President's Column
by Linda A. Thompson

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

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

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

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

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

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

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

May 2, 2005
HCBA/LVL Evening Honoring the Judiciary.
6:30 p.m. Old Capitol Inn

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

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

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

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Judge Edith Jones to Be Speaker at Evening Honoring the Judiciary

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

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

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

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

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

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

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


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

HCBA ELECTION RESULTS

Congratulations to our new officer and directors!

Secretary-Treasurer
R. David Kaufman

Director-Post 1
Leyser Hayes

Director-Post 2
Luke Dove

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The February 2003 issue of this Newsletter contained an article about the trial of Choctaw Chief Wesley Cameron in Noxubee County in 1940 for the killing of Evans Tubb, a member of his tribe. Chief Wesley was convicted of murder but the conviction was later overturned on appeal.

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

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

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

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

Chief Wesley and his supporters claimed the treaty crimes between Indians could not be tried in the “white man’s” court.

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

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

The trial of Chief Wesley took place in late August, 1940, on the second floor courtroom of the Noxubee County courthouse. The courtroom was standing room only. The area outside the courtroom and on the circular iron staircase were filled with people trying to get into the courtroom. As a ten-year-old, I had an advantage. I could scoot and squeeze in and around the adults and make my way into the courtrooms. There was no air conditioning. All of the windows were up and spectators sat on the windowsill. As no one wanted to leave the courtroom and lose their seat, spectators sitting near a window would lower a cord out of the window down to the ground where a friend or an enterprising merchant would tie a cord to a chair to be drawn up to the courtroom.

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

John C. Stennis, Judge of the Sixteenth Circuit Court District, which then comprised Clay, Kemper, Lowndes, Noxubee and Oktibbeha counties, presided. Judge Stennis previously served as district attorney. The then district attorney, L. W. (Red) Brown of Starkville, prosecuted the case. I remember him as a tall, big, chiseled man with a booming voice when speaking to the jury. He had an interesting rhetorical gesture. When making a point, he would raise one arm high over his head, extend his forefinger upward and then rapidly twist his forefinger in a circle as he boomed out his point.

At the conclusion of the point, he would dramatically bring his arm down. Some years later I got to know one of his sons at Ole Miss. I told him I had watched his father prosecute cases in Noxubee County. His son told me his father on occasion would cut a hole in the toe of one of his socks. When his opponent was arguing to the jury, Red Brown would remove his shoe. By displaying a big toe protruding from the sock he hoped to distract the jury during his opponent’s argument.

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

While those events during the summer of 1940 were exciting and at times also unforgettable, a little over a year later Noxubee County, along with the rest of the country, was involved in World War II. Several years later Circuit Judge John C. Stennis of DeKalb was elected to the United States Senate and the saga of Chief Wesley was forgotten until revived in the last issue of this Newsletter.
Killing the (other guys) Lawyers
by Luke Dove

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

Today, almost 400 years later, legions of highly-paid advocates for business, insurance, pharmaceutical, medical, and manufacturing interests frequently but unwittingly invoke the spirit of Jake the Butcher as they campaign relentlessly against "junk lawsuits" and "greedy lawyers". Their goal is to frustrate the judicial system by legislative reformation which, they assert, will make American businesses more productive and competitive, reduce the costs of goods and services, speed the delivery of affordable health care and bring “common sense” to a legal system riddled by excessive fees.

Yet none of this is true. Not much.

Tort reform has far more to do with money and politics than with improving the justice system, or the delivery of health care or the protection of the consumer. Shakespeare’s line was, on the other hand, an ardent supporter of Jack Cade, an armed insurrectionist and would-be despot. Cade seeks to capitalize on the popular grievances of “downsized” society in order to incite rebellion and invoke justice.

The juxtaposition of the landless and murderous butchers against the wealthy gently representative conflicts within the ranks of society. Cade, for his own ends, advocates the overthrow and seizure of those with wealth, power, and position; the destruction of established order. And who stood steadfastly as the first line of defense against such anarchy and lawlessness? Who sought to preserve society’s rights and economic interests? To quote Shakespeare:

CADE: Be brave, then, for your captain is brave and vows reformation. There shall be in England seven hundred: leaves roll’d for a penny and I will make it a large roll for small bills. All the shall be in common. And when I am king.

FOLLOWERS: God save your majesty!

CADE: I thank you good people! There shall be no money. All shall eat and drink on my score, and I will apparel them all in one livery that they may agree like brothers, and worship use as their lord.

BUTCHER: The first thing we do, let us kill all the lawyers.

Poncho, you noted that the Butcher’s avowed goal was to kill all the lawyers. Lawyers were scarcely available to those without property, wealth, and position. Today, at least, insurance, medical, and business groups only want to kill the other guy’s lawyers: specifically, lawyers for consumers, debtors, and persons with significant personal injury claims. So far, the rich and powerful have not publicly expressed a desire to eradicate their own lawyers who would, otherwise, have(ally) sought to assist them, thus alienating so loyally for so long, albeit for handsome fees.

Since netitcourageous criminal statistics prevent the actual number of lawyers, tort reformers resort to the next best thing: refocusing the justice system by legislative stratagems. And where did they get the idea to strangle the justice system? From lawyers and judges.

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

If you failed to notice, the reforming trend began several years ago with restrictions or limitations of these rights of corporate shareholders to recover damages. Reform spread to compulsory arbitration, with the result that an entire economic system will be taken with a virtual exemption from jury trials. Not surprisingly other groups like this will not have been affected that way.

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

Also during the last 20 years, more and more lawsuits of every stripe have included a demand (and threat) for punitive damages. Punitive damages have been upheld on some questionable cases. The principal concern raised by a claim for punitive damages is the complete lack of predictability. To say that punitive damages may be “allowed only with caution and within reasonable limits” is extremely generous.

The result has been that businesses and insurers cannot fairly assess litigation risks, except for their well-founded belief that in some venues they will certainly be struck with a large punitive damage award. Punitive damages have an important place in the law, but they are not a substitute for the lottery. A better course, and one which has been previously suggested, is to allow the recovery of reasonable attorney fees as punishment for repetitious or frivolous lawsuits. Punitive damages instructions should be restricted by judges to cases with truly extraordinary facts. But that has not happened.

continued on page 7
It is always a good experience to shop in a bookstore, whether it's an independent bookstore such as Lemuria and Square Books, a chain such as Books-A-Million, Roasters or Barnes and Noble, or a used bookstore like Choctaw Books. Going to a bookstore, for me, involves committing a fairly large amount of time, as I am not capable of going to a used bookstore, going straight to a certain book, buying it and walking right out again. I have to browse. I like to go to a bookstore as a destination event, like going to a movie or a play. I look at new books and old books and fiction and history like going on a grad school books and talk to the people who work there and just take my time with the whole thing. I hardly ever leave with just one book. However, if I'm at home and I read about a book I know I want to get, like the convenience of going to a website and ordering that book. This is especially good for buying Christmas and birthday gifts for out-of-town friends and relatives, as you can just phone or go online, and arrange to have books wrapped and delivered.

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

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

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

Square Books does have a link to BookSense on its website. The Square Books site also states that collectible books are not available through BookSense. For those, one must contact the store, or click on the BookSense link. That site was established in 2001 by a used book dealer, dealers pay fees based on the number of titles listed. A search of the site turns up books in the hands of a number of dealers; the dealers names are given, but you can tell if you are ordering from a local store or dealer. The Old C deliberately has many books by Mississippians and about Mississippi, and maintains an inventory list on its website. You can order by mail or phone, but not online.

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

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

This is both a good and a bad thing. It has taken a lot of the fun out of visiting used bookstores, always one of my favorite activities when traveling. There's less pressure to get to a used bookstore on a brief visit to another city, when I know I can almost certainly find whatever I might want online. Of course, I'm not a serious collector, and I'm not buying books as investments; I'm just buying things I want to read. I do like to have original editions of books if they're not too costly, and I find out very quickly what you can get on the internet is that you can almost always find the book you're looking for. One bad thing is that you can't smell it. Seriously. Online dealers will describe the condition of a book in regard to the cover, the spine, the dust jacket, etc., but unless it has mildew spots all over it, they almost never tell you if it smells like high heaven. Sometimes their descriptions just plain misrepresent the condition of the book.

Remember, anyone can call himself a book dealer on the internet, and these dealers are located all over the world. Maybe "very fine" has a different meaning in Sandals. If you happen to order from such a seller, you may be for a lot of trouble and inconvenience, and even more so if you order from a local store or dealer.

There are other telling qualities of life that indicate the next Central Jackson mayor will have to confront. For instance, there is not a single commercial movie theater in the City of Jackson. There are, however, enough abandoned schools and buildings in the EverythingElse neighborhood to make the most stricken visitor from the Third World feel right at home. Faced with this reality, too many efficient and middle class Jacksmonians of all races see their own more rewarding "exodus" search of better schools, greater opportunity and heightened personal safety. When they leave, they take a little bit of Jackson's tax base with them.

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

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

And that, my friends, is the bottom line!
On Computing
by Joel Howell

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

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

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

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

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

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

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

3. Use encryption. There are two standard types of encryption. Wired Equivalent Privacy (WEP) is an older and less secure method. It uses a non-changing 64 or 128-bit key. It is not the best method, but it is better than nothing. Wi-Fi Protected Access (WPA) uses 256-bit encryption, which is much harder to decode than the WEP, especially since it is constantly changing. WPA is more prevalent in newer gear, but if you have older equipment, you may be able to get WPA through a firmware update. Firmware is software written on a chip inside a piece of hardware. You may want to check your manufacturer's Web site for more details.

Consider using a passphrase that is at least twenty random characters but you can use up to sixty-three characters. Be careful to not use words in the dictionary or personal information that people can easily find out. Use a combination of numbers, capital letters, and lower case letters to make this as difficult as possible for the hackers to figure out.

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

4. Disable Media Access Control (MAC) filtering. MAC is an address assigned to each wireless card. Each wireless device has a unique MAC address which includes six sets of paired characters and is usually printed on the back of your wireless card. Basically, MAC filtering tells your access point to grant access only to MAC addresses you enter.

Note that all the foregoing is accomplished through your access point's firmware and will vary depending upon your vendor. If you have a network of any size, Windows XP SP2 incorporates a wireless network setup wizard. After implementing these four measures you can do your own security check. Install the free program NetStumbler (http://www.netstumbler.com) onto a laptop or PDA. This program will detect open Wi-Fi networks. After installing the program, try walking around the outside of your house with your laptop or PDA and see what a hacker may see. If you have implemented the four measures discussed above, you should not detect anything.

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

Questions or comments? Email webmaster@hindsbar.com.

GOLF OUTING JUST FOR LAWYERS
(All Lawyers and Judges in Hinds, Rankin & Madison Counties are eligible.)

13th Annual
HINDS COUNTY BAR ASSOCIATION
GOLF TOURNAMENT
Thursday, May 19, 2005
Shotgun Tee Off: 1:00 p.m.
Hamburger/Chicken Buffet 12:00 noon
Annandale Golf Course (Soft Spikes Required)
All proceeds from the tournament will go to the
MISSISSIPPI VOLUNTEER LAWYERS PROJECT
4 Person Scramble* Limit 116 Persons
COST ONLY $125 Per Player includes Lunch and Post-Tournament Cocktail Party

REGISTRATION FORM
DEADLINE, MAY 6, 2005

Name_________________________________________________________
Address_______________________________________________________
Team Members ___________________________ Handicap ______________
Team Members ___________________________ Handicap ______________
Team Members ___________________________ Handicap ______________
Team Members ___________________________ Handicap ______________

Phone: ___________________________

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

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

January 11, - May 11, 2005
Monday - Thursday .................................. 7:30 a.m. - midnight
Friday .................................................. 7:30 a.m. - 9 p.m.
Saturday .................................................. 9 a.m. - 9 p.m.
Sunday ................................................... noon - midnight

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

Exam Schedule
April 29th - May 11th
Monday - Friday .................................. 7:30 a.m. - midnight
Saturday .................................................. 9 a.m. - midnight
Sunday ................................................... noon - midnight

Summer hours will begin May 12th.
Hours are subject to change without notice.
President's Column
by Alveno N. Castilla

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

Why do pro bono work?

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

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

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

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

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

HCBA Calendar of Events

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

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

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Annals Of The Law

by Luke Dove

Theorem Comes To Life

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

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

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

In America, women no longer merely represent the ideal of justice—they have represented a significant percentage of the actual administration of justice.

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

The first woman to serve at a federal appellate court judge was Florence Allen, appointed by Franklin Roosevelt in 1934. In 1949, Harry Truman appointed Sandra Day O'Connor, of the United States Court of Appeals for the Ninth Circuit, to the first

washing machine
Financial data and identity theft is a national problem. It’s the exception to read a newspaper or magazine that does not include mention of this problem. And then there’s the televised ad about Jim enjoying Maurice’s vacation while taking all the Roles in the display case.

The July 2, 2006, issue of The New York Times contained an article by J.P. Muckenhirn, who writes on personal and corporate finances for MSN Money, about her experience with data loss. Motivated by her personal experience, she started useful information and suggestions for protecting personal data in the following paragraphs:

Unfortunately, although there are steps you can take to protect yourself, there are no guarantees.

That said, Mr. Muckenhirn endorsed the preventive measures offered by Privacy Rights Clearinghouse (www.privacyrightsclearinghouse.org), a nonprofit consumer advocacy group, and by the Identity Theft Resource Center (www.idtheftcenter.org), also a nonprofit.

Besides the standard advice to shred personal documents, following are some tips found useful:

- Avoid letting your cards out of your sight. Do not let your checks kick your card away on the pretext that there’s a “problem.”
- Recheck the access to your personal data by signing up for the National Do Not Call Registry (www.donotcall.gov), removing your name and address from the phone book and reverse directories - a service offered from the marketing lists of the credit bureaus to reduce credit card solicitations. The site www.optoutprescreen.com can help.
- Consider freezing your credit report, an option available in a growing number of states.

Freezing prevents anyone from opening up a new credit file in your name (a password lets you gain access to it), and it doesn’t otherwise affect your credit rating.

- Protect your home computer with a firewall, especially if you have a high-speed connection.
- Rein in your Social Security number. Remove it from your checks, insurance cards and driver’s license. Ask your bank not to use it as your identification number. Refuse to give your Social Security number to merchants, and be careful with medical providers. The only time you are required by law to give your number, Mr. Muckenhirn said, is when a company needs it for government purposes, like tax matters, Social Security and Medicare.

- Uninstall electronic access to your bank accounts. Pay bills through mail or mail a follow-up article in the Times on July 7.

Mr. Muckenhirn, who describes her recommendation for “small mail” provided, however, your computer is protected with a firewall and virus software.

I recently had a similar experience involving, instead, a credit card. Someone during a three-day period over the phone or Internet, charged my credit card for about $500 on each occasion in three different categories of expenses. As I had my card, they obviously somehow obtained my credit card.

I didn’t have any strange activity involving, instead, a credit card. Someone during a three-day period over the phone or Internet, charged my credit card for about $500 on each occasion in three different categories of expenses. As I had my card, they obviously somehow obtained my credit card.

My credit card company, suspecting a problem, contacted me a week or so late and the charges were deleted. My card was cancelled, however, and a new card issued. Most vendors now have credit card systems where the card owner signs his or her card and signs a charge slip which prints only the last four digits of the card number. As I thought about my situation, I realized a week or two before I made a purchase at a local business where the clerk printed the card and the purchase slip contains my entire card number.

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

**Option Column by Captain Equity**

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

This particular aphorism has innumerable applications. Unfortunately for the comfort of Judge Roberts, the President’s postponement of Judge Roberts as a replacement for retiring Supreme Court Justice Sandra Day O’Connor was the simple homely words of wisdom to the detriment of us all.

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

Predictably, zealots on both sides of the issue were dismayed, but, from my perspective, the Supreme Court got it about right.

In essence, the Court mirrored the view of most Americans that God is not only true but that this country was founded upon many of the basic precepts found in the Judeo-Christian heritage. At the same time, the Court sought to honor and preserve the fundamental separation of secular and ecclesiastical realms as to avoid the consequences of abuse caused by the failure of impartiality in the majority's destiny to do likewise.

Justice O’Connor, a Reagan appointee and the first woman to serve on the Court wrote a short but precise opinion that reminded everyone exactly why separation of church and state was desperately woven into the cloth of what would become the United States of America. I commend to you a quick reading of her transcription of her words. She reminded us that the issue has nothing to do with belief in a Supreme Being but rather allows everyone the personal freedom and the peace of mind of not having to worship or otherwise follow the religion freely. One need only look at the daily carnage throughout the Middle East to see what happens when countries operate in a fundamentalist theology rather than a representative secular democracy. To this, O’Connor wrote:

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

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

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Sometime ago back in the good old days of local banks, Am South’s predecessor Deposit Guaranty sponsored an annual symposium that brought nationally known business and political leaders as well as journalists to Jackson to survey the year ahead. I remember journalist Steve Roberts, Coke’s husband, telling us that in America, morality was defined as actually getting legislation enacted into law was played between the forty yard lines. This apt football analogy rang true back then. Nothing has changed in the ensuing years. Dialogue has devolved into shouting and consensus has been replaced by blind partnership.

Nowhere is this more evident than in the so-called cultural issues of which separation of church and state leads the list. Distortion of issues and disdain for the type of compromise that is both the hallmark of Justice O’Connor cuts everything in terms of all or nothing, right or wrong, conservative verses liberal. If only the complex issues of modern life were that simple.

Notwithstanding the overheated rhetoric and end of the world scenarios, all the surveys on the subject show that 96% plus of Americans believe in God. One need only contemplate the orderly implicit in the human body to believe in a Higher Power. If more proof is needed, how about the precision of the seasons and the exceedingly narrow range of temperature and atmospheric conditions that sustains life on earth for an almost infinite variety of organisms, plants, animals and humans? Accidents? Happiness? I think not.

Problems begin to emerge only when we get into the details such as the relative worth of one religion versus another or consideration of issues such as stem cell research or if Catholic families can adopt children from so-called faith-based Christian adoption agencies and on and on and on.

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

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

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**Guard Your Card Hard**

by John Land McDavid

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

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

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The Evening Honoring the Judiciary

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

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

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

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

The Honorable Edith H. Jones and the Honorable Edith H. Jones.

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

HCLA member Ben Passara for Outstanding Service Award and Dan Jordan for Pro Bono service.

Judge Edith H. Jones (left), Judge and Mrs. Charles Clark, and Honny Jolly.
Tri-County Lawyers Honored in Destin

Despite the initial uncertainty of how Hurricane Dennis would affect the 100th Annual Meeting of the Mississippi Bar, more than 200 lawyers assembled at the Sandestin Hilton to enjoy the resort and conduct the business of the Bar. Traditionally, the Saturday morning Farrell Brunch is the time for recognizing distinguished achievement by individual members and turning over the gavel to the new administration. Lawyers from Hinds, Rankin, and Madison Counties were among those honored.

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

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

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

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

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

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

continued from page 5

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

The list of suspect men and women of the cloth goes on forever. Jimmy Swaggart, Jim and Tammy Faye Bakker lead a very long list of people who exploited sincere followers for their own gain. Our very own Preacher Edgar Ray Kilken dodged a felony conviction back in the 80s when a lone holdout on a federal jury said he “just couldn’t convict a preacher.” And despite all the good the Catholic Church has done, except perhaps the Spanish Inquisition, Bishops who knowingly reigned collar-wearing pedophiles to other parishes to prey on the children of devout church members not to mention the pedophiles themselves make a mockery of trust and any claim to moral authority the Church may have had.

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

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

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

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IS PLEASED TO ANNOUNCE THAT DAVID MCCARTY

FORMER CLERK TO SUPREME COURT JUSTICE JAMES E. GRAVES, JR. HAS BECOME ASSOCIATED WITH THE FIRM IN THE JACKSON OFFICE
On Computing
by Joel Howell

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

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

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

Doublet is you are aware of the Cornell Legal Information Institute, www.law.cornell.edu, which archives US Supreme Court opinions. You should also know that these opinions are being corralled by its libnetwork. The feed at http://slightlylight.com/rss/000001.page today provides decisions for the current day. Recent decisions are provided through http://slightlylight.com/rss/supreme/000001.page recent decisions.

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

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

GeoTrack, www.geotrack.net monitors the states of federal legislation, speeches of members of Congress, voting records, campaign contribution, and a lot more. Better yet, you can define indexes you want to follow and receive updates through an RSS feed.

Microsoft considers this a sufficient import to integrate RSS support into the next versions of Internet Explorer (4 and Windows (Longhorn), to be out the second half of next year, but don't hold your breath.


Ever wonder how big the Internet is? A web search on Google explores 8,050,004,651 web pages (and that number will be larger by the time you read this). After a Google search, click on "more" above the search line and take a look at Google Suggest, which helps phrase your most effective search terms.

Want public records information? Search Systems Worldwide Free Public Records Directory, www.searchsystems.com, can explore 30,055 public record databases. You can search by geographic location, including, but not limited to, nationwide, statewide, worldwide, and other space (try it and see!).

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

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

Questions or comments? Email webmaster@msbar.com.

HCBA Members Participate in Stewpot Food Drive

When Stewpot Community Services called the HCBA about the June annual "Christmas in July" food drive, more than a dozen law office staff helped. These firms set up collection boxes for non-purchased food donations and ordered all employees to participate in the food drive.

Melody McGinley of Bradley Armond Rose & White assembled the collection boxes between firms and Stewpot.

David Noyes also helped to coordinate the Attorney General's office for support, and LeAnn Nealty of Butler Snow added additional volunteers.

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

Book Notes
by Nonie Joiner

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

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

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

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

Newspapers in Mississippi and in Memphis and New Orleans contained many editorial letters and editorials which addressed the issue. Fred Sullens of the Jackson Daily News is quoted as writing that opponents of the reform plus "... wanted[ed] to sling mud, and they succeeded beautifully..." He thought the bill would pass, because "... the people have the votes..." and Roosevelt still holds the gravy ladder with a firm and vigorous hold. The editor of the Madison County Journal also thought the bill would pass, but did not editorialize in favor of it. The editor of the Tupelo Daily Journal stated that Roosevelt could "restore prosperity and make it permanent" if he could "[t]hrow the reactionary senators on the Supreme Court out of power." In a recent practical note, the "... Diversity editor stated that men over sixty were just not able to carry on business as well as were men of a younger age." The Oxford Eagle's editor thought that the bill "[w]as designed to help the masses rather than the "economic royalty" group."

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

After Roosevelt's attempt to pack the Court, we had a Democratic president, a Democratic-controlled Congress, a Democratic south, and a Supreme Court headed toward liberalization. Now we have a Republican president, a Republicans-controlled Congress, a Republican south, and a Supreme Court very likely headed toward a long period of conservatism. Are there any lessons to be learned here from the past, based on constitutional issues, of many southern Republicans to some of the proposals of extremely conservative Republican? The Journal of Mississippi History is a quarterly publication of the Mississippi Department of Archives and History, in cooperation with the Mississippi Historical Society. For only $25, you get membership in the Historical Society, and receive the Journal as well. It's a deal. Of course, if you're going to give them a little more, they'd appreciate it.
Additions to the State Law Library from Hinds County Law Library Funds: January-June 2005
by Charles Pearce, State Law Librarian

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

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

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The ABC's of nonprofits
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The law of debtors and creditors: bankruptcy, security interest, collection
Bankruptcy procedure manual
Bankruptcy law fundamentals
Bankruptcy exemption manual
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The winning brief: 100 tips for persuasive briefing in trial and appellate courts
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Sexual harassment in the public workplace
Americans with Disabilities Act: employee rights & employer obligations
Wages and hours: law & practice
Medicare and Medicaid claims and procedures
Federal Employee Compensation Act practice guide
Disability handbook
Toxic tort litigation
Encyclopedia of the American Constitution
The Oxford guide to United States Supreme Court decisions
Attacking and defending expert witnesses
The discovery manual: from initial interview to closing argument
Land use planning and development regulation law
State & local government land use liability
The law of future interests
Real estate finance law
Patent's RESPA, TILA, HOEPA and FRCA in real estate transactions, with forms
Murphy's will clauses: annotations and forms with tax effects
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The Oxford companion to the Supreme Court of the United States
Federal civil procedure before trial - Fifth Circuit edition
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Fundamentals of federal litigation
Rule 11 sanctions: causes, context and preventive measures
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Pretrial discovery: strategy & tactics
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ATLA deposition notebook
Trial communication skills
Trial tactics
Trial lawyer: what it takes to win
Children, Celia W.
Opening statements: winning in the beginning by winning the beginning
Courtroom persuasion: winning with art, drama and science
Questioning techniques and tactics
Quainton from the bench
The trial lawyer's book: preparing and winning cases
MISSISSIPPI COLLEGE LAW LIBRARY HOURS
August 21, 2005 - January 10, 2006
Monday - Thursday ........................................ 7:30 a.m. - midnight
Friday .......................................................... 7:30 a.m. - 9:00 p.m.
Saturday .......................................................... 9:00 a.m. - 9:00 p.m.
Sunday ................................................................ noon - midnight

EXCEPTIONS
Labor Day
Monday, September 5th ..................................... 9 a.m. - 5 p.m.
Thanksgiving
Wednesday, November 23rd ................................ 7:30 a.m. - noon
Thursday & Friday (Nov. 24th & 25th) .............. CLOSED

EXAM SCHEDULE
December 2nd - 14th
Monday - Friday ............................................... 7:30 a.m. - midnight
Saturday ................................................................ 9 a.m. - midnight
Sunday ................................................................ noon - midnight
Christmas
December 15th & 16th ...................................... 7:30 a.m. - 5 p.m.
December 17th & 18th .................................... CLOSED
December 19th & 21st ....................................... 7:30 a.m. - 5 p.m.
December 22nd ..................................................... 7:30 a.m. - 4:30 p.m.
December 23rd - January 1st ................................ CLOSED
January 2nd - 6th ................................................... 7:30 a.m. - 5 p.m.
January 7th & 8th ................................................. CLOSED
January 9th & 10th .................................................. 7:30 a.m. - 6 p.m.

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

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

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

FIRST CLASS
October Membership Meeting

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

continued on page 6
OFFICE SPACE FOR LEASE
Very nice executive suite. 2,500 sq. ft, 8 large offices, plenty of storage and parking, street frontage, conveniently located at 2964 Terry Road near banks, interstates 20, 55, & 220. Call 601-373-5189

HCBA Calendar of Events
February 6-24, 2006
Pictorial Directory Photos Taken
8:30-5:00
MC School of Law
February 21, 2006
HCBA Membership Meeting
Noon Capital Club
April 18, 2006
HCBA Membership Meeting
Noon Capital Club
April 27, 2006
HCBA Golf Tournament.
Noon
Annandale Golf Club

HCBA Officer Candidates Announced
The nominations committee is pleased to announce the following HCBA members who have graciously agreed to run for office for the year 2006-2007
The nominees for the three positions to be filled are:

Secretary - Treasurer
Deanne Mosley
Susan Tsimoros

Director - Post 3
Bo Gregg
David Maron

Director - Post 4
Melody McNally
Laura McKinley

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

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

Uncle Sam and Christmas
by Cadet Equity

(Editor's Note: Captain Equity was called out of town shortly before the deadline for his column. Consequently, he has recruited a guest author who is some other than the Captain's previous twelve year old son, Cadet. Captain Equity will return in the February 2006 issue.)

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

Well, the Christmas tree is all decorated and the packages are all wrapped, but unfortunately, some of our favorite relatives won't be able to celebrate the holidays with us. You see, we have a big extended family. Our favorite relative is Uncle Sam. Actually, there are a lot of Uncle Sam's in our family some of whom are Aunts. They all live in Washington part of the year and have second homes scattered throughout the country. Actually, according to my dad, everybody who is not an illegal alien has the same big extended family. I guess they came over on the Mayflower or were Indians or something like that. Anyway, in my dad's opinion, the Sam part is actually a governmental acronym which stands for "Substantial Amount of Muckety Mucks." Even though I am just in the sixth grade, I find this a little confusing. It would seem that the correct spelling should be UNCLE SAMMM. I asked my teacher about this and she said that the "o" was silent, kind of like the "r" in colonel but not exactly. As the second "M" she said that the federal statute that created the acronym was passed at midnight on a voice vote in Congress way back in 1991 when Dan Quayle was Vice President.

Apparently, it was last minute rider to a tax increase bill styled "The Thousands Points of Light, Stay the Course, Better Late Than Never, Revenue Enhancement Act." According to my teacher, the Vice President misspelled SAM and nobody caught it before the President signed it into law. Mom said that the Vice President was probably reading the President's lips and just misunderstood. Dad said it was because the Vice President wasn't a very good spelloger.

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

Uncle Dubya and Ms. Laura were planning on visiting this year on the way to their ranch in Texas with a stopover at the Chevron refinery in Picapogula to deliver part of a $12 billion dollar Christmas present to the oil industry that was included in this summer's energy bill. Mom said Uncle Dubya had promised to bring Aunt Haniet, a nice lady who works in his office with them. Apparently Aunt Haniet got a big promotion in October. My mom was making a black robe for Aunt Haniet to wear at her new job, but just before Halloween she gave it to my sister to wear as part of her witch's costume. I asked mom if anything was wrong. She said Dubya told her everything was fine, but my sister said she wasn't very happy. Another one of our uncles who is not so nice is Uncle Dick. Dad says that Uncle Dick hates Christmas but loves Halloween because he and his...
The Constitution and Judicial Independence
Judge William C. Keady Lecture
by Honorable James E. Graves, Jr., Associate Justice, Supreme Court of Mississippi (Reprinted in part by permission)

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

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

Challengers to judicial independence at the federal and state level include the unwarrented criticism of the judges, single-issue campaigns against sitting judges, inadequate funding of the judiciary, judicial recall elections, proposed amendments to the Constitution, impeachments/calls for resignation, and reductions in state funding of the judiciary, judicial recall elections, proposed amendments to the Constitution, impeachments/calls for resignation, and reductions in state funding of the judiciary.

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

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

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

There have been several major attempts throughout our history to interfere with judicial independence. This is not a new issue. Judges are often accused of being activists, accountable and of the mainstream. The framers of our Constitution struck a balance between accountability and judicial independence. Hence (federal) judges have the security of a lifetime appointment which is made by the executive branch with the advice and consent of the legislative branch. In other words, elected officials who are accountable to the public make the decisions regarding service in the judicial branch. It is indeed a system which facilitates judicial independence.

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

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

"Federal courts had to enforce the Constitution... because the state courts simply were not independent and did not enforce the law. A Georgia Supreme Court justice acknowledged that the elected justices of that court may have overlooked errors, leaving federal courts to remedying them via habeas corpus, because "[federal judges] have no appointments." Let them make the hard decisions."

How much has changed since the (civil rights era)? Mississippi still has judicial elections. And now more than ever before, special interest groups seek to secure the election of judges and impartial judges, but judges who will decide in their favor. From oil, tobacco, and pharmaceutical companies, to the insurance defense bar, to prosecutors, to the religious right, to labor unions, to the plaintiff's personal injury lawyers, in medical doctors and other large employers, all seek to control the courts and the judges. So a judge can (a) try to please everybody, (b) try to please whoever has the most money, (c) try to please whoever controls the most votes, or (d) try to serve the interest of justice.

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States Supreme Court ruled that Montgomery's segregation laws were unconstitutional. The boycott was called off after 381 days.

Mrs. Parks, who had always been poor, suffered even more financially in the aftermath of her arrest. In fact, she had to pawn her jewelry to pay for the legal fees. But despite the financial strain, she remained committed to the cause, saying, "I might have gone off the bus, but I never would have gone off the dream." She continued her activism even from prison, writing her autobiography and speaking out for her cause.

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

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

All hell broke loose. Judge Perry was enraged by what he saw as illegal interference with his authority, and by Keady's truculence to the court. To make matters worse, Judge Clayton held an evidentiary hearing a few days later in which Keady testified at length about his telephone conversation with Judge Perry and Judge Perry's injunctive relief. The TRO, which was to have expired after 10 days, remained in effect for years. Rowe escaped punishment, and the lawyer's Committee continued its work in Mississippi. Keady was branded as an outcast for his efforts to destroy Mississippi's way of life.

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

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

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

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

by Steve Orlinsky

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

In its initial campaign late last year, directed primarily at the state's larger law firms, the MEJF raised approximately $45,000.00, led by the Jackson firms of Brannum, Brothers, Groves & Hayes, and Watkins & Feger, which contributed $15,000.00 apiece. Generous contributions were also made by numerous other law firms and individuals. We can and should do much better this year.

Several states of comparable size have conducted similar campaigns which have raised hundreds of thousands of dollars in recent years. Maine - a state with a much smaller bar than ours - raised more than $250,000.00 in its Campaign for Justice in 2004.

By law, Mississippi's Legal Services programs are prohibited from handling criminal cases, nor are they equipped to handle them. Typical Legal Services clients include battered women seeking protection from their abusers, children entitled to but not receiving educational support, and elderly and disabled citizens requiring assistance in the understanding and assertion of their legal rights.

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

On Reading The Constitution

by James L. Robertson

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

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

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

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

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

Be Careful What You Ask For

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

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

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

The Dycus Concurrence: Exemplar

Two weeks before John G. Roberts was confirmed as the 17th Chief Justice of the United States, six Justices of the Supreme Court of Mississippi weighed in with a confirming opinion in Dycus v. State, 910 So.2d 1180 (Miss. 2005). The Dycus concurrence is reminiscent of forty years ago when Justice Tom P. Brady regularly articulated the Court's grudging acquiescence in the U. S. Supreme Court's construction of the Constitution "respective of how erroneous it may appear, or how odious it is." Watts v. State, 196 So.2d 79, 82-83 (Miss. 1967); Bolion v. City of Greenville, 178 So.2d 667, 673 (Miss. 1965).

The concluding Justices concurrence extolled Roger v. Simmons, 123 S.Ct. 1183, decided 5-4 by the U. S. Supreme Court on March 1, 2005, for creating, rather than interpreting, law, for importing the Roger majority Justices' moral values into the Constitution, and much more. Dycus, 910 So.2d at 1172-03.

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

The six Justices Dycus concurrence is noted here as a timely example forever outside the understanding of the enterprise of constitutional interpretation. At a time when the public needs light and insight regarding the better approach, the Dycus concurrence, i.e. more heat.

I dare say the view of the concuring Justices in Dycus has never been embraced by a majority of the U. S. Supreme Court, except for occasional ad hoc decisions desired on other grounds, e.g., Dred Scott v. Sanford, 19 110. 93, 454 (1856). The Dycus approach is seriously at odds with prominent expressions of the Supreme Court of Mississippi during the past one hundred years.

Almost a century ago, we find in Daniel v. Lebo, 31 Miss. 1, 3 (Miss. 1910) the Marshallian premise that the Constitution was not intended to provide merely for the agencies of a few years, but to endure through a long, lapse of ages." Twenty years later, Justice Virgil A. Griffith wrote that the "Court is not to be constrained by ... meanings ... known to the framers of the instrument at the time of its adoption" Dycus v. State, supra.
While the meaning and application of these and other clauses may be debated, it cannot be denied that an adjudication under one or the other must include consideration of premises indisputably moral, however the case is decided. Indeed, there is a wealth of moral values. A grain of salt should be brought to bear when we hear complaints about Justices importing their moral values into the Constitution.

Fourth, many first and second generation Justices never desired that constitutional premises and value judgments were an essential part of the enterprise of constitutional interpretation. Justice Samuel Chao, a signer of the Declaration of Independence, thought so in Calder v. Bull, 3 Dall. 386 (1796), and so did Justice Joseph Story through most of his thirty-two years on the Court.

Finally, unhappiness regarding the Court’s approach to constitutional interpretation is a function of the constitutional premises and value judgments that were, and has been ever thus. We do not hear from Court critics, “Even though the right result was reached, the Court offended the intent of the Framers, or acted on personal whims or beliefs.”

Enter Originalism

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

Perhaps the most prominent definition of Originalism is that provided by Justice Bork in 1990. In his book, The Tempting Of America, Bork argues that “what counts is what the public understood” at the time of the Constitution, which is “manifested in the Constitution and in secondary materials, such as debates at the convention, public discussion, newspaper articles, dictionaries in use at the time, and the like” in search of the original understanding of “true process,” “privileges and/or immunities” (which appears twice, first in the conjunctive, then in the disjunctive), and “cruel and unusual punishments” and no one has come up with much. There is much more of a paper trail regarding the compromise that led to the constitution of the Senate and the House of Representatives than there is of the original understanding of “necessary and proper,” or “excessive fines,” or, for that matter, of the criteria by reference to which senators should decide whether to give their “Advice and Consent.”

The Problematic Practice Of Originalism

Originalists face the further frustration of backsliding from those within their ranks. What are to be Originalists to do with Chief Justice Rehnquist, whose loyalty includes elevating Miranda to constitutional status in Dickerson v. U.S., 530 U.S. 622 (2000)? Similarly, Justice Scalia provided the swing vote in the First Amendment in Texas v. Johnson, 491 U.S. 397 (1989), the first flag burning case, and showed he meant it in the second flag burning case. U.S. v. Eichman, 496 U.S. 317 (1990).

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

Originalism can get us into deep water in areas where moral values are complex. One clear example would be a change to make it legal to nurse an infant who is sick. For example, there is no way around the historical fact that “separate but equal” was perfectly consistent with the original understanding of the Equal Protection Clause, whose drafters rather clearly did not contemplate the racial integration of public facilities. One can search the “secondary materials” and come up with little consistent with today’s cherished moral and constitutional imperative for racial equality.

Originalism crumbles in the face of two prominent cornerstone texts of today’s constitutional architecture: Judicial Review and Incorporation Doctrines. Judicial review is not in the text of the Constitution. Even Ronald Dworkin, a liberal constitutionalist, writing in 1986 admitted that judicial review “harmfully [s] as a matter of iron logic.” Judge Bork acknowledged in 1990 that “many historians are not even sure that the Founders as a group contemplated any form of judicial review.” But we believe no other credible Originalist of whom we are aware seriously urges abolition of Judicial Review.

Incorporation of the Bill of Rights into the Fourteenth Amendment as well is not enough because the states is the other point where Originalists invariably punt. Judge Bork, for example, accuses, as a matter of judicial practice, the “case is settled.” He says this, though he admits that incorporation “has done much to alter the moral tone of communities across the country.”

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

The Constitutional Dimension Of Law As Integrity

Originalism is hardly the only way to cabin judicial discretion in constitutional interpretation, and no one familiar with Anglo-American legal history would think that it is. “Reasonable care” and “undue influence” are both exemplary legal concepts and “actual malice” are both a part of the open text common law concepts that are the daily fare of lawyers and judges.

For centuries, common law judges have exercised...
judicial restraint in the interpretation and application of those and other "unwritten" common law, and more recently statutory law which condemns "unconscionable contracts" of these and other nature. Another writes the second chapter. Still another writes the third. The third chapter's purpose is to reduce the exceptions when points of law are phrased and applied according to "personal whims"; we should seek to understand the processes that led the great common law judges to the bench. No one has written more forcibly on judicial restraint in legal interpretation than Prof. Ronald Dworkin. Dworkin labels his approach "Law As Integrity." It's mature presentation is found in Law's Empire (1986). Following Dworkin, the Justice begins the text with before him. A defensive interpretation must fit that text rather than some other text he may wish had been enacted. He wants to know the original intent, and he may have two well-substantiated understandings as time has passed.

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

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

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

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

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

Justices Do And Must Look Out The Window

In the end, we should not inquire what the drafter meant. We ask what the clause means. We seek the best statement of purpose which may exist.

For the clause today, given its text, its history, and the world that we live in. As usual, Holmes said it best, "The case before us must be considered in the light of our whole experience and not merely in that of what years it became clear that that assumption would not be borne out in reality ever . . . [W]hen the background assumption proved false, it was entirely proper for the court to say 'we will carry out the rule they wrote' and if they would have been a little surprised that is too bad..That is the rule they wrote and they assumed something that is not true."

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

Why Not A Living Constitution For A Living Country?

The Dworkin concurrence looks back the window. The six Justices "look[ed] at the negative changes in our society caused by the attacks on the Constitution and the resultant experiential harm suffered by individual citizens . . . Dyer, 910 So.2d at 1103. ¶ 13.

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

Dyer, at ¶ 13.

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

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

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

As for Uncle Frist, he is supposedly having eye problems. Dad mentioned something about his treat going blind. I thought your eyes went blind and not your trust, but what do I know, I am only twelve. Anyway, there seems like a lot of trouble in our family. Even our Uncle Trent from Pascagoula has been saying some bad things about some of our other uncles, especially Uncle Frist.

Something about being stabbed in the back. Maybe Uncle Frist’s sight was so bad that he thought Uncle Trent’s back was a manila envelope that he tried to open with his official Senate Majority Leader letter opener. Dad said Uncle Trent used to own that letter opener. Maybe Uncle Frist bought it on eBay. Dad said Uncle Trent recently wrote a book to talk bad about Uncle Frist. I don’t really understand why but I guess I’d be mad too if I got a letter opener in my back and my home blown away.

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

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

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

---

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On Computing
by Joel Hellwig

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

Highlight a file or folder and press Shift-Del to delete it permanently, bypassing the recycle bin. Alt-Enter opens a highlighted file or folder's Properties dialog.

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

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

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

- Win-D toggles between showing the desktop and restoring all Windows.
- Win-E invokes the Windows Explorer window.
- Win-L locks your system until you enter your password or let your switch active users, if you're using Fast User Switching.
- Win-M minimizes all windows.
- Win-R brings up the Run dialog.
- Win-S, in MicroSoft Word 2002, or later, invokes Windows' text-to-speech engine, which will read either highlighted text or everything from the cursor on.
- Win-Tape/Bring up the System Properties dialog.
- Win-U invokes the Utility Manager, which controls accessibility program options.
- Missing a Windows key? Ctrl-Esc will bring up your Start menu, though it won't allow you to use Windows-key combination commands like those above.

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

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

Take a look, at www.patentsally.com, which is maintained by an engineer/stand-up comedian. Every week, he sorts through new patents issued by the U.S. Patent and Trademark Office in search of ones he considers to be really weird, really cool, or really scary. One of the treasures he has located includes a slide-out deck for a recreational vehicle. Another site, known for combing government archives for hidden documents, is the Smoking Gun, www.bobsmokinggun.com. It has two collections of odd patent filings: Plumbing the Patent Files and Inspector Gadget Inventions. These sites display patents for such inventions as a wig-flipping device to ergonomic underwear.

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

Happy Holidays!

Questions or comments? Email webmaster@hindubook.com.
translation that not only would provide a "big tent" which would accommodate the religious beliefs of all but the most marginal of the disparate groups, but would also evoke an enriched experience of that which it sought to convey.

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

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LAW LIBRARY HOURS

January 11, 2006 - May 10, 2006

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

EXCEPTIONS

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

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

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

EXAM SCHEDULE

April 28th - May 10th

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

Summer hours will begin May 11th.

For more information please call 925-7120

Hours are subject to change without notice.
President's Column
by Linda A. Thompson

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

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

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

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

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

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

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

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

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

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

HCBA LUNCHEON MEETING

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

Speaker: The Honorable Jim Hood, Attorney General of Mississippi
February 15, 2005
HCBA Membership Meeting.
Noon. Capital Club

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

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

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

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

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

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HCBA Calendar of Events

Legal RESOURCES NETWORK

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HCBA Law Library Committee

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

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

HCBA Law Library Committee

Attorney General Jim Hood is February Luncheon Speaker

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

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

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

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

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

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Annals of the Law

by Luke Dave

The Red Man's Burden

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

The Chief Pushmataha referred to Ruben Davis, a former District Attorney, as the only Choctaw chief who sought Andrew Jackson at the Battle of New Orleans. The great Chief died in Washington on Christmas Day, 1824 and was buried with full military honors. The trial of Chief Wesley was first reported in "The Times Picayune" and was written with the assistance of the judge and later Senator John C. Stennis.

The Trial of Chief Pushmataha (1836)

As reported by Ruben Davis, former District Attorney, in Recollections of Mississippi and Mississippian (1900). Pushmataha, a Choctaw chief, had killed one of his subjects. In doing this, he acted under his tribal authority. The case was tried in federal court without the authority mentioned above, which had been extended over all the territory ceded by the Indians to the General Government, the execution became murder. Pushmataha's counsel argued that the chief had acted in self-defense and was entitled to a verdict of not guilty. The Chief was found guilty and was sentenced to death. The burden of proof that it was accidental rested with the defense. "If you can prove it was accidental, what will you do?" asked Judge Stennis.

"Shoot myself," said Chief Cameron Wesley slowly.

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

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

More than 300 men, women, children traveled long miles of dusty country dirt roads; stood for hours under a blazing sun, to witness the strange Indian ceremonies... Then, far away amid the trees, the heart of the tribal drum was heard. The drum was beaten in slow, steady marching cadence, the cadence by which the human heart pumps blood...Up the dusty road, between high clay banks, through a tasty tunnel of tangled trees, a small band of Indians was seen approaching. In the lead an Indian boy of 14 beat the drum. Behind him marched Indian men, carrying the stick-like Lacerance sticks. Behind them marched the squaws by the squaws trudged the papooses old enough to walk. Their faces were incurable. Not a muscle moved save the involuntary twitching of cowboy eyelids. Up to the Dancing Rabbit Treaty grounds they marched. A crowd of men, women, and children, the descendants of those brave men and women who gave up their ancestral lands. They agreed to leave for the Indian Territory, now Oklahoma, half of them in 1831, half in 1832. But some stayed by their old hunting grounds. Cameron Wesley's forefathers were among them.

Dancing Rabbit Treaty Indians in their overalls...white cotton work shirt with a collar like a Roman b signifies touched with faded Indian embroidery, explained his plight to Judge Stennis. If the tribal court finds him guilty, Judge Stennis explained, he will be sentenced to suicide. "They give me gun. They say: 'Go shoot yo' se'ft' I do." Chief Cameron's law gives only one defense for killing a human being. Indian law made the death of a man, woman, or child a murder. The burden of proof that it was accidental rested with the defendant. "But if you can prove it was accidental, what will you do?" asked Judge Stennis.

"Shoot myself," said Chief Cameron Wesley slowly.

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

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

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

Their faces were incurable. Not a muscle moved save the involuntary twitching of cowboy eyelids. Up to the Dancing Rabbit Treaty grounds they marched. A crowd of men, women, and children, the descendants of those brave men and women who gave up their ancestral lands. They agreed to leave for the Indian Territory, now Oklahoma, half of them in 1831, half in 1832. But some stayed by their old hunting grounds. Cameron Wesley's forefathers were among them.
New Link between HCBA and State Library
by Charlie Pearce, State Librarian

Thank you for helping to improve legal resources in the State Library. Upon the recommendations of the HCBA Board and Law Library Committee, the Hinds County Board of Supervisors recently approved a three-year contract designating the State Library as a public law library for Hinds County.

The State Library welcomes this new relationship and greatly appreciates the new annual support of $15,000.

We plan to continue the confidence of the HCBA members by spending the money in effective and accountable ways. Each month, $500 will purchase one public access Westlaw terminal. The State Library's subscription now includes all federal and fifty-state cases, and KeyCite. The only charge to the user is 15 cents per page for printing. Attorney access to primary state law and other state and federal jurisdiction databases might consider changing their subscription to a Mississippi plan and using the State Library's Westlaw terminal whenever they need other state cases and codes.

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

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

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

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

One possible use of the funds would be to build a practical digital library that would not overlap with

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Westlaw, Lexis, or the Mississippi Bar's new project, Casemaker. Several months ago Judge Leslie Southwick suggested an important undertaking. He expressed a need for primary and secondary sources on Mississippi's Constitution of 1890 available through the internet. He mentioned the journal of the constitutional convention and newspaper accounts of the convention as being of interest to judges, lawyers, legislation drafters, and scholars. Perhaps the scope of this project would cause it to fall more into the category of a Mississippi Bar project. However, the Hinds County Bar and State Library could have someone digitize constitutional sources and put them into an existing website for all to use. This project requires more planning, and a decision should be made about which bar association or other group would be the appropriate entity to build this digital library.
1. Miss. Code Ann. §15-3-3 provides that transactions "made and conveyed of nullity, fraud, 
court, collusory, or guilty, to the intent or purpose to 
delay, hinder, or defraud creditors of their just and 
lawful actions... [are] clearly and utterly void".

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

3. Alfred v. NeSmith, 140 So. 2d 29 (Miss. 
1963). Holds a tort claimant in a "creditor" with the 
meaning of §15-3-3 and §11-5-75 and a tort claimant 
may maintain an action in chancery court to set aside a 
conveyance made to defraud a creditor without first 
obtaining a judgment at law annulling the damages.

4. Attorney Fees, Punitive Damages, Costs and 
Interest. Where a judgement is granted to set aside a 
transfer deemed to be "fraudulent," the possibility that 
attorney fees, costs, interest and/or punitive damages 
may also be granted cannot be precluded. In 
Holland v. Mayfield, 826 So. 2d 664 (Miss. 1999), which 
involved a suit against an 
investment solicitor

5. Code Ann. §547 (b). Also, 
transfers deemed to be fraudulent may be avoided if 
made within one year prior to the filing of the petition. 
11 U.S.C.A. §547 (a). Under certain circumstances, a 
trustee in bankruptcy may utilize Mississippi's 
 fraudulent transfer laws to avoid fraudulent transfers. A 
trustee would be inclined to do so where the state 
statute of limitations (three years) is for a longer "reach 
back" period than the one-year period under the 
bankruptcy statutes. 9C Am. Jur. 2d Bankruptcy, 
§2103. In appropriate circumstances, the advantage of a 
longer state statute of limitations may be asserted in a 
separate action in state court.

6. Mississippi Fraudulent Conveyances and Some Ramifications Thereof
Crisis du Jour: Bush Trades Iraq WMD for Social Security

By Captain Equity

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

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

If you detect that I am just a bit skeptical of what the President tells me, you are right. You see, notwithstanding partisan ideology, credibility and trust no longer red nor blue. They are, however, essential to creating a unified national will.

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

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

Today, the cost of administering Social Security is less than one percent. Can you only imagine what Wall Street would do to such a product? Isn't it obvious what will happen when they are allowed to get their hands on Social Security tax dollars in the name of private accounts, not to mention what kind of self serving investments they would push off on millions of unsophisticated workers? A review of my own investment experience from 2000 to 2003 screams NO THANK YOU.

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

Unfortunately many employers are reneging on promised defined benefit pensions while employees either choose or are forced to live paycheck to paycheck with little or no savings for retirement.

One of the biggest changes since the advent of Social Security has been to do with advances in medicine and nutrition. In 1935 100 year life expectancy was 61.5 years while the retirement age was set at 65. Few recipients were living 15 or 20 years on Social Security. As of 2002, according to the National Center for Health Statistics, life expectancy is pegged at 77.4 years and is rising annually. People in their 80s are the fastest growing segment of the population. This would suggest that the age for retiring benefits should begin to rise with each new corresponding generation to reflect this reality, especially since people now routinely retain their health and ability to contribute to society well into their 70s.

Another part of the solution would be extending or removing the cap on earnings subject to FICA deductions. Last year the cut off was $90,000. This year it is $96,000. Even though I tend toward getting past the cap every November to finance Christmas shopping, it would be hypocritical not to revisualize the cap given the alternative.
I hesitated to write about my trip to England, since our usual travel notes are by Joan and David, not only writers so well, but also go to unusual and exciting places. We went to London, Stratford, Salisbury and York, in other words, the usual tourist spots. However, I enjoyed this trip so much I decided to risk it and proceed anyway.

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

One thing that contributed greatly to my enjoyment of this trip was that I actually liked our London hotel. My prior experience with London hotels had been that they were too hot, too cold, too loud, too expensive, had faulty plumbing or lighting or elevators, or whatever. The Devere Cavendish is located at the corner of Duke and Jermyn Streets in St. James's, the front door of the hotel faces the rentals of De Vere and Mason (that fact alone would be enough for me). It is only one block off Piccadilly, but there is little traffic on Duke Street or on Jermyn, home to many extremely upscale men's shops. Long-time watchers of Masterpiece Theater may remember the series The Duchess of Duke Street, about a woman who established and ran an exclusive hotel in 19th century London. The Duchess would not recognize it now. It has been renovated so that the only evidence of its history is the small size of the rooms. The décor is modern and slightly oriental - no chintz here. The bathrooms are tiny but with modern plumbing and Villeroy & Boch fixtures. It has four stars instead of five - I'm not sure why - so rates aren't totally ridiculous, though they're still slightly ridiculous.

Service was excellent, it's walking distance of major tourist and shopping sites, and they let us check in at 9 a.m. after arriving on that early morning Delta flight.

An excellent book about London has been written by Anna Quindlen, the columnist and, recently, novelist. Titled Imagined London, it was published in 2004. I strongly encourage avid readers of both "good" literature and popular fiction. On her first trip to London, in 1995, she was struck by the familiarity of it all. I had the same sensation the first time I went there. I knew where I was going, where to shop, where to eat, where tourist sites were, the history of buildings and streets, and none of this came from travel guides. It came from a lifetime of reading books in London. Miss Quindlen was a fan of the historical London, the historical London, and present day London, and I can almost guarantee that anyone who has read much English literature, of any genre, will enjoy this too. We chose to visit Stratford and to make known in the parish. They were attempting to round up enough people to make a decent number at the funeral. I found this very comforting.

We went from Stratford to Blenheim Palace, another Churchill association, and from Blenheim to a country house hotel in Telfont Evias, near Salisbury, which was straight out of an Agatha Christie novel. The village is tiny and has thatched roof buildings and a thirteenth century church. The hotel was built in 1623 and had lots of chints, no elevator, spiders, a much more rustic restaurant, and a garden with the best perennial border I've ever seen. We stayed several nights and in the late afternoons sat in the garden with our wine, waiting for Miss Marple to peer over the hedge. As always I'm grateful we were bumped from our usual table by a party of English people, who talked loudly and with very upper accents about the Duke and about their places in Scotland and Greece and their yachts and their property in Angers and who offered the best security systems. One of them proclaimed extra loudly that the food was excellent there and that the hotel is nice and quiet and that ofint 16  some times slipped down for a long weekend. I wonder if the hotel paid them to do that? The whole experience was fun and I would like to go back, but it was almost like being on a stage set.

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

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

The President is probably correct that we could get a better return by investing some of the tax money in higher return, yet still conservative investments. But why does he feel it's not in individual accounts with high administrative costs? That's why we have 401(k), 403(b) and IRA accounts. People should be encouraged to put them to greater use.

Finally, Congress should begin to gradually convert the entire scheme from that of a transfer payment to a true trust fund not unlike a university endowment. At the risk of quoting A. Gore, the fund should be invested in a way that is locked up against fraud and charged with fiduciary responsibilities would have a key. Congress and the President would be barred from ever accessing the fund as is regularly the case now. It is shocking that the legislative and executive branches of both major political parties have proven themselves untrustworthily steward of our nation's retirement funds.

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

Editor's Note: The viewpoints expressed in this column are solely those of Captain Equity and are not to be attributed to the Hindu County Bar Association, its officers, directors and its editorial board. We are not part of what Fox News calls “the liberal media elite.”
On Computing
by Joel Howell

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

Among the most recommended resources is Google. When searching for answers to questions of technical information or advice, he joins a Google Group search saying information is more readily available there than on composed web pages. Jim Callaway and Bruce Dorner recommend the Google Desktop. This function allows users to highlight text and view the search results in a small window. Craig Ball uses Google to track UPS and Fed Ex packages, translate foreign languages, send updates of news items and reverse phone numbers. If phone numbers are a concern for you, Jeffrey Brand recommends visiting www.reversephonefinder.com and http://wireless.unpqqest.com/intiny30. All of these functions and others offered by the site are reported most helpful and highly recommended by these practitioners.

For those who want to search the web quickly without all the whistles and bells, the Mozilla Foundation has created Mozilla Firefox 1.0. The default download for this system is equipped with Macromedia Flash and Adobe Acrobat to add speed to your browsing. This opens a wide field for your searches containing simplified buttons, search bars, and navigation tools that can be customized for your view through the tool menu on the Theme Manager. Matthew D. Sarral recommends using the Smart Keywords functions to gather information from weather to stock quotes. Dictionary.com allows you to check your grammar or receive word suggestions. The full suite, Mozilla 1.2, a free version, gives you a formatted and the new email program, Thunderbird.

Another recommended website is www.dineoutfl.com. This website offers searches based on IP addresses and URLs. When sending a URL to a client, Carol Levine recommends using www.tinyurl.com to permanently shorten the URL for you and make one of the URL easier for the receiving client. Consultant George Socha and Public Defender Jeff Flax utilize the Way Back Machine. The Way Back Machine is an archive of websites dating back to 1996. Simply enter the URL and receive links to old versions of the website. This allows one to view how a company presented itself in the past or examine a client by showing he was on the old website in lieu of wrongdoing.

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

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

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

The Google Desktop Search (available at desktop.google.com) works inside your web browser. Just type keywords into the search field and it begins to search Word and Excel documents, as well as Outlook messages and more. It will, however, only recognize audio and video files by name. Part of the MSN Toolbar Suite (beta.toolbar.msn.com) examines the meta data in multimedia files as well. The MSN program actually allows you to create different indices for separate user accounts.

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

Questions or comments? Email webmaster@hindbar.com.
MISSISSIPPI COLLEGE
LAW LIBRARY HOURS

January 11 - May 11, 2005

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

EXCEPTIONS

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

EXAM SCHEDULE

April 29th - May 11th
Monday - Friday ........................................ 7:30 a.m. - midnight
Saturday .................................................. 9 a.m. - midnight
Sunday .................................................. noon - midnight

Summer hours will begin May 12th.

Hours are subject to change without notice.

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Correspondence regarding the newsletter should be directed to: HCBA Newsletter Editor, 151 E. Griffith Street, Jackson, MS 35201. Letters to the editor must be signed, but the writer's name will be withheld upon request. Telephone inquiries should be made to the Executive Director at 601-999-6897. The website address is hindsbar.com.

Hinds County Bar Association, Inc.

151 E. Griffith Street
Jackson, MS 39201

FIRST CLASS

IMPORTANT

HCBA Luncheon Meeting
12:00 noon,
February 15, 2005
President’s Column
by Alveno N. Castilla

Hurricane Katrina: Facing the Aftermath

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

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

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

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

Continued on page 6
Your Clients Expect You To Know Everything.

HCBA Calendar of Events

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

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

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

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

The Mississippi Humanities Council & The Mission College School of Law Present
Judge William C. Keach Distinguished Lecture VIII
Justice James E. Graves Jr.
Mississippi Supreme Court
The Constitution and Judicial Independence
October 26, 2005 - 1:30 p.m.
Mississippi College School of Law Conference Center
facilitative Justice Street
Jackson, Mississippi
A Reception Will Follow The lecture

The MHC is supported through the NEH and by the generosity of individuals donors. The MHC does not discriminate on the basis of age, color, national origin, disability, or gender. Any view, finding, or recommendation expressed in this event does not necessarily reflect those of the NEH.

A Glass of Katrina: Half Full or Half Empty?
by Captain Equity

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

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

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

Beyond the immediate federal response, there was the nation's response and resolve to address the unique target of a major hurricane that was and is New Orleans. Everyone knows the city is below sea level. Everyone knew that it was only a matter of time before a Category 3 or higher storm hit the city causing the levee system to fail. Federal appropriations to strengthen the levee system were consistently pared back or denied by the defense corps of engineers. The local New Orleans levee board spent at least $20 million to develop casino and dig up dirt on critics. Meanwhile, the pumps were not properly maintained and on and on and on. And yet, our elected leaders in Congress passed a bi-partisan $24 billion Federal Highway Bill only weeks before Katrina hit. It contained $831 million earmarked projects. One of them authorized the expenditure of $237 million to build a bridge from the Alaskan mainland to an island that is home to 50 people. How can this be you ask? Alaska's lone Congressman just happens to be Chairman of the House Transportation Committee. Just think about how much a quarter of a billion dollars could have done to strengthen the New Orleans levee system. I am confident that no appropriately concerned Senator or Congressman will connect this particular set of dots despite the inevitable Congressional investigations and hearings.

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

And finally, as always there is the issue of race and poverty to stir the pot. What a surprise! To hear some chokers cable news commentators dress in their Banana Republic hurricane garb talking about New Orleans andHydrant, one would think evacuating the Ninth Ward of the Crescent City simply involved everyone loading up their SUVs and heading to the Baton Rouge Marriott. And beyond transportation logistics, consider the fact that a great many whites and blacks who have lived in poverty their whole lives in metro New Orleans haven't exactly followed the well continued on page 3
Effect Of Hurricane Katrina On Mississippi's Legal System

By Kevin L. Humphreys

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

State Trial Courts

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

The story in Jackson County is similar. The Jackson County courthouse in Pascagoula received heavy floodwater damage and even some damage from the building's sprinkler system. The repair work is expected to take 3-5 weeks. Circuit and County courts are being temporarily relocated to the Civic Center. Although bench trials are expected to resume in October, it may be January before jury trials can resume, in part because so many potential jurors are homeless or otherwise displaced.

Federal District Court

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

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

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

Fifth Circuit Court Of Appeals

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

Court of Appeals and Supreme Court

Annals Of The Law

By Luke Dove

The Ganders’ Sance

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

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

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

One could argue that the Mississippi Supreme Court was merely recasting the language of dissenting opinions in Rogers. However, it would not be unreasonable for the public to conclude that the Mississippi Supreme Court is of the opinion that at least five justices of the U.S. Supreme Court, acting in disregard of their oaths of office, decide cases merely on “personal whims” and “desire their own outcome.”

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

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

The Mississippi Supreme Court faced a pro se litigant $1,000 for using “offensive and disrespectful” language including the charge that the Court was comprised of drunks and liars. (perhaps you recall certain other cases bearing articles in other publications) Little v. Dept. of Human Services, 2005. The Court held Little had “attacked the integrity of this Court” and impugned the justices. He was ordered to show cause why he should not be held in contempt. In his response, Little inquired rhetorically: “you have the balls to talk to me about the ‘integrity of this court?’ “

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

“Our judicial system cannot properly function when lawyers demonstrate a pervasive lack of respect for judges, justices and the courts.”
After considering several alternatives and possible steps to demonstrate our support of the task of rebuilding lives, we decided on the following:

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

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

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

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

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

Thanks for your support.

Sincerely,
Alvero N. Castilla
President
On Computing
by Joel Howell

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

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

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

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

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

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

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

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2005 - 2006 HCBA Committee Chair Appointment

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Barry H. Powell

Budget

J. Paul Varner

Community Grant

Melody McAleny

Diversity

Sharon Bridges (co-chair)

Golf Tournament

J. R. (Rob) Dodson, III

Hinds County Law Library

Ben J. Piazza, Jr.

Judicial Dinner

Roy D. Campbell, III

Law-Related Education

Jay Kilpatrick

Membership/Pictorial Directory

Linda Dixon Rigby (co-chair)

Newsletter Editorial Board

Lutz Dodge

Nominating

Linda Thompson

Pro Bono

Vereeca Green

Programs & Speakers

Alveno N. Castilla (co-chair)

Jimmie Wilkins (co-chair)

Social

Pamela Ratliff

Technology

Joiel W. Howell, III

Women in the Profession

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

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

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

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

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

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

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Saturday ....................................................... 9:00 a.m. - 9:00 p.m.
Sunday .......................................................... noon - midnight

EXCEPTIONS

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

EXAM SCHEDULE

December 2nd - 14th
Monday - Friday ............................................... 7:30 a.m. - midnight
Saturday ....................................................... 9 a.m. - midnight
Sunday .......................................................... noon - midnight

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

January 2nd - 6th ............................................ 7:30 a.m. - 5 p.m.
January 7th & 8th ......................................... CLOSED
January 9th & 10th ....................................... 7:30 a.m. - 6 p.m.

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

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

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