



## President's Column

### Roy Campbell

The Capital Area Bar Association closed out 2010 with its always popular Annual Holiday Social on December 2, 2010 at the Old Capitol Inn. The turnout was excellent, the food was superb, the drink was abundant, and no notices of Dram Shop claims against CABA have yet been received. Our Social Committee chairs, Tammra Cascio and Dena Smith, planned and executed that festive event and on behalf of the entire membership I thank them both for the time and effort they invested. Please mark your calendars for that same event next year on the first Thursday in December, December 1, 2011, at 5:00 p.m.

Our first bi-monthly lunch meeting of 2011 will be on February 15, 2011 and the program should be both educational and entertaining. United States District Judge Dan Jordan and William Liston, III, co-chairs of the Bench-Bar Relations Committee, together with the other members of their committee, have scheduled a CLE lunch seminar entitled "Pet Peeves—a Two-Way Street." A panel of esteemed judges and mere lawyers will discuss their respective grievances and, perhaps, allow audience participation. The program should be informative and fun and you will earn an hour of CLE credit (so admission is \$25.00 rather than the usual \$15.00). Make plans to be there, bring a friend and come early because we will start at 12:00.

The Pro Bono/Community Service Committee, chaired by LeAnn Nealey, has scheduled 2011's first "Wills for Heroes" event on January 24 from 1:00 p.m. to 4:00 p.m., and on January



25 from 9:00 a.m. until noon and 1:00 p.m. to 4:00 p.m. at the Ridgeland Central Fire Station, 463 Towne Center Boulevard. Developed after 9-11 in response to learning that many first responders who died did not have wills, this program provides wills, durable powers of attorney, and healthcare directives. And you can know as little about estate planning as I and still participate; the committee has all the materials you will need. Please email LeAnn at leann.nealey@butlersnow.com to sign up.

Since 2003 CABA has awarded significant monetary grants to charities in Hinds, Madison, or Rankin counties whose primary mission is to assist those with special needs. The Community Grants Committee, chaired by Matthew McLaughlin, is currently seeking applicants for potential recipients. If you have suggestions or would like to serve on that committee please email Matthew at mmclaughlin@balch.com.

CABA's Law Related Education Committee is well under way in conducting its annual essay writing contest in area schools. The committee recently mailed out CABA's essay materials to 32 area schools, informing them of this year's theme, "Hands Free in Mississippi – What is a Fair Law of Cell Phone Use by Drivers?" If you are interested in assisting this committee and selecting the

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### Fall of the House of Zeus

Peyton Prospere reviews the Curtis Wilkie account of the Scruggs saga.

## Upcoming Events

### February 15, 2011

CABA Membership Meeting  
Noon • Capital Club

### April 19, 2011

CABA Membership Meeting  
Noon • Capital Club

### May 17, 2011

CABA/JYL Golf Tournament  
Noon • Annandale Golf Club

### June 21, 2011

CABA Membership Meeting  
Noon • Capital Club

# COMING SOON!

## CABA PICTORIAL DIRECTORY

**For the first time in 5 years,** CABA will publish a 2011 Color Pictorial Directory. We will get started photographing all members in February. More information to follow on dates, times, and locations.



# CAPTAIN EQUITY



## Free the Bear:

An Open Letter to the Ole Miss Chancellor.

Dear Chancellor Jones:

**D**umb, dumb, dumb! Not since the branding disaster that was the Ford Edsel or perhaps the introduction of New Coke have we seen such an inept marketing decision. Of course, I am speaking of the “Rebel Bear.” Admittedly, it is the best of three terrible choices. It’s kind of like having your doctor ask you what disease you would like to contract: smallpox, cholera, or malaria? “How about none of the above, Doc?” you reply. Nope, you gotta choose one. “Oh...well, let me check the mortality tables and buy a cemetery plot, then I’ll get back to you.”

Now, if Hotty Toddy were to be a duo comprised of an attractive young lady accompanied by a giant, animated cocktail, well...And a land shark? You can’t be serious. Nothing says flagship state university like some real estate swindler disguised as a cartoon predator from the deep. Rather than worrying about symbols from another time, you should be more concerned with projecting a laughable, chronic lack of imagination to the rest of the world. I selected the word “chronic” with care.

Does anybody remember “Rowdy Rebel” or “Rebel Bruiser” seven years ago? Thank goodness somebody in a position of authority decided to deep six those two. While Mississippi does indeed have some image problems, creativity is not one of them. I can only

*And a land shark? You can’t be serious. Nothing says flagship state university like some real-estate swindler disguised as a cartoon predator from the deep.*

imagine that William Faulkner, Tennessee Williams, and Eudora Welty - not to mention Elvis Presley, Robert Johnson, and Jimmie Rodgers are all quite pleased to be dead if this is the best that Ole Miss can do. Were they alive, I am sure they would move to California or maybe France to avoid the stain on their reputations for creative excellence.

I understand why some might want to retire Colonel Reb. Personally, I love him. Rather than associating him with the days of plantations and institutional racism, I see him more as one of the



eccentric characters that make the Deep South different from anywhere else in the country, thank goodness. It is the Colonel Rebs of the world that make people who come to Mississippi with suspicious stereotypes quickly dismiss them when they discover the basic goodness of our citizens, black and white, and the charm of our culture, which is unlike anything else in this country. Or perhaps the old Colonel could actually be William Faulkner himself just back from accepting the Nobel Prize for literature. He could even be a generic old grandfather who spent too much time in the Grove before kickoff. I think we can all agree to having known someone who bears a strong resemblance to the Colonel, maybe a little differently dressed, but a look-a-like nonetheless. But assuming that the University is abandoning its unique trademarked character, thus making all of my “Colonel Reb” emblazoned “stuff” collector’s items, I submit that Ole Miss can do better. A lot better.

Before I am accused of being an outside agitator from Mississippi State, LSU, or maybe Alabama, let me assure that I have been a rabid Ole Miss fan ever since I returned from trick or treating on Halloween night in 1959 to click on the radio and hear the call of Billy Cannon’s punt return in the heartbreaking 7 to 3 loss to LSU. Some years later, I received my law degree from Ole Miss Law School. Former Rebel place kicker, Robert Khayat, was my torts professor. I have loyally followed the Rebels from Johnny Vaught right through to Houston Nutt. I want the best for my school, which means alerting its leadership to the potential irreparable harm the University could suffer from the doctrine of unintended consequences. Let me explain.

After leaving Ole Miss, I practiced law in New York City and attended NYU Law School earning an LL.M in Trade Regulation (which is code for intellectual property). One of my areas of study was trademark law, a course which was not offered at Ole Miss Law School. Of course, this is understandable since I enrolled at NYU in 1946, the very same year that the Lanham Trademark Act was enacted. (Yes, I was still trick or treating in my late thirties). Thanks to a century of constitutional law confusion stemming from the trademark cases, the Lanham Act was the

first comprehensive federal trademark statute in the history of the United States.

Colonel Reb had not yet discovered the world in 1946, much less the Ole Miss campus. But the Ole Miss Rebels were alive and well back then. In the decade of the 1950s, they would become a national football powerhouse. Even though few thought about it in legal terms, Ole Miss and Rebels were becoming valuable trademarks that helped transform a public university in the poor, backward Deep South into something unique. My fear is that this hard-earned good will has suddenly and unwittingly been put in jeopardy by a university leadership that is trying in good faith to take progressive steps to advance the University's national and international standing.

A trademark is any word, name, symbol, device, or combination thereof that serves to identify the source of goods or services and distinguish them from others. "Ole Miss," "Rebels," and "Colonel Reb" are trademarks owned by the University of Mississippi for

athletic services and a number of other items of merchandise, like sweatshirts, glassware, platters, etc. I know because I own all of them. Now, I presume that the University seeks to abandon its Colonel Reb trademark which is defined as discontinuation of use without the intent to resume. Ever since the Colonel was banned from Vaught-Hemingway seven years ago, the University has continued to license the Colonel's likeness on a wide variety of merchandise. In its place, the University seeks to adopt a new mark, "The Rebel Bear." The dominant part of the new mark is a cartoon black bear. The word Rebel is used as a modifier, an adjective, if you will for the Bear. Granted, it provides a sideline character to replace the Colonel, but it creates unintended branding confusion. Is it the Ole Miss Bears or the Ole Miss Rebels or the Ole Miss Rebel Bears? And what exactly is a Rebel Bear? Might it attack Coach Nutt and his players to the horror of fans due to its rebellious nature? Do you get the point? In the sports world, there is no confusion

between the Chicago Bears and the Ole Miss Rebels. But if this new mark is adopted and promoted, do the Ole Miss Rebels become the Ole Miss Bears? Is Ole Miss located in Chicago rather than Oxford? Perhaps it is some place in between. Maybe the campus is really located in a grove of trees in Southern Illinois on the Mississippi River where black bears can still be found. Is that what the University really wants? I don't think so.

If you must ban the Colonel from Vaught-Hemingway, so be it. But why abandon a mark which has near universal appeal to generations of fans of all races? I have encountered a number of African American fans who think it is a non-issue. Did I mention dumb, dumb, dumb? For Saturdays in the Fall, why not bring back the concept of a majestic grey horse named "Rebel." Imagine an amplified "Are You Ready?" over the Vaught-Hemingway public address system as Archie, Deuce, or Eli mounted on "Rebel" would ride into the stadium to a rousing standing ovation. Or imagine a somber, rider-

*Continued next page...*

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less “Rebel,” the horse wearing a saddle blanket with the number 38 to honor the memory of Chucky Mullins. Or what if Elvis—clad in gold sunglasses and a jeweled jumpsuit—were to ride “Rebel” into the stadium, circling the field on the track that surrounds the field, finally dismounting with a karate kick? Or maybe Ole Miss could honor Mississippi legends such as B.B. King, Morgan Freeman, or Oprah Winfrey by having “Rebel” pull them in a carriage prior to kickoff? The possibilities are endless. And yes, I wouldn’t totally foreclose ole Colonel Rebel mounted on “Rebel” the horse for an Egg Bowl ride in. Do you want crowd reaction? Well, you would sure get it! For that matter, Athletic Director Pete Boone could mount Rebel as soon as he dropped Jacksonville State or perhaps Tupelo Day School in favor of a resumption of the Ole Miss-Memphis series.

So, rather than replacing the Rebels with the Bears, “Rebel” the horse becomes a vehicle for an imagination fueled campaign to grow the Ole Miss Rebels trademark rather than preempting and replacing it. Rumor has it that the horse was previously rejected because it somehow couldn’t be properly managed in the Grove. Who knows, but if this is true, it is very simply a case of the tail swishing the horse.

Chancellor Jones, please give the foregoing some serious thought. Better yet, I will give the University a check for a thousand dollars to start a scholarship fund for deserving Mississippi students regardless of race, based only upon need and promise of excellence, provided you humanely release the Bear in the woods and buy a horse. I just bet there are a lot of other alums out there that would do the same for a “Save the Rebel

Mascot Scholarship Fund.” The bottom line is that Mississippi is one of the most creative states in the country and the world. It is a big reason that I am not still trick or treating in New York. Let us honor that tradition with some pragmatic imagination that will pay dividends for generations to come. Please give it some serious thought. It’s never too late to dodge a disaster. 📌

### Note to reader from Captain Equity and not the CABA:

*If you agree with these sentiments, please contact Dr. Dan Jones, M.D. at the Office of the Chancellor, University of Mississippi, 123 Lyceum, University, MS 38677 or via e-mail at [www.chancellor@olemiss.edu](mailto:www.chancellor@olemiss.edu). If you pay taxes in Mississippi, you have standing.*

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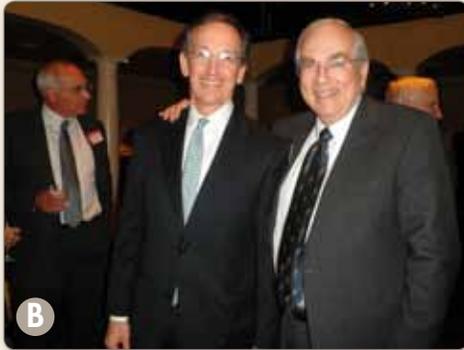
# CABA Events October - December 2010



A



C



B



D

## CABA/JYL Holiday Social

A good time was had by those attending the Holiday Social hosted by CABA and the Jackson Young Lawyers at the Old Capitol Inn on Thursday, December 2. Tammra Cascio and Denita Smith were the co-chairmen. Shown are scenes from the event. For more photos of the social please go to the Photos page of the website [www.CABA.ms](http://www.CABA.ms).

- A** Tom Alexander, Past CABA President; Marcy Forrester
- B** Roy Campbell, CABA President; Dean Jim Rosenblatt
- C** John Howell; Cliff Ammons; Corey Hinshaw, JYL Past President
- D** Stephanie Rippee, Co-Chairman of the Women in the Profession Committee; John Henegan, CABA Past President; Laura Glaze, CABA President-Elect

## October CABA Membership Meeting



Marshall Ramsey (far right) was the featured speaker at the CABA October Membership Meeting. Thandi Wade (second from right), President of the Magnolia Bar Association, also presented an update of their activities. They are pictured with Meade Mitchell, CABA Program Chairman; Roy Campbell, CABA President; and Laura Glaze, CABA President-Elect.

## Mississippi Volunteer Lawyers Project

The Capital Area Bar Association was recognized for its contributions by the Mississippi Volunteer Lawyers Project. The MVLP held a reception during the National Pro Bono Week Celebration.



Cheryn Baker, CABA Director; Tom Alexander, CABA Past President; La'Verne Edney, MLVP General Counsel; Laura Glaze, CABA President-Elect; Roy Campbell, CABA President.

# On Computing

Joel Howell  
A Column for the Contemporary Lawyer



## Learn How to Protect Your Trademark™

In addition to the resources available through The Mississippi Bar, MC Law School offers a number of programs to aid practitioners.

Perhaps the newest of these is the Judicial Data Project. Its web site [www.law.mc.edu/judicial/](http://www.law.mc.edu/judicial/) includes, among other things, videos of appellate oral arguments and briefs. There is also a statistical research function which has the potential to be quite helpful. More on this interesting site in the future.

With thanks to Robert Ambrogi and Law Technology News, here's some information on sources which can help you develop and protect trademarks for your clients.

If your client already has a trademark, how can you protect it from, say, improper use on social networks? Moreover, how would you even know whether someone is already utilizing your trademark? TM.Biz can help.

TM.Biz, [www.tm.biz](http://www.tm.biz), searches and monitors the 500 most popular social networks for use of a trade name as a user name. It then can provide trademark owners with a downloadable report of all its findings.

It also allows its users to register their trade name across a variety of social networks, in order to reserve it and ensure that others are unable to use it.

The best thing about this site is that it is absolutely free to join and to search. Fees are charged only if you order reports, watches, and name reservations.

The searches are all conducted in real time. Once you run a search, TM.Biz caches it for 24 hours. If you then want additional details, you can order one of two types of search report. The first type lists all the sites where the name is taken, where it's available, and where it is listed as unacceptable or restricted. The In-Use report

offers more of the same information plus screen captures showing all uses of the name on the site, usually by showing the profile associated with the user name. The reports can cost anywhere from \$29 to \$199.

A second service of TM.Biz is to monitor the networks periodically for use of your trademark. This service provides packages that will check for your name monthly, twice monthly, or weekly. The cost of these watches range from

\$99 to \$459 depending on the type of watch you would like conducted on the site.

The final service that the site offers is name reservation. This will register the name at the sites where it is available, at prices from \$199 to \$999.

TM.Biz, again, does offer free registration and searching, but that access is limited to lawyers, trademark professionals, and trademark owners. ➡

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# The Road LAWYER

## » All About Baseball

by the Road Lawyer

### Who Finds Him / Herself the Night Before Halloween in the DFW Metroplex

At first it was about “The Freak.” Then “Fear The Beard!” Then the even more feared red “Rally Thong.” This for a team just a few years ago powered by the chemical dependency of Barry Bonds.

The home team brought out “The Claw.” “Antlers Up” everywhere.

Five nights earlier a G-man thug had mashed the Hero’s collar bone just across the parking lot, though many outside Arlington have mixed reads on the plight of “Jerry’s World” and “America’s Team.”

Halloween was looming! Tomorrow night! The politics of fear pervaded!

North Texas media were filled with reports of weed smoking weirdos in and around McCovey’s Cove a few days before. Fate had dealt Dallas-Ft. Worth Metroplex fans a cruel hand. If they wanted to win the World Series, they had to go back to the city of gay pride and Nancy Pelosi and Governor Moonbeam Redux and of thong waving fans in that den of iniquity oddly called AT&T Park.

### The Handsome Young “One of Us” from Amory

In the second inning of Game Three a clean cut kid from Amory came up to bat for the home team and against a dark skinned

pitcher whose last name ended with “ez” and first language was not English.

Never mind that **Jonathan Sanchez** was born in Mayaguez, Puerto Rico, played college ball at Ohio Dominican U. not so far from Ohio State, and was in law and in fact just as American as **Mitch Moreland**, who once wore Bulldog Maroon and led State to the 2007 College World Series.

It was “one of us” against one of “those people” who dealt from the Left, or so so many in the RBPIA<sup>1</sup> stands seemed to see it that Saturday night.

Moreland planted Sanchez’ ninth pitch into the right field seats, and the inning ended, Rangers 3, Giants 0! The Claw! Joy!

#### Don’t Mess with Texas!

America (politically and legally North of the Rio Grande, excluding perennially Red States of the Northeast and the Northwest) First!

In the bottom of the fifth, “born again” **Josh Hamilton** — a redeemee from addiction to legal and illegal substances — smashed Sanchez’ inside slider above and beyond the Rangers bullpen and into deep right center bleachers. The Claw! Joy!

#### Do NOT Mess with Texas!

### A Tension Toward The End

Then **Cody Ross**—the journeyman scourge of Roy Halladay in the NLCS—cleared the right field wall and cut the Rangers’ lead to 4-1.

A fitful silence followed **Andres Torres**’

HR in the 8th inning that had been fateful in Games One and Two. Another of “those people,” and he swung from the Left by choice! Also another Puerto Rican American; Andres had played juco ball in the Miami area.

The Texas team weathered the storm, winning 4-2 in the first World Series game ever played in RBPIA. For that magical night, it seemed not to matter that the closer who shut down the Giants in the ninth was **Neftali Feliz**, a Dominican who needed a “green card” to work here. Or that Hamilton and Moreland were Leftists, too.

Fans lingered long after the last out, grudgingly accepting that they were supposed to leave. Surreal joy roared and reigned, down the exit ramps and out of the park into the dark.

For that one night, baseball had endured and prevailed. God was in his Heaven. All was right with the World. As it was in 1841 when Browning penned his poem, then and now in the eyes of more than a few Texans.

### A Broader Context

The story lines are as many as their incongruities.

It was the World Series nobody wanted. Or so we were told by the Mad Men whose clients had booked TV spots and throughout the LCSs were salivating over the block buster Nielsen Ratings a Yankees-Phillies Series rematch was sure to bring.

But a year after their ticker tape parade down Broadway, the Yankee players had to clear out their lockers early, thanks to the Rangers. Reporters in search of an explanation found a near empty clubhouse, except for cardboard boxes and two no names.<sup>2</sup>

Still there were stories to be found in baseball being played in the DFW Metroplex and The Bay Area. Better stories, fun stories, real stories, in the context of a Game that could

expose and shred so many of our prejudices if we would let it.

### The “Antlers” and the “Claw”

The “Antlers” and the “Claw” began within the team. **Elvis Andrus** steals a base, leaps to his feet, faces the Rangers dugout, puts his hands to his head, his fingers spread like antlers. He exults in the return salute from his team mates.

**Michael Young** belts a base clearing double off the wall in left center and gives a quick swipe in the air, his upturned, open fist mimicking a great bear claw. His mates respond.

For a time sports writers and RBPIA fans alike were confused. Then the story broke.<sup>3</sup>

Antlers signal speed and agility, like a deer. Some say it began with right field speedster **Nelson Cruz**, from Monte Cristi, D. R. For a time **Josh Hamilton** is said to have had a trophy 10 pt. buck he shot with bow and arrow between their lockers.

The Claw is traced to utility infielder **Esteban German**, Santo Domingo, D. R. It's seen a sort of a long distance high five. The double entendre “Clawing back!” was the appropriate headline in the Ft. Worth Star-Telegram the morning after the Moreland and Hamilton HRs won Game Three.

The Antlers and the Claw have what lawyers call common law meanings. Thousands of variable T-shirts in and around RBPIA and the DFW Metroplex attest the point.<sup>4</sup>

### The Freak

**Tim Lincecum** is “the Freak.” Thin as a foul pole, sporting a bow tie, long black hair drops to his shoulders. His unorthodox mechanics and 5’11”, 172 lb. frame produced NL Cy Young Awards in 2008 and 2009.

“All laissez-faire and long hair,” as one commentator said. Looks fine in SFCA.

Giants fans responded to Tim's pot possession charge in his native Washington with orange T-shirts featuring a marijuana leaf and the rallying cry, “Let Tim Smoke!”

We learned Nov. 2 that only 46.4% of voters in all of California want to legalize pot.

The Freak messed with Texas big time! He beat the theretofore invincible **Cliff Lee** twice!

The Texas Board of Education has ordered the mere mention of freaks expunged from all school books.

### The Red “Rally Thong”

**Aubrey Huff** is the Giants' carefree first baseman who wears a good luck red “rally thong” beneath his uniform. Helped him break a 3 for 32 slump in August, he says. Shortly before the playoffs Huff distributed samples sent him by a thong maker throughout the clubhouse.

Another Leftist, Huff stroked a key two run homer Halloween Night in Game Four and had other timely hits. His perfect two-men-on-base sacrifice bunt – first of his career – in Game Five set the stage for **Edgar Renteria's** dramatics to come.

The Texas Board of Education is poised but perplexed. Can't prove what Huff was wearing under his uniform at RBPIA or under his street clothes those three days in the DFW Metroplex. Not sure what school books to check, or what to look for, and Huff has left the jurisdiction.

Three days later Aubrey proudly displayed his good luck red rally thong in the victory parade on the street cars of San Francisco. And got a fat new contract.

### “Fear The Beard” and Madison's Trick

**Brian Wilson** has “half a mullet, half a mohawk and a full head of steam” reported The New York Times after he got the last two outs in Game One for the Giants. An 11-7 SFCA win in what was supposed to have been a pitcher's duel between Tiny Tim and Cliff Lee.

Wilson's beard is a dark shade of black produced en route to his MLB high 48 saves in 2010. “Fear the Beard!” is a favorite among the T-shirt set at AT&T Park. Less fearsome fake beards are almost as plentiful.

This native of Londonderry, New Hampshire, said he would have dressed as himself for Halloween and trick o' treated The Bay Area had he not been otherwise engaged for Game Four at RBPIA.

Turned out the Rangers got 21-year-old **Madison Bumgarner** for Halloween. Another Bay Area Leftist from North Carolina. SF 4, DFW 0. The Beard's 9th inning close out merely confused the familiar with the necessary.

Same for Game Five, with Tiny Tim hardly breathing hard, much less inhaling.

### They've All Come to Look for America

A case can be made that no social practice by its nature has to potential to exhibit core American values more so than baseball. The Nation of Immigrants, of Norman Rockwell, and of Bart Giamatti. A good lawyer can find much in this Series with Rule 401 relevance to the point. And it its aftermath as well.

How the Rangers got to the Series may be the most American story of all. That is, for those of us who understand that David's sling and not some embattled farmer's musket at the Concord Bridge fired the shot heard 'round the world.

A 63 year old, All American boy from Refugio TX, named **Nolan Ryan**,<sup>5</sup> was the face of the group that bought the Rangers out of bankruptcy, traded for a former Razorback and Meridian CC Eagle from Benton AR named **Cliff Lee**, and beat the Yankees in the ALCS.

How sweet it was, the misery of pin striped, multi-multi-millionaires Mark Teixeira and Alex Rodriguez, who had so recently looked down their noses at the Rangers.

A generation ago Kevin Costner reminded us of the insight of Terrance Mann a/k/a James Earl Jones, “The one constant through all the years, Ray, has been baseball. America has rolled by like an army of steamrollers. It had been erased like a blackboard, rebuilt and erased again.

“But baseball has marked the time. This field, this game; it's a part of our past, Ray. It reminds us of all that once was good and it could be again.”<sup>6</sup>

No matter that **Buster Posey** played in Nancy Pelosi's home district. Who can't still see this fresh faced kid from outside Albany, Georgia, in his cumbersome catcher's gear, excitedly circling the joyous jumping Giants, as if to say “Let me play, too,” still holding the ball Nelson Cruz swung at and missed to make the Giants World Series champs that first night in November.

The night before Posey had homered into the grassy part of the batter's eye over RBPIA's center field fence. A frenzied scramble of SRO fans till one came up with the ball and met with \$400,000 salaried 23 year old rookie after the game.

No demand for a king's ransom or a

*Continued next page...*

U-Haul filled with dollars. The fan found two autographed baseballs and a signed picture sufficiently valuable considerations to convey the souvenir Posey can treasure for a lifetime.

**Edgar Enrique Renteria Herazo's** last name doesn't end with an "ez" or an "es," but it's close. He is from Barranquilla, Colombia.

Edgar became the fourth player in MLB history twice to deliver World Series winning hits. Edgar's first was a walk off single to win for the Marlins in 1997. None of the other three—Yogi Berra, Lou Gehrig, and Joe DiMaggio—had any more American "blue blood" coursing through his veins than Edgar Renteria.

You have to love the **Josh Hamilton** story! No mistaking the meaning of RBPIA's and the country's roaring response to Josh's solo HR in Game Three the stat man said was meaningless. Nor of his AL MVP voted by the normally cynical writers, though Josh spent a month on the bench with injuries.

Nor of his team mates holding a ginger ale victory celebration out respect and camaraderie with the personification among them of Holmes' heroic values of daring, hope and will.

No one in the DFW Metroplex or anywhere else in America can read Josh's story without thoughts of **Mickey Mantle**,<sup>7</sup> who lived his last years in Dallas and whose tortured story has been so simultaneously and affectionately told by Jane Leavy.<sup>8</sup>

No name right hander **Colby Lewis** of Bakersfield, CA, continued his post-season heroics for the Rangers and largely shut down the Giants before TRL's admiring eyes in Game Three.

**Elvis Andrus** is the 22 year old shortstop from the Bolivarian Republic of Venezuela, home of St. Chico Carrasquel, the Jackie Robinson of Latin American baseball players. Elvis is greeted by his name sake's "All Shook Up" each time he comes to the plate or makes a play in the field. Punctuated, of course, by "Antlers Up" when the occasion demands.

**Benjie Molina** was the Giants catcher from 2007 halfway through 2010, when he was replaced by baby Buster and traded to the Rangers. The 36 year Puerto Rican American caught for the Rangers throughout the playoffs and the Series.

**Matt Cain** from Dothan AL is straight, except maybe for the Don Sutton-like curls under his cap. With the aid of 7 runs in the Rangers' 8th inning implosion, Cain cruised most all the

way to a 9-0 Giants win in Game Two.

The only Ranger who outdid Mitch Moreland's .462 Series batting average was 24 year old **Julio Borbon** from Starkville. Yes, *that* Starkville, though Julio played his SEC baseball at Tennessee. A pinch hit single in the 9th inning of Game One was enough to leave Borbon batting a cool .500 for the Series.

A third Mississippian was on the Giants' roster. **Eli Whiteside** of New Albany, via Delta State, was another minimum salary kid who made it to "the show," albeit as the bench bound backup catcher behind Buster.

A month after the final out of Game Five, baseball punctuated its point. The boyish Buster Posey from the land of Nancy Pelosi was NL Rookie of the Year. The "green card" carrying Nefali Feliz, the 22 year old 9th inning flame thrower in the home district of Ron Paul, was AL Rookie of the Year.

Maybe some of the stuff we have been so carefully taught doesn't matter much after all.

## What America Have They Found

**Cliff Lee** cited the affection of fans in Philadelphia a year ago and his two wins in the 2009 World Series that the Yankees still won. Lee then left the DFW Metroplex and took the Phillies' offer that was slightly less than what both the Yankees and Rangers put on the table. Lots of Texans feel they have been messed with.

It is hardly an un-American act to give Philly fans who have paid their dues over the decades MLB's strongest starting pitcher rotation, joining Cy Young winner Roy Halladay for former Weir Wolf Roy Oswalt, and Cole Hamels — plus a likely return shot at the Yankees not in the ALCS but in The Series itself. Not to mention more regular rematches against The Freak during the 2011 season, if not the NLCS, and in years to come.

But by the end of November Giants infielder **Juan Uribe** had signed a 3 year, \$21 million contract with the hated LA Dodgers. His 3 run HR in Game One and RBI single late in Game Two had made Juan one of The Bay Area heroes. It was time to cash in.

The shoe was on the other foot on November 5, 2010, when the Giants declined to pick up their \$10.5 million option to keep Series MVP Edgar Renteria around one more year. Instead, the Giants have doled out big

bucks to 36 year old, one time steroids using shortstop, Miguel Tejada, sending a message to the 35 year old Renteria, not to mention the rest of America. The Giants had offered a mere \$1 million to the man whose 3-run HR sent Cliff Lee to the showers and gave the franchise its first Series championship since 1954.<sup>9</sup>

The Washington Nationals lured Jayson Werth — who? — away from the Phillies for a cool \$126 million over the next seven years. Not even the Nats' political counterpart in downtown D.C., the U. S. Government, makes deals that shaky. Look for the price of those \$500 seats behind home plate at Nationals Park to spike and quickly.

The Cinderella Tampa Bay Rays had the best record in the American League in 2010, but have been dumping high priced talent ever since. In 2008, Cleveland had C. C. Sabathia, Cliff Lee—and LeBron James. Now its long suffering fans are again relegated to memories of Bob Uecker, Jake Taylor, Willie Mays Hayes, and Wild Thing.

It is those most familiar of super-American values: Freedom of contract, supply and demand. Pass those objectively outrageous costs on to the dumb driven cattle called the consuming public. The rich get richer. The poor are always with us, cf. Matthew 26:11, only they are poorer.

The normally Homeric Holmes proved he was human with *Federal Baseball League vs. National League, PBC*, 259 U.S. 200 (1922), which haunts baseball and the rest of us to this day. See, e.g., *Flood v. Kuhn*, 407 U.S. 258, 261-64 (1972).

A new Congress has been sworn in. The politics of fear reached a fever pitch and shows no signs of abating. A mean spirit pervades. People seem more willing to believe lies about people they don't like than ever before, though those of us who barely remember Joe McCarthy were not around for the Adams-Jefferson campaigns or the J. Q. Adams-Andy Jackson elections.

What we have most to fear may not be fear itself, but not enough baseball.

## The Game of Hope, American Style

Some of us are "simpler creature[s], tied to more primitive patterns and cycles." We look for something within America that subsumes

the majority's momentary madness.

And so some of us remember that "the afternoon grew so glowering that in the sixth inning the arc lights were turned on" that last game of the 1960 season in the park in the Fenway near the site of the real "tea party." In the bottom of the eighth, another Leftist, "the Kid," who 14 seasons later would be the first manager of then new Texas Rangers, strode through "the ovation, switching his bat impatiently, ignoring everything except his

cherished task."

A ball and a mighty miss later, "a density of expectation h[ung] in the air and pluck[ed] an event out of the future."<sup>10</sup>

Five weeks later the same thing happened in American politics, so that the next April another Bostonian born some 16 months before the Splendid Sprinter, but similarly seasoned in war, threw out the first pitch of the 1961 baseball season.

Across America the countdown has begun.

The Hot Stove League season wanes. The first day of Spring Training. Opening Day.

"I need to think something lasts forever, and it might as well be that state of being that is a game; it might as well be that, in a green field, in the Sun."<sup>11</sup>

"People will come Ray. People will most definitely come." For gods do "answer letters," and with a game called baseball, if we have the wisdom and will to see. ➡

<sup>1</sup>TRL has heretofore visited and reviewed food service and other amenities at Rangers Ballpark In Arlington ["RBPIA"]. See HCBA Newsletter, pages 14-17 (August 2007). In addition to the culinary offerings listed there, the lawyer landing in Arlington for a ball game should most definitely seek out

1. **Hickory smoked sausage on a stick** - the line was 60 deep on the third deck the night of Game Three. With a normal regular season crowd, the line may be short enough that only half an inning or so of baseball must be missed. *Chicago-Style Hot Dog and Turkey Leg* are other highly sought after meat based offerings, with two locations each.
2. **Funnel cake** - found in four locations throughout RBPIA, and having enjoyed Most Favored Treat status for years at

the ballpark and at countless community and state fairs across Texas. See also, [en.wikipedia.org/wiki/Rangers\\_Ballpark\\_in\\_Arlington](http://en.wikipedia.org/wiki/Rangers_Ballpark_in_Arlington).

<sup>2</sup> Mark Viera, "At Stadium, a Quiet Fall Cleaning," *The New York Times* (Oct. 24, 2010).

<sup>3</sup> William Wilkerson, "Texas Rangers signal a craze with the Claw and Antlers," (Sept. 16, 2010), [www.star-telegram.com](http://www.star-telegram.com); and Doug Miller, "It's 'Claws and Antlers' vs. 'Fear the Beard,'" <http://texas.rangers.mlb.com>.

<sup>4</sup> See, e.g., [shop.mlb.com/product/index.jsp?productId=4476882](http://shop.mlb.com/product/index.jsp?productId=4476882); [www.youtube.com/watch?v=OskpfabyRks](http://www.youtube.com/watch?v=OskpfabyRks). Any 10 year old can find 100 more sources.

<sup>5</sup> Yes, the same Nolan Ryan who stole the Jackson Generals and

moved them to Round Rock, Texas back in 2000.

<sup>6</sup> "Field of Dreams" (1989).

<sup>7</sup> See George Vecsey, "Home Runs and Demons for Hamilton and Mantle," *The New York Times* (Oct. 24, 2010).

<sup>8</sup> See Jane Leavy, *The Last Boy: Mickey Mantle And The End Of America's Childhood* (2010). TRL picked up a copy at DFW that Halloween morning and began devouring while waiting on his flight back to everydayness.

<sup>9</sup> On Jan. 11, the Cincinnati Reds signed Renteria to a one-year contract for \$2.1 million, plus incentives of \$850,000.

<sup>10</sup> John Updike, "Hub Fans Bid Kid Adieu," *The New Yorker* (October 22, 1960).

<sup>11</sup> A. Bartlett Giamatti, "The Green Fields of the Mind" (1977).



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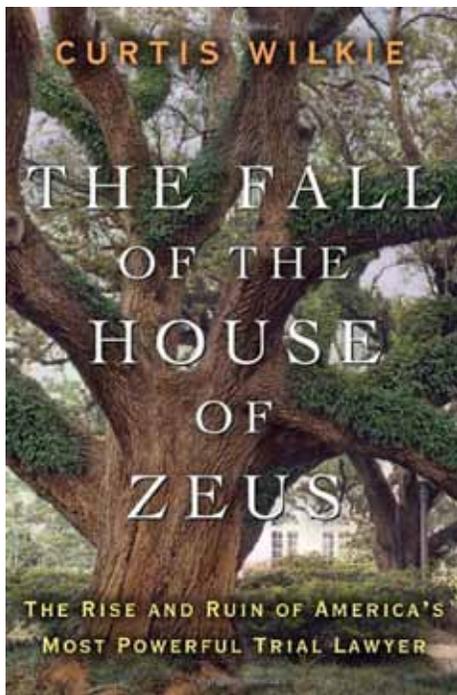
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# BOOK REVIEW: Fall of the House of Zeus



Reviewed by Peyton D. Prospere

Curtis Wilkie has crafted a compelling read with his “The Fall of the House of Zeus,” one broader in scope than the Lackey legal proceeding followed so avidly by Mississippi lawyers. This book surveys the landscape of Mississippi political and legal culture of the latter 20th Century from whence Scruggs emerges, culminating with the Judge Lackey bribery case, and is of interest to the lawyer and layman alike.

A little background on Wilkie is useful in understanding his perspective. Wilkie grew up in Summit, Mississippi, and graduated from Ole Miss following the fall term of 1962; he was in school with several of the principals in his book. His contemporaneous mapping of the riot taking place in front of the Lyceum on the night of September 30, 1962, before the admission of James Merideth is included in Charles Eagle’s, “The Price of Defiance,” a long view treatment of the Merideth saga. Wilkie worked as a journalist at the Clarksdale

Press-Register for five years before winding up as a national correspondent for the Boston Globe covering the White House, presidential campaigns, and the Mideast. He retired to New Orleans and Oxford where he is a professor of journalism at his alma mater. A fine writer, Wilkie’s two previous books include “Arkansas Mischief,” treating the Whitewater imbroglio, and “Dixie,” his well-received memoir.

In taking up Dick Scruggs and the most pernicious subversion of our judicial system in memory, Wilkie returned to a subject that he had encountered in the past. Over a decade ago, Wilkie had explored the Jackson County Chancery Court decision and the distribution of tobacco settlement funds. The political nature, federal and state, of the resolution of the case captured his interest, as well as the actors who included his old classmate Trent Lott, the energetic Attorney General Mike Moore, and tobacco lawyer Dick Scruggs, all of Pascagoula. The legacy of the settlement—a hybrid of law, politics, public policy, and big dollars—created a vortex of money and power that transformed, if not disfigured, the legal landscape in Mississippi.

Wilkie is at his best as he describes the forces and elements of post World War II Mississippi that converge to produce the Scruggs morality play, although there are few players of virtue to be found on this stage. Wilkie’s account of the transposition of power from the old Eastland network to the talented strivers of Sigma Nu, an incubator of conservative political operators such as U.S. Senators Trent Lott and Roger Wicker and fellow travelers, is persuasive when one understands that power is relational and not mechanical. It is in this strong stream that Wilkie finds Scruggs swimming, alongside his brother-in-law Lott, as he superintends mass tort cases and represents political fixers like P.L. Blake, the old Eastland hand. A status deprived son of a single mother, Dick Scruggs had the drive and brains to escape his situation. Wilkie knows the economic and

*Continued next page...*



In an attempt to further the occasionally humorous side of our profession, we hope to periodically publish some stories from the past that need to be preserved for posterity. In this first edition, a trial lawyer (who preferred to remain anonymous) relayed the following events.

.....  
**E**arly in his career, he took on the representation of a farmer who had been involved in a car accident in downtown Jackson. The client was extremely nervous about testifying at trial and the lawyer was anxious about his performance.

The lawyer emphasized over and over that the farmer would have to testify that right before the accident, he was looking straight ahead and following the rules of the road.

In an attempt to explain how important this was during cross-examination, the lawyer told the farmer “I don’t care how or what you are asked, you just keep telling them that you were looking straight ahead and following the rules of the road.”

On the day of trial, the nervous plaintiff took the stand. When the clerk asked him if he swore to tell the truth, the farmer, attempting to comply with his lawyer’s instructions, blurted out: “I was looking straight ahead and followed the rules of the road.” Needless to say, the courtroom burst into laughter. The lawyer would not disclose to me the outcome of the case.

*To share your war story, contact Will Manuel at [wmanuel@babc.com](mailto:wmanuel@babc.com).*

cultural contours of this common condition well and illuminates for the reader how they shaped the man Scruggs became.

“Zeus” presents a remarkable carnival of characters who come into sharp focus for those readers of Faulkner and Robert Penn Warren. From the enigma of political grifter P.L. Blake, through Steve Patterson, the picaresque name “partner” lacking only law degree and license, to the sinister Ed Peters whose off-record role

*“[Zeus] is ultimately a sad tale, and an ancient tale, of avarice and hubris. And these two afflictions most always bring ruin.”*

was poison to justice, Wilkie paints a dark canvas. And while Scruggs manages to keep his pile, there are ruinous consequences for many in his orbit and those who wished to be.

The interplay between Balducci, Judge Lackey, the Feds, and Team Scruggs is well chronicled, a vivid narrative that will be of special interest to non-lawyers. And for lawyers who followed the case avidly there is new information that startles; the casual revelation by attorneys of client confidences and testimony to the Scruggs bunch and the malignant neglect of conflicts of interest. These acts combine with the nefarious convolutions

involving the Rigsby sisters in the State Farm Katrina litigation and numerous other misdeeds to constitute a doleful debasement of jurisprudential standards.

Wilkie is not a lawyer and “Zeus” is not a legal analysis, but a colorful description of the rise and fall of its central actor, Dick Scruggs. A criticism of Wilkie’s book is that, in parts, it depicts Scruggs in too sympathetic a light, with Scruggs’ recent conduct to be mitigated by

addiction to pain medication. A friend of mine, Wilkie is a friend to Scruggs and received cooperation from the Scruggs’ family while access to other principals was not granted. Yet, Wilkie’s litany of Scruggs’ failings,

including the harsh and shabby treatment of attorneys working alongside him, the abuse and neglect of all manner of rules governing the practice of law, his furtive deployment of odious men such as Ed Peters and P.L. Blake, and much more, does not fail to portray a grievously flawed man. It is clear that Scruggs has wrecked lives, sacrificed his son’s career, and committed viral damage to the judicial system that made him richer than Croesus. But he is not simply a two dimensional villain and these defects can only be fully appreciated when viewed in the spectrum of all his qualities.

“Zeus” contains enough legal issues and transgressions to support a law school curriculum, but it is ultimately a sad tale, and an ancient tale, of avarice and hubris. And these two afflictions most always bring ruin. Anyone interested in the annals of Mississippi law and politics or who simply enjoys a well told story of intrigue, with both comic and tragic elements, should read Wilkie’s book. ➤

## CABA OFFICER CANDIDATES ANNOUNCED

*The nominations committee is pleased to announce the following CABA members who have graciously agreed to run for office for the year 2011-2012.*

**The nominees for the three positions to be filled are:**

**Sec-Treasurer:**  
Sharon Bridges & Collins Wohner

**Director, Post 1:**  
Beau Cole & Scott Jones

**Director, Post 2:**  
Amanda Green Alexander & Rob Mink

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

## CABA Grant Committee

The Capital Area Bar Association’s Community Grant Committee is seeking applicants for its 2011 slate of grants. Each year since 2003, CABA has awarded significant monetary grants to charities located in Hinds, Madison, or Rankin counties whose primary mission is to help persons without financial means or with special needs. Recipients of CABA’s 2010 grants were the Lutheran Episcopal Services of Mississippi and Southern Christian Services for Children and Youth.

The amount of the award for this year has not been determined, but during the past several years the award has been within the range of \$5,000 to \$10,000. Matthew McLaughlin, Chairman of the Community Grant Commit-

tee, anticipates that the committee will distribute grant funds to the finalist or finalists in April 2011. Preference will be given to those applicants requesting funds for a one-time specific item, project, or service, while requests to cover general operating expenses will not be considered.

If you are aware of a well-managed charity serving the Jackson metro area that could benefit from a CABA grant, please encourage its executive director or other representative to request a grant application. Inquiries or requests for grant applications should be sent to Matthew McLaughlin at [mmclaughlin@balch.com](mailto:mmclaughlin@balch.com). Those without access to email may request an application by phone by call Matthew at 601-965-8162. The deadline to apply for the grant is February 1, 2011. ➤

## President's Column

continued from page 1

winners of our annual essay contest please contact Rob Mink, the committee chair, at [rmink@wyattfirm.com](mailto:rmink@wyattfirm.com).

Mark your calendars for May 17, 2011, the day of CABA's Annual Golf Tournament, to be held again this year at Annandale Golf Club. Remember that the tournament is our annual fund raiser, from which we donated last year over \$8,000.00 to the Mississippi Volunteer Lawyers Project (and from which JYL donated another \$4,000.00 to the Boys and Girls Clubs of Mississippi). Elizabeth Thomas and her Golf Tournament Committee are planning another great event.

I regret to report that Cheryn Baker, a member of the Board of Directors and Chair of the Membership Committee for the past two years, has resigned. Cheryn left the capital

area and the Secretary of State's office to join Hancock Bank's legal department on the Gulf Coast. I want to take this opportunity to thank Cheryn, on behalf of the entire CABA membership, for her two-plus years of hard work and effective leadership on our behalves. We will miss her stewardship and we wish her well in her new job. Luke Dove has been appointed and graciously agreed to serve the balance of Cheryn's term of office.

Our last Pictorial Directory was published in 2006 so the time has come to re-photograph and re-publish. We expect to schedule photo sessions in the early months of 2011, about which you will be receiving information in the coming days.

You will recall that last year's president, Tom Alexander, set a goal of raising a minimum of \$50,000.00 to fund two \$25,000.00 law school scholarships, one at the University of Mississippi and one at Mississippi College, for minority students. Through Tom's diligence

and perseverance that goal was exceeded and \$110,000.00 was raised. On December 21, 2010, those two scholarships, named for and honoring Reuben Anderson, were fully funded with \$55,000.00 each. We are grateful to the Robert M. Hearin Foundation for its contributions of matching funds, totaling \$50,000.00, and we encourage all our members to continue making contributions to those scholarships.

Finally, congratulations are in order to the following members for their nominations for the following officer and directors positions: Collins Wohnner and Sharon Bridges, for Secretary-Treasurer; Beau Cole and Scott Jones, for Director (Post 1); and Rob Mink and Amanda Green Alexander, for Director (Post 2). The ballots for the elections, together with each candidate's biographical information, will be mailed to the membership in the near future.

Please remember to join us at the CABA CLE lunch seminar, "Pet Peeves—a Two-Way Street," on February 15, 2011 at the Capital Club. ➡

# Minority Scholarship in Law Honoring Reuben V. Anderson

*CABA would like to thank the foundations, individuals, companies, and law firms that contributed to this scholarship. For a full list, see page 19.*



Jim Rosenblatt, Mississippi College School of Law Dean; and Tom Alexander.



Tom Alexander, past CABA president, presenting the CABA check to Dean Richard Gershon

The law school deans, I. Richard Gershon, University of Mississippi, and James Rosenblatt, Mississippi College, have received checks to their respective schools in the amount of \$30,500 from the Capital Area Bar Association. The checks represent payment of the initial funds that the association raised to establish the Capital Area Bar Association Minority Scholarship in Law Honoring Reuben V. Anderson.

Because the fundraising goal was met and even exceeded, the association was able to achieve a matching grant from the Hearin Foundation which forwarded the schools \$25,000 in December making the scholarship total \$55,500 each.

# Write-in elections create controversy

Kate Margolis

**W**rite-in elections for two judgeships caused quite a ruckus this past election season, spawning a lawsuit by some county election officials and perhaps a general sense in the legal community that the arbiters of the Mississippi system of justice should not be selected by such a rough-hewn method.

The crisis arose with the untimely deaths of District 13 Circuit Judge Robert Evans in July and District 10 Chancery Judge James Thomas Jr. in October. (Circuit District 13 covers Covington, Jasper, Simpson, and Smith counties. Chancery District 10 covers Forrest, Lamar, Marion, Pearl River, and Perry counties.) Evans and Thomas were running for reelection unopposed and the qualifying deadline for the election had long since passed.

The State Board of Election Commissioners—comprised of Governor Haley Barbour, Attorney General Jim Hood, and Secretary of State Delbert Hosemann—concluded that state law required the election to proceed as a write-in election.

The circuit clerks of Jasper, Simpson and Smith Counties and an election commissioner in Covington County filed suit in the Circuit Court of Jasper County to enjoin the write-in election, contending that a special election should be held instead. In addition to their legal argument for a special election, the officials raised fears of mass confusion by voters, un-

qualified write-in candidates, and the further eroding of respect for the judicial system. Under the state constitution, a circuit or chancery court judge must have practiced law for at least five years, been a Mississippi citizen for at least five years, and be at least 26 years old.

The case was transferred to the First Judicial District of the Hinds County Circuit Court. After the Hinds County circuit judges recused themselves, the Mississippi Supreme Court specially appointed Circuit Judge Henry Lackey, who ruled that the write-in method was appropriate under state law. On appeal, the Mississippi Supreme Court agreed. Grant-

posed selection for chancery judge in Chancery District 10. Predictably, he overwhelmingly won the race, requiring an interim appointment by Governor Barbour and a special election in late 2011.

Former district attorney Eddie Bowen of Raleigh—appointed last September by Governor Barbour to serve as interim judge—won the election for District 13 Circuit Judge following a run-off with the other top vote-getter in the write-in election. Bowen begins a full four-year term this month.

Whether a change in the law governing this situation will gain traction in the state

*Because ballots had already been printed, Judge Thomas's name remained as an unopposed selection for chancery judge in Chancery District 10.*

ing a petition for an expedited appeal, the en banc court further held that state law treats judicial offices no differently than other positions when a write-in election is necessary.

The Secretary of State's office conducted an aggressive campaign to educate south Mississippi voters about the write-in process (voters would select "Write-In" on the electronic voting machine and type in the candidate's name). Voters used old fashioned paper and pencil to write in a candidate on absentee ballots or when voting by affidavit.

Because ballots had already been printed, Judge Thomas's name remained as an unop-

posed selection for chancery judge in Chancery District 10. Predictably, he overwhelmingly won the race, requiring an interim appointment by Governor Barbour and a special election in late 2011. Former district attorney Eddie Bowen of Raleigh—appointed last September by Governor Barbour to serve as interim judge—won the election for District 13 Circuit Judge following a run-off with the other top vote-getter in the write-in election. Bowen begins a full four-year term this month. Whether a change in the law governing this situation will gain traction in the state legislature is unknown. There are obviously more pressing matters on the minds of legislators and voters. Opinions on this issue would seem likely to fall along the same divide as the elected-versus-appointed-judges debate, with those in favor of electing judges also supporting the write-in method, and those in favor of appointment supporting an interim appointment, followed by a special election.

What do you think? Letters-to-the-editor regarding this subject (or any other topic) are welcome. ➡

## CABA Professionalism Award

At the HCBA Dinner Honoring the Judiciary in May 2011, CABA will present its twelfth annual Professionalism Award. The recipient of the award will receive a plaque bearing his or her name, the year the award was presented, and the criteria for the award. In addition, the recipient's name will appear on a trophy on permanent display at the Mississippi Bar Center.

Nominations are being sought for this award. The recipient, who must be a CABA member, will be chosen by a selection committee comprised of

the Senior Hinds County Chancery, Circuit, and County Court Judges, the Senior United States District Court Judge from the Jackson Division, and three CABA members.

The criteria for the award are that the nominated member must have consistently demonstrated adherence to professional standards of practice, ethics, integrity, civility, and courtesy; have encouraged respect for, and avoided abuse of, the law and its procedures, participants, and processes; have shown commitment to the prac-

tice as a learned profession, to the vigorous representation of clients, and to the attainment of the highest levels of knowledge and skill in the law; and have significantly contributed time and resources to public service.

CABA members are encouraged to submit the names and addresses of suitable candidates to Pat Evans, CABA, 151 E. Griffith St., Jackson, MS 39201. A brief statement as to why the nominee is deserving of the award may be included with the submission of his or her name. A deadline of Wednesday, March 9, 2011, at noon, has been set for receipt of nominations. ➡

# Charles Clark: A Gentleman Judge

By David W. Mockbee

*If he looks like a judge,*

*If he acts like a judge, and*

*If he writes like a judge...*

*...then he must be Judge Charles Clark,  
Former Chief Judge of the United States  
Fifth Circuit Court of Appeals.*

**B**ut despite (or in addition to the above), if you know Judge Charles Clark, you know he is first and foremost a gentleman to everyone with whom he comes into contact.<sup>1</sup>

Judge Clark's closest friend on the Fifth Circuit Court commented:

Charles was a wonderful chief judge. Charles had the additional benefit of looking like Lord God Almighty, which helps if you're a judge. All he needed was a thunder bolt!<sup>2</sup>

When questioned about this comment, Judge Clark remarked: "Well, if you can't play the part, you ought to look the part!"

## Background and Legal Practice

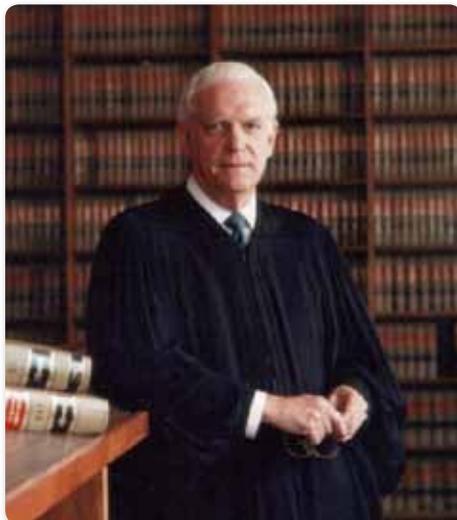
Judge Clark was born in 1925 in Memphis, Tennessee (because there was no hospital in Cleveland, Mississippi) and raised in Cleveland, Mississippi.

He was destined for greatness given his family lineage and he didn't disappoint.

He is a fourth generation lawyer and his great-grandfather was elected governor of the State of Mississippi in 1863.

Judge Clark began practicing law in 1948 with the firm of Wells, Wells, Newman & Thomas in Jackson for the handsome sum of \$150.00 per month.

Judge Clark left the Wells firm in 1961 and formed a partnership with Vardaman Dunn and Bill Cox, as Cox, Dunn & Clark, and prac-



ticed with that firm until 1969 when he was appointed to the United States Fifth Circuit Court of Appeals.

Judge Clark considers Hyde Construction Co. v. Koehring Co.<sup>3</sup> one of the most interesting cases he handled as a lawyer. Cox, Dunn & Clark filed suit in federal court on behalf of Hyde Construction. Koehring objected to federal jurisdiction and Vardaman Dunn responded by bringing an attachment action in Chancery Court in Hinds County. The chancery action got set for trial first and when Vardaman Dunn advised Koehring that he intended to go to trial in state court, Koehring started fighting to stay in federal court.

As Dunn prepared for trial in Chancery Court, Charles Clark traveled to Houston, Texas, to appear before the Fifth Circuit to fight Koehring's attempt to stay the state court action in Hinds County. The Fifth Circuit transferred the case to federal court in Tulsa, Oklahoma. An injunction enjoining the Hinds County action was issued by the Federal District Court in Tulsa. Judge Clark then applied to the Tenth Circuit, Judge Alfred P. Murrah, then the Chief Judge of the Tenth Circuit, to stay the injunction order. Meanwhile Vardaman Dunn prac-

ceeded with trial in the Hinds County action.

Koehring's house counsel argued to Judge Murrah that Vardaman Dunn should be incarcerated for going forward with trial in Hinds County. Judge Murrah said, "You mean that this is a challenge to a lawyer, trying a lawsuit, and you want him arrested and put in jail?" And Koehring's house counsel responded: "That's right!" Judge Murrah retorted, "We don't put lawyers in jail in the Tenth Circuit for trying lawsuits!"

Judge Clark remembers appearing before Judge Elbert Tuttle in several civil rights cases and has commented that Judge Tuttle was "very rigid, very unbending." Judge Clark can remember Judge Tuttle leaning over the bench and saying,

"Mr. Clark, how long are you going to keep on bringing these cases and insisting on your views," and [Judge Clark] said, "Until you change your mind, Judge Tuttle! You changed your mind once when you overruled prior precedent in this area and I intend to argue that you shouldn't have done it and that you should change back, until I can't argue anymore!"

After Judge Clark took the bench, he and Judge Tuttle became very close friends.

## The Bench Years

Judge Clark recalls his confirmation hearing conducted by Senator Hruska, as chairman of a panel of three senators. Judge Clark was seated between Senator Eastland and Senator Stennis, and remembers Senator Hruska making the statement, "You certainly are well escorted here today," and then the Chairman asked, "Mr. Clark, you've done a lot of civil rights litigation. Is there anything in your background as a litigator that would cause you to lean one way or another in deciding lawsuits?" Judge Clark said, "No." Senator Hruska responded: "Thank you very much. The meeting is adjourned."

The confirmation process began at 11:00

<sup>1</sup>It was a great honor and even greater pleasure to have served as law clerk to Judge Clark 1974-75.

<sup>2</sup>A testament to the affection of others for Judge Clark is the 80+% attendance at the law clerk reunion to honor Judge Clark in 2009, on the occasion of the 40th anniversary of his appointment to

the bench. Former law clerks attending included four (4) Judges, including one Fifth Circuit Judge (Judge Leslie Southwick), one (1) law school dean, one (1) college president, and six (6) law professors.

<sup>3</sup>U.S. Courts Library, Oral History Interview with Judge Charles

Clark, May 5-6, 1999.

<sup>4</sup>Hyde Const. Co. v. Koehring Co., 178 So.2d 857 (Miss. 1965); judgment amended, 182 So.2d 580; subsequent appeal, 236 So.2d 377.

o'clock in the morning and by 12:30 Judge Clark's nomination had been confirmed by the full Senate.

Judge Clark has stated that he sought a federal judgeship because he saw it as a noble undertaking and as a public service. It was certainly both in Judge Clark's case when you consider:

1. He served on the Fifth Circuit bench for 22 years.
2. He became the chief judge of the Fifth Circuit on October 1, 1981, when the "old Fifth" court was split into the Fifth and Eleventh, serving in that position until he resigned in 1992.
3. He served on the Budget Committee of the Judicial Conference, becoming Chairman of that Committee; and on the Executive Committee of the Judicial Conference by appointment by Chief Justice Burger, becoming Chairman of that Committee by appointment by Chief Justice Rehnquist. Judge Clark served as Chairman of the Executive Committee until he retired from the bench.
4. Judge Clark authored 2,775 opinions, serving on three-judge panels in triple that number of cases.

## His Judicial Approach

Judge Clark remembers Chief Judge Brown reminding new fifth circuit appointees that they should remember that they had been "appointed and not anointed" and that although they now put a robe on and sit three feet above everybody else in the courtroom, they're no smarter than they were before. Judge Clark never forgot this admonition.

Judge Clark reminded himself every day when he went to work that there were one or more new cases on his desk to be processed and in each case somebody's rights were involved and needed a decision. He also reminded himself daily that each day a case remained unresolved, it's effectively decided against the person who should win. The time most cases took to decision constantly bothered him.

## Judge Clark's suggestions for appellate briefing:

1. remember you're dealing with a judge who has a limited amount of time to spend with your brief. If you don't immediately

get to the critical issue that turns your case and makes it shine, you're doing your client a disservice.

2. If your brief has ten assignments of error, you're in trouble!
3. Most briefing is too long.
4. When you write your brief go for the jugular, don't fool around with kicking the judge in the shins, and don't ever criticize your opponent.

## Judge Clark's suggestions for oral argument:

1. The highest purpose of limited oral argument is to force the lawyer to get even more condensed on what is going to turn his case around if he's the appellant, or what's going to assure him that he can keep his victory if he's the appellee.
2. Infrequently does oral argument change the outcome. Judge Clark was seldom convinced by oral argument that he had misperceived the issues in the case from the briefs.
3. A loud, gesticulating lawyer loses often in the Court of Appeals because "it's a kind of cool atmosphere." Oral argument is supposed to be an intellectual exercise.
4. The worst thing you can do is to read to the Court.

## Humor (misstatements) in the courtroom:

1. One lawyer stated that the point had only been brought up for "peaches of impersonment."
2. Another said his opponent was "vexious and contemptimonious."
3. Another said the money had been deposited in the "coiffeurs of the Court."
4. "My opponent's just looking at this case through rose-colored eyes!" said another.
5. One lawyer was just like a machine gun, and Judge Clark said, "Wait a minute! I can't think that fast!" The lawyer responded: "Well, thank you very much for stopping me; I can't either!" and he slowed down.

## Judge Clark's view of the federal judicial system of the future, possibly by 2020:

When the briefs are all in the Clerk's of-

fice, the clerk will have an analytical computer that looks at jurisdiction and kicks the case out if it's not in compliance. If it passes that test, then the case will be transmitted to the staff attorneys' office where their computers, maintained by the staff attorneys, will examine the briefs and "distill" whether a case fits into one of the categories for summary disposition by a single judge or whether it fits into a situation that deserves some different treatment. The staff attorneys' computer will make its analysis of the briefs that have been transmitted to it, and then it will either parcel them out on one course or another to the conference computer in the appropriate three judge's offices, or to the individual computers in the judges' offices if it's to be processed as a three-judge opinion. Those computers will be maintained by the judges' elbow clerks and by the judge to contain the very latest philosophy of that judge on every subject that would be likely to come before the Court. The briefs will go into that Judge's computer, called Computer Judge, to be tested against the issues and the philosophy of the judge. Computer Judge will formulate a decision that will be electronically transmitted back to the clerk's office and the two lawyers. "And that, I think, is where you're headed."

## Judge Clark's view of the jury system

"I think that's the best system of fact-deciders that you can have. I don't think that fact decisions ought to be entrusted to judges." The courts are behind the good citizen and there should be a compelling force to stay good.

## His better half

No article about Judge Clark would be complete without mentioning his wife, Emy, who Judge Clark always refers to as his very best friend in the world. Judge Clark tells of an instance during law school when he rushed home to tell Emy that he had obtained an A in Professor John Fox's class. Emy promptly responded: "I knew you would, because he likes me." ➡

## Author's Note

*All judges should strive to be like Judge Charles Clark. And to Judge Clark: Thanks for the experience!*



# STATE LAW LIBRARY OF MISSISSIPPI

**HOURS**  
Monday - Friday  
8:00 a.m. - 5:00 p.m.

**Gartin Justice Building**  
450 High Street  
Jackson, MS 39201  
Telephone: 601-359-3672

## HOLIDAY HOURS

- January 1<sup>st</sup>** . . . . . New Year's Day
- Jan. (3<sup>rd</sup> Monday)** Robert E. Lee & Dr. Martin Luther King Jr.'s birthdays
- February (3<sup>rd</sup> Monday)** . . . . . George Washington's birthday
- April (Last Monday)** . . . . . Confederate Memorial Day
- May (Last Monday)** National Memorial Day and Jefferson Davis' birthday
- July 4<sup>th</sup>** . . . . . Independence Day
- September (1st Monday)** . . . . . Labor Day
- November 11<sup>th</sup>** . . . . . Armistice / Veteran's Day
- November 24<sup>th</sup>** . . . . . Thanksgiving Day
- December 25<sup>th</sup>** . . . . . Christmas Day\*

\*In addition to Christmas Day, any day(s) designated, at the Governor's discretion, for the observance of the Christmas Season are fixed by proclamation by the Governor.

# Regional Mock Trial Tournament

*The American Mock Trial Association Regional Tournament will be held in Jackson and hosted by Mississippi College School of Law and Mississippi College.*

**The dates for this event are Saturday, February 19, & Sunday, February 20.**

**T**wenty six teams made up of undergraduate students will be competing from the following schools: University of Alabama Birmingham; Auburn University; University of Memphis; Middle Tennessee State University; University of Mississippi; Mississippi College; Mississippi State University; Mississippi Valley State University; University of North Alabama; Rhodes College; University of South Alabama; Southern Methodist Uni-

versity; University of Southern Mississippi; University of Tennessee; and Vanderbilt.

Teams can be made up of 10 students but usually carry 8. Approximately 250 students are expected to attend. Judges, attorneys, faculty members, and law students will serve as "judges" for the competition.

Jackson attorneys, Eric Brown and Micah Dutro, are coordinating the details. The trials will be held at MC's law school and the Hinds County Circuit Court. ➡



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# MISSISSIPPI COLLEGE LAW LIBRARY HOURS

## JANUARY 12, 2011 – MAY 13, 2011

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)

Saturday, January 15<sup>th</sup> . . . . . 9:00 a.m. – 9:00 p.m.  
 Sunday, January 16<sup>th</sup> . . . . . noon – midnight  
 Monday, January 17<sup>th</sup> . . . . . 9 a.m. – 9:00 p.m.

### SPRING BREAK

Friday, March 11<sup>th</sup> . . . . . 7:30 a.m. – 5:00 p.m.  
 Saturday, March 12<sup>th</sup> – Sunday, March 13<sup>th</sup> . . . . . CLOSED  
 Monday, March 14<sup>th</sup> – Thursday, March 17<sup>th</sup> . . . . . 7:30 a.m. – 5:00 p.m.  
 Friday, March 18<sup>th</sup> . . . . . 9:00 a.m. – 5:00 p.m.  
 Saturday, March 19<sup>th</sup> . . . . . CLOSED  
 Sunday, March 20<sup>th</sup> . . . . . noon – midnight

### EASTER

Friday, April 22<sup>nd</sup> . . . . . 9:00 a.m. – 5:00 p.m.  
 Saturday, April 23<sup>rd</sup> . . . . . 9:00 a.m. – 9:00 p.m.  
 Sunday, April 24<sup>th</sup> . . . . . CLOSED

### EXAM SCHEDULE (APRIL 30 – MAY 13)

Monday – Friday . . . . . 7:30 a.m. – midnight  
 Saturday . . . . . 9:00 a.m. – midnight  
 Sunday . . . . . noon – midnight  
 Thursday, May 12<sup>th</sup> – Friday, May 13<sup>th</sup> . . . . . 7:30 a.m. – 5:00 p.m.  
 Saturday, May 14<sup>th</sup> – Sunday, May 15<sup>th</sup> . . . . . CLOSED

Summer Hours will begin May 16th.  
 Hours are subject to change without notice.



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