one bid two thirds of the appraised value of Kitchens' property, *viz.*, three yoke of oxen, a wagon, and one mare and colt.[32] Claiborne County Sheriff Joseph Briggs then followed the new law and sold the property on one year's credit, with proper bond and security.

Cochrane & Murdock applied to District One Circuit Judge Richard Stockton, Jr., for relief, asking that the sheriff be fined for an improper sale.[33]

Judge Stockton did not decide Cochrane & Murdock's claim. Rather, he invoked a then accepted procedure and asked the Supreme Court to consider and answer the questions of law needed to decide whether Cochrane & Murdock's motion had merit.[34] The court agreed, held the new law unconstitutional, and fined Sheriff Briggs one hundred dollars because he made a "false and untrue return" on the writ of execution that the circuit court had issued.

The grounds on which the Supreme Court held the act unconstitutional and unenforceable were that it impaired the obligations of a contract, contrary to both the U. S. Constitution[35] and the Mississippi Constitution.[36]

In practical effect, the Supreme Court told Sheriff Briggs he should have foreseen that the secured credit sale process in "the act further to extend relief of debtors" was unenforceable.

24. Id. at ** 1.
25. Id.
26. Id.
27. Id.
28. The "distinguished statesman" was Joseph Hopkinson, co-counsel with Daniel Webster before the Supreme Court of the United States in the *Dartmouth College Case*. Joseph's father, Francis Hopkinson, was among the New Jersey delegation signing the Declaration of Independence.
29. *Runnels v. State*, Walker (1 Miss.) 146, 148–149 ** 2, 1823 WL 543 (1823).
30. Miss. Laws, ch. 74, pages 101–106 (January 23, 1824).
31. Miss. Laws, ch. 74, §7, page 104 (January 23, 1824).
32. Mississippi House Journal, page 69–70 (Jan. 11, 1825).
33. The story of *Cochrane & Murdock v. Kitchens* and others is told in James Daniel Lynch, The Bench and Bar of Mississippi 92–97 (1880). See also a paper entitled "The Power of the Courts," authored by Prof. Thomas. H. Summerville of the University of Mississippi, and presented to the Mississippi State Bar Association at its Annual Meeting held in Meridian on May 6, 1908. See proceedings of the meeting, at pages 69–70 (1908); see also Prof. Summerville's "A Sketch of the Supreme Court of Mississippi," pages 505–506 of The Green Bag, Vol. 11 (Sydney Russell Wrightington, et al.). Prof. John Ray Skates' A History of the Mississippi Supreme Court, 1817–1948, pages 6–9 (1973), offers a slightly different version of the facts.
34. Mississippi House Journal, page 75 (Jan. 11, 1825); *see Blanchard's Adm'r v. Buckholt's Adm'r*, Walker (1 Miss.) 64, 65, *1, 1818 WL 1237 (Miss. 1818); John Ray Skates, A History of the Mississippi Supreme Court, 1817–1948, page 6 (1973).
35. U. S. Constitution, Art. 1, §10, cl. 1.
36. Miss. Const. Art. VI, §10 (1817).

The Firestorm Breaks

Some legislators took offense.[37] Gov. Leake's veto had been overridden, and now his judicial appointee had held a part of the new act unconstitutional. A part of the problem may also have been that the Supreme Court published no written opinion,[38] explaining why it did what to the legislators seemed so jarring. Moreover, fining Sheriff Briggs for following what he thought was the law seemed outrageous.

In January of 1825, Judge Stockton honored a House of Representatives committee summons to appear and explain the Court's actions. Judge Stockton suggested to the committee that its proper question should be "whether the judges, in rendering their opinion, had been governed by impure motives, or had decided according to established law."[39]

Judge Stockton then explained in writing why the Supreme Court found that the "act further to extend relief to debtors" was unconstitutional. He meticulously presented the facts of the case and the proceedings in the Circuit Court.[40]

Judge Stockton told the committee that the U. S. Supreme Court and the Court of Appeals of Kentucky had made similar rulings in cases involving similar state statutes.[41] He added that these cases were "the only ones, that my memory, or the limited libraries in this town [Jackson] has [sic] enabled me to obtain."[42]

In other words, Judge Stockton provided the House committee with the written opinion[43] that the Supreme Court should have issued in the first place. At all points he showed courtesy, deference and respect for the House committee and the course upon which it had embarked, mistaken though he thought it was.

Judge Stockton assured the Committee that "[t]he motion to fine the sheriff was in strict conformity to the statutes, and the committee have, already, the opinion of the court in writing."[44]

He added, "The opinion of the Supreme Court, which is in possession of the committee, was that…[the statute] was unconstitutional as to all contracts made previous to the passage of the law."[45] Though this latter question had not formally be placed before the Court, Judge Stockton told the committee "that while he was the junior member of the bench, he would give [his opinion] with great cheerfulness, and assure them that the other members of the bench joined him in [this] opinion."[46]

The House Committee Takes Its Stand

The committee reported to the full House of Representatives, criticizing the Supreme Court on both points. Preliminarily, Chairman Joseph Johnson of Wilkinson County announced that "[t]he Committee cannot refrain from expressing their satisfaction at the frank and candid manner in which his Honor Judge Stockton (who was in this place [Jackson] on private business) manifested in making his Report, and communicating what information was in his power."[47]

> Substantively, the committee found no fault with the Sheriff Briggs. As respects the fine imposed upon the Sheriff, the committee do not hesitate to say it was unjust and illegal — for they cannot believe that any subordinate officer ought to be punished for executing any process which emanates from any competent authority — *it is his duty to execute it, and not to judge of its legality.*[48]

In other words, the sheriff is not a judge. In separation of powers parlance, the sheriff is exercising executive powers when he is called upon to conduct a sheriff's sale.

The House committee also denied that there was a constitutionally legitimate principle of judicial review:

> The committee knows of no power, either delegated or implied from the constitution, that authorizes the Supreme Court to make such a declaration of the unconstitutionality of any Law [sic] to suspend its operations; but must believe such power assumed and maintained on the grounds of Judiciary precedents alone.[49]

The committee's position on this point, of course, is facially credible. A state legislative committee *circa* 1825 may not be faulted for its failure to understand the legal status and power of "judiciary precedents alone." Nor may the committee be faulted for not understanding the implied nature of the power Chief Justice

37. Dunbar Rowland reported that both judicial review and debtor's relief statutes were controversial at the time. Rowland, Mississippi, Comprising Sketches of Counties, Towns, Events, Institutions and Persons, Arranged in Cyclopedic Form, Vol. II, 734 (1907).
38. At the time most decisions of the supreme court were announced orally. Only the judgment of the court on appeal had to be reduced to writing and certified to the clerk of the court in which the case had originated. Act of June 29, 1822, § 8, Miss. Laws page 78 (1822). The law did provide for a reporter to collect, print and publish those written decisions that might be "deemed useful" to be delivered to the clerks of all courts "for the use of said courts." The reporter could also print and sell the reports to lawyers and others who might be interested. Act of June 29, 1822, §§ 37–39, Miss. Laws page 85 (1822). The first reporter, R. J. Walker, was appointed in 1828 and did not produce a volume of decisions until sometime in 1834. V. A. Griffith, *The Reporter*, 22 Miss. L. J. 37–39 (1950); James Daniel Lynch, The Bench and Bar of Mississippi 110 (1880); John Ray Skates, A History of the Mississippi Supreme Court, 1817–1948, page 5 (1973).
39. Mississippi House Journal, page 69 (1825); James Daniel Lynch, The Bench and Bar of Mississippi 93 (1880).
40. Mississippi House Journal, pages 69–70 (1825).
41. James Daniel Lynch, The Bench and Bar of Mississippi 94–95 (1880).
42. Mississippi House Journal, page 27, 68–71 (1825).
43. Mississippi House Journal, page 69–72 (1825).
44. Lynch, supra, at 96.
45. Id.
46. Id. At the time, Chief Judge John P. Hampton and Judge Powhatan Ellis were senior to Judge Stockton in time of service. Judge Edward Turner, however, had not come to the Court until the Fall of 1824, following the death of Judge Louis Winston on August 20, 1824, some two years after Judge Stockton assumed his seat as circuit judge for District One and judge for that district on the Supreme Court.
47. Mississippi House Journal, page 73 (1825).
48. Mississippi House Journal, page 74 (1825); James Daniel Lynch, The Bench and Bar of Mississippi 96 (1880).
49. Mississippi House Journal, page 74 (1825); James Daniel Lynch, The Bench and Bar of Mississippi 96–97 (1880).

John Marshall found in *Marbury v. Madison*.

Of interest is the House committee's apparent failure to consider a more discerning alternative view. Judge Stockton's legal analysis of the particular question presented in *Cochrane & Murdock* may have been faulty, even if the constitutional principle of judicial review should be accepted.

Whether on grounds of propriety or competence we know not, but the committee chose not to match wits with Judge Stockton on the point of law. In point of fact the committee told the full House that "they could not, for a moment, entertain an idea that the Supreme Court were influenced in their decisions by any impure motive."

Judge Stockton Resigns and Level Heads Emerge

On January 10, 1825, without stating his reasons, Judge Stockton tendered his resignation as Judge.[50] This defused such hostilities within the House as may have been latent beneath the courtesies that had been exchanged by all parties.

Judge Stockton's resignation showed that he was a man of proper humility and deference in the face of his co-equal department of state government. Shortly thereafter the same General Assembly appointed Stockton as attorney general of Mississippi.[51]

On February 4, 1825, sensing that something had to be done after all the back and forth over the preceding month, the General Assembly enacted that:

> The judges of this state, when in the supreme or circuit courts, where they shall make any decision affecting the constitutionality of any law passed by the legislature, shall make out a full report of the case and decision thereon, and sign the same, and within twenty days thereafter, transmit a copy thereof, to the governor of this state, who shall immediately have the same published in some public newspaper, printed within the state for the information of the citizens thereof…[52]

The larger point in the end is that the constitutional practice of judicial review had survived. Assurance of its proper judicial stewardship was left to extra-legal human and public forces.

Reflections on the Birth of Judicial Review in Mississippi

There are a number of takeaway points from *Runnels* and from *Cochrane & Murdock v. Kitchens*, aside from the obvious—constitutional adjudications by the Supreme Court need to be written, well grounded, and made readily available to the public.

The propriety of the constitutional practice of judicial review does not seem to have been a concern for the remainder of the life of the Mississippi Constitution of 1817. Harmon M. Runnels set the stage for Judge Powhatan Ellis' reasonable exposition of judicial review. Cochrane & Murdock provoked Judge Richard Stockton, Jr., to a ruling, both parts of which are subject to reasonable doubt on their merits—but not the authority to make some merits ruling on each point. Certainly this latter authority is sound to the legal mind.

Judge Powhatan Ellis wrote a nice opinion in *Runnels*. He then moved on to a more prominent and colorful career most of which was associated with first General and later President Andrew Jackson. *Runnels v. State* languished in Walker's Reports unnoticed for 160 years.

When the story of judicial review and its beginnings in Mississippi is told, it often centers around *Cochrane & Murdock v. Kitchens*, Sheriff Joseph Briggs, Rep. Joseph Johnson and the House committee, and, of course, Judge Richard Stockton, Jr. Their back and forth within the House of Representatives in January of 1825 is well reported.

With Judge Stockton's resignation, the matter was resolved peaceably. All moved on to other issues, albeit Attorney General Stockton's good judgment soon failed him again, this time fatally.

Constitution makers in 1832, 1868 and 1890 had a shot at stripping the supreme court of the power of judicial review. None did so. It was fitting that in 1983 a native of Lawrence County would turn to the county of his roots and in *Alexander* remind us that

> [a]s long ago as 1823, [*Harmon M.*] *Runnels v. State*, Walker (1 Miss.) 146, held it the duty of the judiciary to declare void any legislative enactment which may be repugnant to the provisions of the constitution and that this duty is paramount to the authority of the legislature.[53]

50. Mississippi House Journal, page 77 (1825).
51. Mississippi House Journal, page 82–84 (Jan. 12, 1825). House Committee Chairman Joseph Johnson reports the date as January 12, 1825, in a handwritten letter to his brother. Johnson told his brother that Stockton defeated a man named Adams, 23 to 21, and that he (Johnson) had voted for Adams; see Skates, A History of the Mississippi Supreme Court, 1817–1948, page 8 (1973).
52. Miss. Laws, page 85 (Feb. 4, 1825).
53. Alexander *v. State By and Through Allain*, 441 So.2d 1329, 1333 (Miss. 1983), also citing and following as persuasive (though not controlling) precedent "the genesis federal case, *Marbury v. Madison*, 1 Cranch 137, 170, 2 L.Ed. 60 (1803)."

The SUMMIT

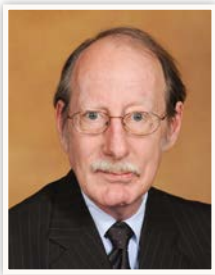
on October 10, 2015
at the Jackson Convention Center

Keynote Speaker: Anita Hill

MISSISSIPPI WOMEN'S ECONOMIC SECURITY POLICY SUMMIT

The **CABA Women's Initiative Committee** partnered with the **Mississippi Women Lawyers' Association (MWLA)** to support the **Mississippi Women's Economic Security Initiative (MWESI)'s** inaugural Policy Summit. The MWESI Leadership Team was formed to bring together multiple partners to help provide greater collaboration to address several primary issues that impact the economic security of women in our State. These issues are grouped into the broad categories of: Economic, Education, Health, Legal, and Political. The Summit, held October 10th at the Jackson Convention Center, provided a venue for discussion of these issues, introduced the Initiative's policy agenda going forward, and outlined the goals that must be met to support better policies for the women of Mississippi. The keynote speaker for the Summit was Ms. Anita Hill who delivered a rousing call to arms to Summit attendees, saying "This is a critical moment in our time, when you have brought together the greatest minds and best energy to combat these problems." Ms. Hill was welcomed during a Reception held October 9th at the Mississippi Museum of Art, also sponsored by **CABA's Women's Initiative Committee** and **MWLA.** Support of both events was coordinated by CABA Women's Initiative Committee Chairs **Wendy Huff Ellard** and **Rebecca Wiggs,** and Past-President **Amanda Green Alexander.**

Political Apps to Consider



By Joel Howell

As this is written, the 2016 presidential election is more than a year away, but we're already overloaded with political news. Here are some apps that will help you get a handle on all those pressing issues.

Brigade (www.brigade.com), free on iOS, is a social network for discussion and informal polling on political issues. You can sign up for a free profile to find public opinions and vote on public views.

Want to keep up with the latest developments and polling results of Gallup? There's an app for that. The Gallup News app, free on iOS (www.gallop.com/poll), provides updated polls at 1p.m. every day, interactive graphs, polling data from over 140 countries, and access to Gallup blogs.

If you want a consolidated picture of political news, check out Politomix (www.politicomix.com) which is free on iOS. It scans 40 top political news sources and collects breaking news in one place. An alternate is Flipboard, free on iOS and Android, which has a more polished interface and does very much the same thing.

Want to know more about local and state representatives? iCitizen (www.icitizen.com), free for iOS and Android, provides you with information about elected officials based on location. You can skip the letters and phone calls to your representative's office and simply enter it into the ranking section of the app where it is sent for you. It also provides a personalized news feed, a social media feed to monitor your favorite politicians, and offers polling opportunities.

When candidates make reference to constitutional matters, you may want to brush up using the free iOS app Transcript of the United States Constitution by Clifton Marien (www.cliftonmapps.yolasite.com). For Android, there is a free United States Constitution app by RBware with many extra documents and the ability to jump to Wikipedia for items within the app. It's downloadable at play.google.com/store/apps.

The Library of Congress has an official constitution app, free for iOS only, which has a more formal design. The app titled: U.S. Constitution: Analysis and Interpretation (www.loc.gov/connect), contains clause by clause discussions of the Constitution and also includes all Supreme Court decisions with accompanying commentary. However, be aware that this is not nearly as sophisticated as those previously mentioned.

The Congressional Record app (www.loc.gov/connect), free on iOS and Android, is another product of the Library of Congress. It allows users to keep up with the progress of congressional debates, bills, treaties, resolutions, and proceedings. All are archived in the database, which can be searched by date, keyword, or subject.

The official White House app (www.whitehouse.gov/mobile) is packed with easy to navigate news briefings and videos free on iOS and Android directly from 1600 Pennsylvania Avenue.

If you're so inclined, you can have classics such as Machiavelli's The Prince and Sun Tzu's The Art of War in your smart phone audio book reader. For those on the iOS interface, www.itunes.com has complete novels such as The Prince for $0.99. While these aren't free, they are worthy and entertaining investments that serve as constant reminders that elections haven't changed for centuries.

Finally, on another legal front, Harvard Law School is digitizing most of its library in conjunction with Ravel Law, a legal research and analytics platform. Literally slicing the spines off all but the rarest volumes, they are feeding forty million pages through a high speed scanner. "The Free the Law" initiative will provide open, wide-ranging access to a wealth of American legal reporters and literature for the first time in United States history. "Driving this effort is a shared belief that the law should be free and open to all," said Harvard Law School Dean Martha Minnow. "Using technology to create broad access to legal information will help create a more transparent and more just legal system." Ravel is funding the costs of digitization and will be making all of the materials publicly available for free access and search at ravellaw.com.

Happy Holidays!

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

Former Justice James Robertson donates portrait to Supreme Court

By Beverly Kraft

Former Mississippi Supreme Court Justice James L. Robertson of Jackson gathered with current justices and some of his former colleagues Thursday, Oct. 8, to unveil his portrait and reminisce.

"We are honored that you would make this bequest," Chief Justice Bill Waller Jr. told Justice Robertson and his wife, Administrative Judge, author and artist Linda Thompson.

Oxford artist Deborah Freeland drew the profile portrait in graphite in 1984, a year after Robertson joined the court.

The portrait was hung Thursday outside the entrance to the State Law Library. It was added to the Supreme Court's historic collection, which includes more than 40 portraits of justices who served from the 1800s to modern times.

Former Chief Justice Edwin Lloyd Pittman, who served with Robertson, said he was a scholarly, prolific writer in his court opinions as well as law journal articles. "Robertson is a brilliant lawyer and a brilliant mind. I did give him advice on street sense on occasion," Pittman said.

Robertson ushered in modern legal research for the court. When he arrived at the court, "there was nothing but law books here. I had been using Lexis for three years. I couldn't imagine having to function without it…How could you possibly operate the court without that kind of resource?" he recalled. He arranged for the Law Library to have a Lexis terminal installed, with three months of free use, after which the court could subscribe to the service or give it up. "I couldn't get anyone to go near it," he recalled.

On the last day of the free trial, Chief Justice Neville Patterson needed to locate an opinion in a case he had authored in years past. He remembered only the defendant's nickname. It took Robertson about 30 seconds to find the case using Lexis. Patterson was amazed and said, "We've got to have this," Robertson recalled. Afterwards, the running complaint was the amount of fees the court spent monthly for Robertson's legal research—until Justice Fred Banks came to the court and used the service twice as much.

The scholarly Justice Banks laughed.

There were no computers. The fastest typewriter was an IBM Selectric, and a typist had to retype the whole page if a mistake was made. The old Gartin Justice Building's decor, including ugly yellow naugahyde chairs, was once described by a court administrator as "early fish camp."

The justices with whom Robertson served were larger-than-life characters: former Chief Justices Patterson, Roy Noble Lee, Armis Hawkins, Harry Walker, Dan Lee, Lenore Prather and Pittman, and Presiding Justices Michael Sullivan and Chuck McRae. Robertson cherished memories of serving with Justices Reuben Anderson and Joseph Zuccaro.

Recalling Sullivan's biting wit often delivered in a stage whisper, Robertson said people have asked what it was like to work with him. "Imagine working with Don Rickles every day."

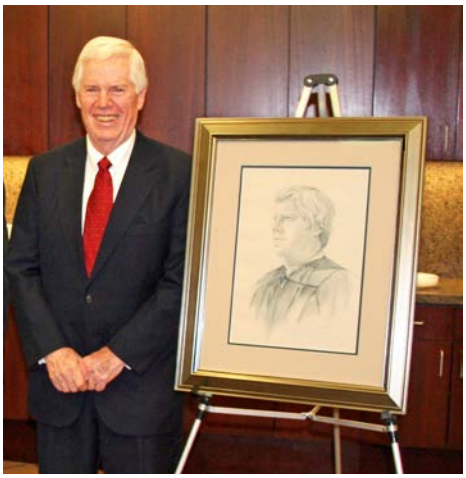
McRae said, "There were some great times."

Pittman said later, "Sometimes Chuck made it more exciting that I wanted it to be."

Robertson added, "All of my Roy Noble Lee stories are in an in memoriam piece I authored for the Capital Area Bar Association Newsletter last Spring." "Remembering Judge Roy Noble Lee" appears on pages 4-7 at www.caba.ms/newsletters/caba-april-2015.pdf. Previously, Robertson published a tribute to Neville Patterson, the first Chief Justice under whom he served. "Neville Patterson: A Remembrance," is published in 57 Miss. L. Journ. 417 (August 1987).

Robertson was a member of the faculty of the University of Mississippi School of Law from 1977 through 1992. He taught full-time 1979 until his appointment to the Supreme Court. He continued to teach a legal philosophy course while serving on the court.

Gov. William Winter appointed Robertson to a vacancy on the court on Jan. 17, 1983. Robertson served on the court for more than nine years. He was defeated in his second election campaign. He resigned Sept. 1, 1992, and taught the fall semester of 1992 as a visiting professor of law at Fordham Law School in Manhattan.



He has been a shareholder in the Jackson law firm of Wise, Carter, Child & Caraway, P.A., since 1993. He is currently listed in *Best Lawyers in American* in the specialties of admiralty and maritime, civil rights, commercial litigation, antitrust, environmental, intellectual property and First Amendment law.

Justice Robertson, 75, was born in Greenwood and grew up in Greenville. He earned a Bachelor of Arts degree from the University of Mississippi in 1962 and a law degree from Harvard University in 1965.

Robertson recently attended his 50-year reunion at Harvard. When he learned that about 100 of his classmates have died, he started working on a "bucket list." Thursday's portrait hanging was on the list.

CAPTAIN EQUITY

Captain Equity does not have an article for this issue. The Captain is taking an extended fishing trip and hopes to return to port with fresh material in future issues.

CABA Newsletter Committee Members

(listed below In order from left to right beginning with back row)

Blake Smith, Mike Malouf, Jr., Marlane Dove, Meta Copeland, Pat Evans
Terryl Rushing, Joel Howell, Linda Thompson, Jimmy Robertson

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