



President's Column

David Maron



This year, CABA celebrates its 80th year of service to the bench and bar of Hinds County and surrounding metropolitan areas. This legacy of service would not have been possible without each of you. Thank you!

We're looking forward to the new year. I want to thank immediate past president Laura Glaze for her outstanding leadership. During her presidency, CABA's 2011-12 year was highlighted by several successes, including excellent golf and tennis tournaments (which together raised thousands of dollars for the Mississippi Volunteer Lawyers Project), launching CABA's electronic newsletter, and a diversity conference which raised \$4,000 for the Reuben V. Anderson Minority Scholarships at both MC and Ole Miss law schools.

We look forward to continuing the tradition of service in the new year with an emphasis on communication, professionalism, and public service.

Communication is important to CABA membership and will be a focus in the upcoming year. We look forward to expanding service to our members through greater and more flexible access to timely information, publication, and opportunities for service through a new and more interactive website design. Our new

CABA Information Card is another tool for us to succinctly communicate who we are, highlight what we do, and offer opportunities to get involved. Communication flows both ways. Let us hear from you!

Professionalism and collegiality also remain a critical emphasis for CABA. In fact, it has long been a core tenet of CABA's mission statement "to promote and cultivate the spirit of cooperation and good fellowship among the members of this association; and all to the end of fostering and maintaining the highest respect of the members of the community."

We look forward to providing opportunities to strengthen the relationship among our members with CABA social and



[See our new Info Card »](#)

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Upcoming Events

June 19, 2012

CABA Membership Meeting • 12:00 Noon at the Capital Club • 19th floor of Capital Towers Building

Lunch is \$15 for members and law clerks; \$18 for guests

CABA Membership Luncheon Meeting

June 19, 2012 @ 12:00 Noon

Capital Club • 19th Floor of Capital Towers Building

Guest Speaker: Lem Adams [View Article](#)

President-Elect of the Mississippi Bar Association

\$15

Lunch

\$15 for members & law clerks; \$18 for guests

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athletic events, service projects, and regular membership meetings.

We also look forward to continuing CABA's commitment to pro bono and to public service. Pro bono and public service are at the heart of this honorable profession. As Governor Winter recognized in *The Measure of Our Days*, we have the "privilege of providing wise and unselfish leadership in the solving of the problems of our community, our state and our nation. We must remember that it will not be enough that we are good lawyers. We must also be good citizens." There is no greater opportunity to demonstrate that than through pro bono service.

Through the annual golf and tennis tournaments, CABA raised approximately \$6,000 for the Mississippi Volunteer Lawyers

Project. CABA will continue to encourage pro bono service and to financially support MVLP. Without a doubt, the unmet legal needs of the poor are great and remain a challenge for our justice system. But there is hope. Our local pro bono legal service organizations are under excellent leadership and, more importantly, we've seen what is possible. Many who were involved with pro bono disaster legal assistance in the months after Hurricane Katrina witnessed the personal and professional generosity of hundreds of pro bono lawyers that harnessed a spirit of service within our profession. There is still great need. And today, although we're thankfully not facing the devastation of a natural disaster, I firmly believe that the spirit of service remains at the core of our profession.

As we look forward to CABA's 80th year, it's also important to reflect on our history and the men and women who have served as presidents and leaders of CABA. The late Judge Charles Clark, Sherwood Wise, and many other past presidents have left a strong legacy—to the profession, to this bar association and to us individually. Many of them—whether directly or indirectly—have been our personal and professional mentors.

As we begin the summer months of vacation, the bar convention, summer clerks and (soon) new lawyers, take time to mentor a young lawyer or law student. In the foreword to his ethics treatise, Professor Jackson begins "in law practice, I had a mentor..." Perhaps the best way to begin building on CABA's next 80 years is to start mentoring the next generation. 📌

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AN EVENING HONORING THE JUDICIARY



The eighteenth annual *Evening Honoring the Judiciary* was held May 15 at the Country Club of Jackson. The Capital Area Bar Association and the Jackson Young Lawyers sponsored the annual event honoring federal and state judges, as well as judges in Hinds, Madison, and Rankin Counties. Gretchen Kimble served as chairman

of this year's program featuring Professor Michael McCann as the keynote speaker.

The Capital Area Bar and the Jackson Young Lawyers also recognized award recipients. CABA and JYL jointly bestowed upon Chief Justice William L. Waller, Jr. the Judicial Excellence Award. 🏆



- A** Laura Glaze, CABA President, and recipient of the CABA Professionalism Award, Barry W. Ford.
- B** Mary Margaret Gay, Laura Glaze, and Kevin Gay. The Gays received the CABA Outstanding Service Award.
- C** David Maron, 2012-13 CABA President; Professor Michael McCann, keynote speaker; Laura Glaze.
- D** Laura Glaze presents the CABA Pro Bono Award to Robert B. McDuff.
- E** Justice William L. Waller, Jr. receiving the CABA/JYL Judicial Excellence Award from Laura Glaze.

I Beg Your Pardon?!?

By James L. Robertson

Most every state hands the pardon power to its governor. It is society's great good fortune that most of us most of the time believe there should be such a politically created power of "mercy and grace,"¹ and so this power is enshrined in constitution after constitution.

Granting pardons is altogether consistent with Judeo-Christian ethics, that most of us most of the time say we accept.

The pardon power is theoretically as broad as it is sparingly exercised. No one in the western world in January of 2012 can doubt why the exercise of this humane power is left to those last moments before the governor walks out the door.

The best that can be said about *In Re Hooker*,² decided March 8, 2012, is that it put an end to the present pardon firestorm.³

The Court Kicks Itself

"At the outset, we wish to state that this case is not about whether the Governor is above the law," the lead opinion in *Hooker* (¶1) begins. The practical effect of the 6-3 decision is otherwise. The Governor can indeed put himself above the law, if he has wits and minions attentive enough to detail. All he has to do is make the evidence of his acts "facially valid." (¶2).

No one seriously argues that the Justices should "assume for ourselves the absolute power to police the other branches of government..." (¶1). Yet the Mississippi Supreme Court has always had the constitutionally restrained power and responsibility to police the other branches of government. Most of us argue that is good and proper and, best of all, settled. What else is judicial review about?

There are plenty of quite real "checks and balances" in play, assuring that in practice and in time, any power the Court might try to make "absolute" will be constrained.

Just as the pardon power is a check on the judiciary, judicial review of whether the Governor has exercised the power consistent

with the Constitution is a check on the executive. (¶24, n. 22).

The Duty Of Judicial Review Is As Broad As Need Be

Of course the Court has the power of judicial review where the Governor's excess of his authority affects a citizen in his personal or property rights. (¶¶1, 50); *State v. McPhail*, 180 So. 387, 391-392 (Miss. 1938). But that

is not its limit, as one dissenting Justice well points out. (¶143).

In *Alexander v. Allain*, 441 So.2d 1329 (Miss. 1983), the Court quite appropriately policed another branch of government, striking down legislation giving House and Senate members control of executive boards and agencies, though no "justiciable violation of a personal right" was alleged. (After that ruling, the Legislature deleted the Justices expense allowances from the next Court budget.)

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Section 33 of the Constitution vests in the Legislature the power to legislate (at issue in *Alexander*) as fully as Section 124 of the Constitution vests the pardon power in the Governor.

For the Court to be called upon to discharge its duty of judicial review, one needs only a credible claim that the Governor's "exercise exceeds constitutional parameters," (§189) made by one with standing. It cannot be seriously doubted that the Attorney General has such standing.

Assuming *arguendo* that a personal right is requisite (which it is not), such is readily found in the rights conferred on persons who have been victims of crimes. See Miss. Const., § 26(A)(1), and Miss. Code §§ 99-43-1, *et seq.*

In substantial part, Section 124's mandate that the pardon applicant publish for thirty days "in some newspaper in the county where the crime was committed" is a means of notifying the victim and his or her family that the perpetrator has applied for a pardon. Sections 26(A)(1) and 124 should be read together. The Attorney General has the authority to go to court to enforce victims' rights.

Hooker's lead opinion argues: "[I]t fell to the governor alone to decide whether the Constitution's publication requirement was met." (§15). Where there may be grounds for doubt, perhaps, such as what "thirty days" means in practice. But where the issue is a straight up and down question - whether "the applicant shall have published [anything at all] for thirty days" — No.

The Dead Give Away

It speaks volumes that the *Hooker* majority relies foremost on *Ex Parte Wren*, 1886 WL 3462 (Miss. 1886) (§§28-41, 62, 72), an opinion as ill-argued as it is ancient. That a case was decided under the 1869 Constitution does not put it off limits, if it is well reasoned. However, *Wren* is poorly reasoned by any lights, particularly the lengthy quote *Hooker* resurrects (§40), combining familiar fallacies, the domino theory and a parade of horrors. The citation to *Hunt v. Wright*, 11 So. 608 (Miss. 1892) (§§52-54, 62) is no better.

A concurring opinion takes up the point from *Wren* and fears that "every gubernatorial pardon would be subject to judicial review — not just upon the face of the pardon, but

upon evidentiary inquiries into whether the publication requirement were met to the satisfaction of this Court." (§176). But this is not so at all.

The familiar analogy is the Court's authority to review findings of fact. Where there is evidentiary support, the jury's finding stands. Only where there is no credible evidence supporting the jury's verdict may the Court intervene. That judicial review of the Governor's finding may be more constrained does not mean it is not there at all.

Remember Justice Griffith?

Griffith's *Chancery Practice* has fallen into disuse. Young lawyers know little of its author. All should read *State v. McPhail*, 180 So. 387 (Miss. 1938) (and not just for its historical reminder of "The Gold Coast" and its once "glaring notoriety.")

The *Hooker* majority cites *McPhail*. (§§43-45, 59, 62). Nowhere mentioned is Justice Virgil Griffith's rhetoric and reasoning which utterly undermine *Hooker*, as one dissenting Justice is quick to point out. (§§118-21).

Official action...must be within the Constitution and the laws, and the facts must be such as to uphold or justify the exercise of the official authority which in a given case is exercised.

McPhail, 180 So. at 391 (emphasis supplied). If, in fact, the pardon applicant **did not "publish [something] for thirty days**, in some newspaper in the county where the crime was committed, ..." then there has been **no "official action ... such as to uphold or justify the exercise of the official authority [the pardon power]."** *Id.*

Justice Griffith's words are sufficient unto the day: *If any officer...attempt to exercise an authority... upon a state of facts which does not bring the asserted authority into existence, his action is... the subject of judicial review and remedial rectification...*

McPhail, 180 So. at 391, appropriately quoted in a *Hooker* dissent. (§89).

Of course the Governor "[i]s the sole

judge of the sufficiency of the facts and of the propriety of granting the pardon," (§47), quoting *Montgomery v. Cleveland*, 98 So. 111, 114. But this cannot and does not mean that the Governor can make up facts that are not there.

The *Montgomery* premise the *Hooker* majority cites presupposes that there are facts whose sufficiency the Governor may judge. If there be nothing that might arguably be deemed a "publi[cation] for thirty days," the Governor has nothing to do.

Of course as a textual matter the Governor's pardon power "**is not limited by any other provision** of the State constitution, ..." (§47), quoting *Pope v. Wiggins*, 69 So. 2d 913, 915 (Miss. 1954) (emphasis in original). The limits within Section 124 itself, however, are not "any other provision." One of those limits, as a point of plain English, is that "the applicant therefor shall have published for thirty days..."

Pardons Are A Function Of Law, Not Mercy Or Grace

It is less than helpful to have dissenting Justices declare *Hooker* "a stunning victory for some lawless convicted felons, and an immeasurable loss for the law-abiding citizens of our State." (§184). This just feeds the frenzy.

I am not surprised that there might be 215 convicted felons in this state worthy of executive clemency, without "most of them...no longer in custody." (§16). In a variety of contexts, I have interacted with the correctional authorities of this state, and those within their custody, since the late 1960's. I rather suspect there are more than 215 deserving of clemency.

On the other hand, nothing said here passes judgment on whether a single one of this particular 215 is worthy of clemency. I do not know the facts. I have taken media reports with many, many grains of salt, particularly those of political pontificants condemning the Governor's actions.

If in fact one or more pardoned persons published nothing for thirty days in some newspaper in the county where the crime was committed, that pardon is unlawful. The positive law declares my thoughts whether the applicant is worthy beside the point. It is

the Constitution that commands the Court to enforce the positive law.

A Wise Dissent

I know personally all of the Justices. They are friends and respected colleagues at the bar. The one I know the least (because he is so young) put it best in dissent. (¶¶133-48). Though I have quibbles at the margins, his opinion calls to mind the well chosen words of Chief Justice Charles Evans Hughes:

*A dissent in a court of last resort is 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 which the dissenting judge believes the court to have been betrayed.*⁴

Here's to a future day when good lawyers will read the controlling opinions in *Hooker* and gasp, "I beg your pardon!?"

1. *Montgomery v. Cleveland*, 98 So. 111, 114 (Miss. 1923), quoted in dissent in *In Re Hooker*, 2012 WL 745062 (¶136) (Miss. 2012).
2. *In re Hooker*, — So.3d —, 2012 WL 745062 (Miss. May 17, 2012), *reh'g denied* (May 17, 2012).
3. This piece is no substitute for reading with an open mind all six opinions that make up *Hooker*, and most more than once.
4. Charles Evans Hughes, *The Supreme Court of the United States: Its Foundations, Methods, and Achievements: An Interpretation* 68 (1928).



In an attempt to further the occasionally humorous side of our profession, we hope to periodically publish some stories from the past that need to be preserved for posterity.

By Will Manuel

In the words of Orson Welles, "Ask not what you can do for your country. Ask what's for lunch." In the old days, clerking for a Jackson area law firm was all about the lunches. Whether it be the lunches put on by our local associations: JYL, Hinds County Bar, Federal Bar, MWLA, or the Magnolia Bar; or the longer lunches at some of the area's more colorful dining establishments. All law clerks knew that when the clock hit 11:30, you wanted to be camped out in your office to await the inevitable visit from associates or younger partners ready to take you to fill your poor law student belly.

The art of the law student lunch was something that would usually evolve over the six week clerkship period. In the early 1990s, a well known Capitol Street firm even had its own "lunch guide" that listed numerous diners, drive-ins and dives that

The Art of the Free Lunch

served up the best eats in Central Mississippi. There were many outings to Bully's, The Hill, Country Gentleman, the (old) Cherokee, and even out to Big D's in Pocahontas for ribs. Primarily, it was the younger crowd that was most adventurous in taking you out to places where you really stood out in a tie and a suit. If one of the "elder" partners caught you for lunch, you might catch the University Club, the Capitol Club, River Hills, or Nick's.

Unfortunately, some of our fellow law clerks took the free lunch entitlement too far. One clerk was legendary for ordering two entrees at lunch and having one wrapped up in a doggie bag to go. Yet another clerk who was a big fan of sleeping late would have his roommate call him at 10:00 a.m. to wake him up so he could be at the firm in time for the daily lunch run. A recent story online relayed the tale of an East Coast law clerk who attended law firm lunches that were so large, she routinely ordered a bottle of wine and sneaked it back to the firm in her purse for an afternoon of sipping it from her aluminum water bottle. It is sad to see that some had little respect for such an honored tradition. A few bad apples...

One of the great things about the summer were the lunches for the Hinds County Bar (now CABA) and JYL that occurred in the summer. For most students lucky enough to garner a ticket on the law clerk gravy train, these events provided a great opportunity to

run into classmates and old buddies. Each firm would go through the (sometimes painful) process of introducing all their summer associates. The organizations also tried to abandon the usual diet of politicians and law professor speakers in the summer in exchange for more exciting entertainment. One summer, JYL even employed two local jugglers to put on a comedy routine for the summer crowd. In this writer's humble opinion, it is still the greatest lunch program of all time.

The free lunch program may only have been topped by the law clerk happy hour. Who can forget two of our (now) more notorious trial lawyers jumping into the lake after winning the JYL golf tournament and then hosting the city's law clerks at the Dock in all their muddy gloriousness. Hal and Mal's, Fenian's and now Parlor Market are often seen full of 1Ls and 2Ls on Thursdays and Fridays filling themselves with free beer and semi-accurate war stories from the lawyers hosting them.

Overall, the law clerk experience is designed to expose students to the practice of law and what it is like to be a young associate. The lunch and happy hour aspects to that program are essential to help each side determine whether they feel comfortable in that specific environment. It would be sad to think that any firm would do away with these great traditions. Instead, grab a bite or a beer with a law student today!

Get to Know Lem Adams

*President-Elect of the Mississippi Bar Association
Will Be CABA's Guest Speaker on June 19th*

By Chris Shaw

When Lem Adams, III first moved to Rankin County in 1973 to practice law, it was a much different place than it is today.

"When I first moved here there was not a fast food restaurant in the entire county," said Adams. "The first one was Dairy Queen in Pearl, so on Sundays after church everyone went to the Dairy Queen in Pearl."

Adams, the 2012 President-Elect of the Mississippi Bar Association, has watched what was the small, rural county in which he began practicing law explode from a population of approximately 44,000 residents in 1970 to over 141,000 currently. And Adams has worked hand-in-hand with its residents all the way through the continuing growth.

Adams began his practice in Brandon because "at the time it had the lowest per-capita population of lawyers in the surrounding areas." He has worked with numerous Rankin County communities as they've grown, serving as Rankin County

working with his longtime friend George Bobo, county administrator for Rankin.

"I went to work with the City of Brandon in 1984 and Lem taught me a lot about city government and the law," said Bobo. "He is super knowledgeable about everything and does a really good job listening to situations before coming up with solutions."

Those same qualities "will make him a good representative for the Bar," said Bobo.

Six years after moving to Brandon and working with a solo practitioner, Adams started his own law firm, which now consists of nine lawyers. As Rankin County and his law firm grew, so did Adams' reputation.

"It's hard to go anywhere where someone doesn't know him," said Mike Boland, one of Adams' partners in the law firm of Adams & Edens, P.A. "You can walk into a courtroom anywhere in the state and someone will ask you how Lem is doing."

This is in part because of Adams' involvement in the Mississippi Bar and his community. Adams has served on the Board of Bar Com-

and has served on its nominating committee.

In the community, Adams and his wife of forty years, Marcia, are members of Lakeland Presbyterian Church, where he serves as a ruling elder. Adams is currently vice chairman of the Board of Directors of Desire Street Ministries, an inner city ministry to at risk youth in the New Orleans 9th Ward and other poor areas in the Southeast. Adams is also a Life Member of the Ole Miss Alumni Association and the Ole Miss Loyalty Foundation.

Adams' "diversification" in his law practice and community involvement make him an ideal Bar president, said Adams' longtime law partner, Frank Edens, Sr. "He is just excellent working with people," said Edens.

"He is an absolute gentleman and a pleasure to practice law with and against," said long-time friend, attorney John Toney.

It is his wide variety and collection of experiences that Adams' hopes will serve him well as President of the Bar. With plenty of other things to keep him busy, Adams is now accustomed to the hectic pace and is excited about the new challenge of serving as bar president.

"I look forward to serving all members of the bar in whatever way I can," he said.

Adams and Marcia have two children, Whitty McCloud of Baton Rouge and Lem IV of Brandon. Adams has one granddaughter, Morgan. Adams graduated from McComb High School, attended Southwest Community College, and received his undergraduate and law degrees from Ole Miss.

When not practicing law or spending time with family, Adams is an avid hunter and fisherman. He is also a self-described New York Yankee fanatic. 🍷

“It's hard to go anywhere where someone doesn't know him... You can walk into a courtroom anywhere in the state and someone will ask you how Lem is doing.”

Mike Boland, a partner of Adams' at Adams & Edens, P.A.

Prosecuting Attorney and city attorney for the cities of Brandon (1977-1989), Flowood (1989-2002), and Pelahatchie (1981-2003). He has also served as counsel to the Rankin/Hinds/Pearl River Flood and Drainage Control District.

Adams currently serves as Board Attorney for the Rankin County Board of Supervisors,

missioners, the Executive Committee of the Bar, the Supreme Court Advisory Committee on Rules, a volunteer lawyer with the Mississippi Volunteer Lawyers Project, a facilitator in the James O. Dukes Law School Professionalism Program, and a volunteer attorney with Mission First. Adams was inducted as a Fellow of the Mississippi Bar Foundation



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