



President's Column

Laura McKinley Glaze

Happy New Year from CABA! 2012 is off to a busy start. On Tuesday, January 24th, the Bench and Bar Relations Committee will offer a lunch program at the Capital Club at noon. A panel of speakers, including Chief Justice William L. Waller Jr., Chief Judge Joe Lee, MC Law Professor Matt Steffey, and former Circuit Judge Frank Vollor, will discuss proposed legislation regarding judicial compensation. The program has been approved for one hour of CLE credit. Lunch is \$15. CLE is \$10.



CABA will also commemorate Martin Luther King Jr. Day this January. On Friday, January 13th, Jackson State University invites all CABA Members to participate in the oldest annual program in memory of Martin Luther King, Jr. in the United States. The program starts at 10:00 a.m. in the Rose McCoy Auditorium. The keynote speaker is John W. Franklin, the Director of Partnerships and International Programs at the Smithsonian Institute's 19th museum, the National Museum of African American History and Culture. For more information regarding this event, please go to www.jsu.edu/margaretwalker.

On Saturday, January 14, John Henegan invites all CABA members to march under the CABA banner in Jackson's Martin Luther King, Jr. Parade to demonstrate the legal community's appreciation for Dr. King's work to advance civil rights.

All interested members should meet John on Oakland Street as close to Freedom Corner (the corner of Martin Luther King, Jr. Blvd and Medgar Evers Blvd.) as possible at 9:45 a.m. that Saturday morning. Look for the vehicle with the CABA signs on it. If you have questions about marching in the parade, contact John at John.Henegan@ButlerSnow.com.

CABA also invites its members, law firms, and government agencies to spend Martin Luther King, Jr. Day, Monday, January 16th, in service to the community. **CABA will give an award for the Best Individual Project and the Best Firm/Agency Project.** We have talked to several organizations in the capital area to gather a wish list of projects. Please peruse the list on [page 10](#) to see where you or your organization might serve.

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Upcoming Events

January 24, 2012

CABA CLE/Membership Meeting
11:30 • Capital Club

February 21, 2012

CABA Membership Meeting
Noon • Capital Club

March 2, 2012

Diversity in the Law
Lecture & Music Event

May 15, 2012

CABA/JYL Evening Honoring the Judiciary
6:00 Reception / 7:00 Dinner
Country Club of Jackson

CABA

Tuesday, January 24, 2012

11:30 AM • Capital Club, 19th Floor,
Capital Towers Building

* Reservations not necessary.

** The program has been approved for 1 hour of CLE credit.

LUNCH

\$15

1 hr CLE
Credit \$10

Jan. CLE / Membership Luncheon Meeting

TOPIC: Proposed Legislation
Regarding Judicial Compensation

GUEST SPEAKERS: Chief Justice William L. Waller Jr, Chief Judge Joe Lee, Professor Matt Steffey, and former Circuit Judge Frank Vollor

CAPTAIN EQUITY

CAPTAIN EQUITY'S CHRISTMAS LIST

My how time flies when you are having fun; it was almost four years ago that I offered members of the Capital Area Bar Association, then known as the Hinds County Bar Association, my Christmas gift list based on just exactly what Santa should give various high profile "leaders" based on what these recipients deserved and surely not what they wanted. Given my chronic lack of imagination and penchant for saying the same things over and over, I have decided to update the list while sharing some then and now moments for those who are still politically relevant as we face yet another national election. But first, let's take a quick look back at 2007.

To put four years ago in context, recall that the 2008 Presidential election was still a year away. The Great Recession began in December 2007 while the sub-prime mortgage disaster had yet to fully manifest itself. Regrettably, the same economic mess still plagues the world economy even today. The United States was tiring of the Bush Administration's unilateral and unpaid for military adventures in Iraq and Afghanistan, but could not have known that they would still be prosecuted unabated with even more borrowed money four years later. We were just beginning to hear about "Change We Can Believe In" from a little known Illinois state senator. John McCain was viewed as all but politically dead and almost nobody had ever heard of Alaska Governor Sarah Palin, the Tea Party, et al. Of course, we now all know how the election turned out along with a whole lot more.

“My 2011 gift list is based on the events of the past four years and is offered with the fervent hope that we will even last another four years...”

My 2011 gift list is based on the events of the past four years and is offered with the fervent hope that we will even last another four years given the current toxic political and economic climate. I hope the Mayan calendar, which is due to expire on December 21, 2012 is just an ancient version of religious seer Harold Camping's missed end of the world predictions, but given the nutty world in which we live, it is just impossible to predict where we will be even a year from now.

Oh, and for those who pay undue attention (an ever diminishing

minority) and ask why I would offer a Christmas list in early 2012 after the holidays have long passed, I would simply counter that in today's America, January is the new December. For a country that failed to anticipate by a couple of decades the demographic disaster of retiring Baby Boomers as they began collecting their unfunded Social Security and Medicare benefits not to mention a federal government who turned a blind eye to Wall Street's financial irresponsibility and were apparently convinced trillion dollar deficits were a perpetual solution

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AUG 11, 2012 – DEC 11, 2012

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

Mon, Jan 16th 9:00 a.m. – 5:00 p.m.

SPRING BREAK

Friday, March 9th 7:30 a.m. – 5:00 p.m.
Saturday, March 10th – Sunday, March 11th CLOSED
Monday, March 12th – Thursday, March 15th 7:30 a.m. – 5:00 p.m.
Friday, March 16th 9:00 a.m. – 5:00 p.m.
Saturday, March 17th – Sunday, March 18th CLOSED

EASTER

Friday, April 6th 9:00 a.m. – 5:00 p.m.
Saturday, April 7th 9:00 a.m. – 5:00 p.m.
Sunday, April 8th CLOSED

EXAM SCHEDULE (APRIL 29 - MAY 11)

Monday – Friday 7:30 a.m. – midnight
Saturday 9:00 a.m. – midnight
Sunday noon – midnight
Thursday May 10th – Friday, May 11th 7:30 a.m. – 5:00 p.m.
Saturday, May 12th – Sunday, May 13th CLOSED

Summer hours begin May 14th. Hours subject to change without notice.

to the country's financial ills, I would say that I am right on target. And if that doesn't float your boat, there is always the ubiquitous anthem of responsibility-free American young people, to wit: "My Bad."

With that said, let's review my 2007 list of "leaders" still relevant today with updated presents that Santa should bring them once the jolly old man scrambles his reindeer sometime around Valentine's Day, which in today's America represents yesteryear's Christmas Day. (Note, most of these presents will be manufactured in Asia because the only thing we produce here are advertising circulars stuffed into the Clarion Ledger and other local papers aka America's new Postal Service). These Christmas gifts will be imported to the Arctic Circle on Chinese Container Ships which may push the delivery date back to sometime in March. If so, I simply offer another insincere "My Bad" mixed with a hearty *Ho Ho Ho*.

Then & Now

1 Barack Obama (2007)
An Honest Chance To Become the Democratic Nominee. Are all of you primary voting elves out in Iowa, New Hampshire, South Carolina and Nevada listening? **(2011)** In the words of Rick Perry, "Ooops." This was a mix of some underappreciated good combined with a dash of "My Bad" disappointment. Thankfully, there is still time. Maybe Santa can bring the President a backbone to use in his dealings with Mitch the Turtle and the Orange Weeper. But actually, come to think of it, the President is already celebrating Christmas early. Santa has already given him Rick Perry, Michelle Bachmann, Rick Santorum, Herman Cain, et al. Some people have all the luck.

2 Mitt Romney (2007)
A Pair of Flip Flops. No explanation needed for this Christmas gift. **(2011)** *A Chinese Container Ship Full of*

Flip Flops or a set of core beliefs that can endure beyond one television appearance. On second thought, let's just go with the ship load of Flip Flops. Even Santa can't pull off the impossible.

3 John Edwards (2007)
A \$12 haircut paid for by four one hundred dollar bills with the change going into a red Salvation Army Kettle. **(2011)** *Government provided free haircuts and the chance to shower regularly with Coach Sandusky of Penn State Horse Play Infamy under the watchful eyes of prison guards.* This one rates a big Res Ipsa Loquitur on the North Pole Hubris Express.

4 The American People (2007)
The Ability To Pay Attention To Political Candidates Next Year Long Enough So As To Not Be Fooled Yet Again. Unfortunately, whoever said you get the government you deserve was right. Whether it be Health Care, Social Security, National Debt, Immigration, Threats to the Environment, Addiction to Fossil Fuels and Collective Denial of all of the foregoing, this country faces monumental challenges. And yet what do we get? Rampant Public Corruption, Institutional Greed, Shameless Hypocrisy, Cowardly Indifference From Our So Called leaders, Political Polarization At Ever Increasing Volume, Obsession with Moronic Celebrities et al.

Maybe my Christmas Gift to the American People is one that should have been opened a long time ago. **(2011)** *Same present.* Sadly, some things don't change

New Additions to the Christmas List

1 Houston Nutt and Pete Boone:
Joint custody of the Ole Miss Black Bear. To ease the financial strain on these two,

especially Coach Nutt (A six million dollar golden parachute isn't what it used to be) the biological father (Dan Jones) should be ordered to help with support payments.

2 Governor Elect Phil Bryant
A Moving Van To Facilitate a Pre-Inauguration Move To Alabama. Despite his recent election, it is just unfair to subject Phil to the 58% of Mississippi voters who stood with Satan to defeat the "Egg Abuse" Initiative. Plus, Alabama, the "Bull and the Bear State" (Conner and Bryant) has better college football than we do, plus they have the same draconian anti-immigration law Phil favors already on the books. And as an extra bonus, there is no gambling to ignore or attack. How can you lose? Our neighbor to the east is a lot farther down the road to installing the right wing theocracy the former deputy sheriff favors. Sounds like Heaven on earth with no Satan supporters in sight. Come on Phi, just take yes for an answer and let Santa do the rest.

3 Captain Equity
Hey, it's my list; shouldn't Santa bring me something too? All I want is the same kind of \$1.6 million dollar historian gig that Newt Gingrich got with Freddie Mac and Fanny Mae. I knew liberal arts would pay off one day. Are you listening Santa? And not to be greedy about it, but since we are talking Newt, how about a pair of diamond cuff links from Tiffany's? To quote the young people again, "I'm just sayin'..."

*Oh yeah, I almost forgot,
Merry Christmas, Happy New Year
and My Bad! 🍷*

JUDICIAL INDEPENDENCE & THE NEED FOR SALARY REALIGNMENT

“Not my Court, but the court that sits in this building is the most important court for the citizens of Mississippi. To be sure, the Supreme Court of the United States is, in some respects, the most important court in the land...[But] if you were to ask, “What court is most important to the day-to-day life of an American citizen?” it is not my Court; it is the court of that citizen’s state.”

The Honorable Antonin Scalia

Associate Justice, Supreme Court of the United States

Remarks at the Dedication Ceremony of the Mississippi Supreme Court Building on May 20, 2011

By Chief Justice William L. Waller, Jr.

Why would a U.S. Supreme Court Justice refer to a state court as more important than his own? The reason, as Justice Scalia expounded, is that state law has the most direct, significant impact on citizens’ daily lives. The law on torts, crimes, marriage, and divorce is governed, for the most part, by state law. State courts wrestle with such issues every day. And a state’s highest court has, essentially, the last word on these pivotal matters.

Mississippians are fortunate to have so many highly qualified, devoted men and women serving in the judiciary. These individuals are committed to one endeavor: the fair and efficient administration of justice. That goal remains the same whether the case involves capital murder or a boundary dispute. Our judges recognize that every case affects the life and liberty of the parties before them. They take their work seriously and strive to provide our citizens the best possible system of justice.

To attain the fairest and most efficient judicial system possible, the judiciary is always searching for ways to improve and enhance its services. Drug courts are a primary example. Started in 1999 by then-Circuit Judge Keith Starrett in the 14th Circuit Court District, drug courts offer an alternative to incarceration for certain nonviolent criminals whose offenses are rooted in their addiction

to drugs and alcohol. Currently, there are more than 3,000 drug-court enrollees across the state. Participants undergo a rigorous, rehabilitative program that includes substance abuse treatment, close monitoring, and random drug testing. Additionally, they are required to either work or attend school.

The societal impact and taxpayer savings associated with drug courts are tremendous. A ten-year study of the nation’s second oldest drug court showed that criminal recidivism among drug-court participants was nearly thirty-percent less than that of nonparticipating offenders.¹ Moreover, drug-court participants are required to pay child support and fines. Last year alone, Mississippi drug-court participants paid a total of \$1.7 million in fines;² these fines would not have been collected had those individuals been incarcerated. Drug courts save taxpayer money as well. The cost savings compared to incarceration is projected to be about \$38 million³ this year—that almost equals the judiciary’s entire general fund appropriation.

There are several other promising initiatives underway. The Mississippi Electronic Courts (MEC) is an electronic document filing and case-management system that improves efficiency, bolsters security, and expands public access. MEC is derived from the e-filing system used by all federal courts. Mississippi received access rights to this multi-million dollar, proven system at no

cost. MEC, which is funded by user fees, is in the latter stages of a pilot program that includes the circuit and chancery courts of Madison and Warren counties. Efforts are currently underway to expand MEC into the chancery courts of DeSoto, Holmes, and Yazoo counties, and into the circuit and chancery courts of Harrison County, as well. The goal is for MEC to evolve and mature into a statewide system that will enhance efficiency and save costs.

The judiciary has also taken steps to promote and improve access to justice for all Mississippi citizens. This past year, the Supreme Court revised the Rules of Professional Conduct to allow for limited representation and to relax conflict-check requirements for lawyers who volunteer their services to assist low-income individuals. These rule changes will facilitate opportunities for attorneys across the state to offer pro bono legal services for those who otherwise could not afford representation.

The Commission on Children’s Justice is yet another important initiative. The Commission, co-chaired by Justice Randy G. Pierce and Rankin County Court Judge Thomas Broome, is working to develop a statewide, comprehensive approach to improving the juvenile justice system by coordinating the three branches of government.

Other ongoing efforts include the development of uniform criminal rules and plain language jury instructions.

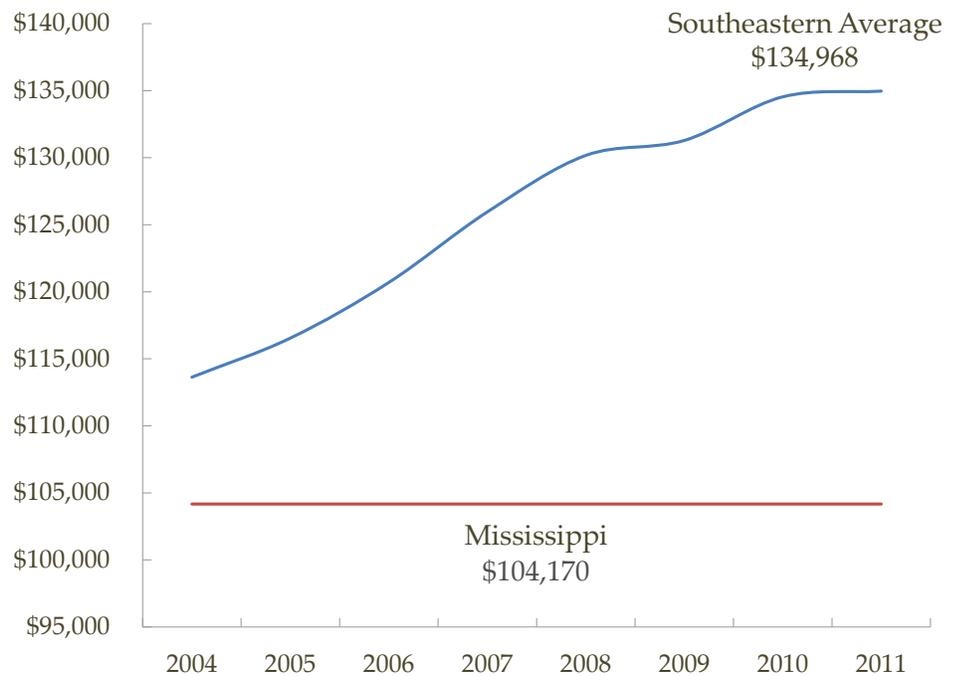
In sum, the work of the Mississippi Judiciary touches every citizen either directly or indirectly. Our judges appreciate the importance of their duties and are striving to maintain and improve the administration of justice in this state.

Like any other organization, the key to success is quality personnel. For the judiciary, that means strong, experienced, highly trained, and capable judges. We have that now, but there is an ominous trend that threatens the quality of our judiciary for the future. It is, perhaps, the greatest challenge to judicial strength and independence that we face today.

Mississippi's judges are the lowest paid in the country.⁴ They have not received a pay increase since 2003. The chart to the left illustrates how Mississippi trial judges' salaries have compared to the southeastern average since 2004. The disparity is dramatic.

The low level of judicial pay has led to two disturbing trends. First, our courts have experienced an inordinately high rate of turnover in recent years. Twenty-one new judges have taken office during the last two years alone. The low level of pay is one of the main reasons given by departing judges for leaving the bench. Second, the salaries of other important public officials have far outpaced judicial salaries. For example, the Chairman of the Workers' Compensation Commission earns \$112,436 per year, and a Commissioner earns \$108,698 annually.⁵ Both of these salaries are more than the salaries of all the judges on the Court of Appeals who most often review the Commission's cases. As another example, the Commissioner of Public Safety, who ensures that Mississippi's laws are enforced, is paid \$138,115 per year.⁶ And the Commissioner of Corrections, who oversees the state prison system, earns \$132,760 annually.⁷ Yet, trial judges, who make the critical decisions in criminal cases, earn substantially less— \$104,170 per year. This in no way disparages the essential work and responsibilities of these important public officials; it simply highlights the pressing need for realignment.

Without question, the economic climate makes it difficult to argue for a judicial pay increase at this time. Times are hard for many people across the state. And, certainly,



Southeastern average is based on the salaries of general-jurisdiction trial court judges in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, and West Virginia, according to the National Center for State Courts' (NCSC) annual Survey of Judicial Salaries.

there are countless other private and public-sector employees who are underpaid. Yet, the issue of judicial pay merits serious, immediate attention. Judges make decisions that influence family life, public safety, the economy, and the very nature of our society. Only the best and the brightest should be entrusted with this responsibility.

Yet, current pay levels, which have remained static since 2003, erode our ability to attract and retain such individuals. Though we can never expect to match the salaries available in the private sector, judicial salaries should be high enough to attract and retain competent, highly qualified lawyers. This is really about the health and future of the judicial system in Mississippi.

During the 2012 Legislative Session, the Mississippi Judiciary will propose a judicial pay bill that features three major components. First, the bill implements a four-year, step pay increase for Supreme Court Justices, Court of Appeals Judges, Circuit Court Judges, Chancery Court Judges, and County Court Judges. Trial judges' pay, for example, would

increase from \$104,170 to \$112,127 in 2013; their salaries would then increase annually until the target compensation of \$136,000 is reached in 2016. Second, increased civil filing and appellate court fees are used to fund the pay increases—no general funds are needed! This accomplishes the objective and, at the same time, frees up general fund moneys to be invested elsewhere.

Finally, the bill provides for a periodic review and recommendation by the State Personnel Board concerning adequate levels of pay for justices, judges, staff attorneys, and law clerks. As already noted, judicial pay has been neglected for several years now; this is a recurrent theme. One reason for this is that judges lack a constituency to lobby on their behalf. And the judiciary is ill-suited to do so itself. Judges are often required to interpret or rule upon the constitutionality of legislative enactments. At the same time, they are dependent upon the Legislature for their compensation. This tension poses a real and serious threat to judicial independence. A periodic review by the Personnel Board

would ameliorate this problem and ensure that judicial pay is at least considered every four years or so.

Last year, a similar judicial pay measure passed the Senate handily but was defeated in the House by a narrow margin. To ensure a different outcome in the 2012 session, we need the Bar's help. I encourage each of you to contact your senator and representative and urge them to support the judicial pay bill this next session. Your voice is crucial; it made a

difference last year, and I am confident that it will be the deciding difference in the 2012 Regular Session.

The judiciary is not simply another agency, department, or public-improvement project. It is a co-equal, independent branch that fulfills a core function of government. And its impact is far-reaching. Former Chief Justice of the United States John Marshall once stated that, "The judicial department comes home in its effect to every man's

fireside: it passes on his property, his reputation, his life, his all."⁸ Given the prominent role of judges in our democratic society, it is imperative that only the best and the brightest occupy these positions of trust. The bottom line is that a competitive level of pay is required to attract and retain such individuals. Without it, the future of our state judiciary is jeopardized. ➡

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1. MICHAEL W. FINIGAN ET AL., THE IMPACT OF A MATURE DRUG COURT OVER 10 YEARS OF OPERATION: RECIDIVISM AND COSTS, EXECUTIVE SUMMARY I-II (NPC Research, April 2007).
 2. Based on data collected by the Mississippi Administrative Office of Courts (AOC).
 3. For 2010, the average annual cost per prisoner in Mississippi was \$15,235.06. MISS. DEP'T CORR., FISCAL YEAR 2010 ANNUAL REPORT 19 (2010). Based on that figure, it would cost \$38,087,650 to incarcerate the estimated 2,500 felony offenders who are enrolled in drug courts across the state.
 4. NAT'L CTR. FOR STATE COURTS, SURVEY OF JUDICIAL SALARIES, VOL. 36, NO. 1 (January 1, 2011).
 5. MISS. DEP'T OF FIN. AND ADMIN. & MISS. MGMT. AND REPORTING SYS., <https://www.transparency.mississippi.gov> (last visited December 20, 2011).
 6. *Id.*
 7. *Id.*
 8. CHARLES F. HOBSON, DEFINING THE OFFICE: JOHN MARSHALL AS CHIEF JUSTICE, 154 U. PA. L. REV. 1421, 1458 (June 2006) (quoting Debate on the Judiciary (Dec. 11, 1829), in 11 The Papers of John Marshall 310, 311 (Charles F. Hobson ed., 2002)).

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RESOLUTION

WHEREAS, judges serve a role of critical importance in society. They preside over and issue rulings in cases that involve everything from capital murder to boundary disputes. Their decisions directly impact the life, liberty or property of the parties before them, and affect all citizens directly or indirectly. The best and the brightest are needed to make these important decisions; yet, because of inadequate judicial pay, retaining those individuals to judicial office is becoming increasingly difficult; and

WHEREAS, the increasingly frequent turnover in state court judges results in case backlogs, delayed prosecutions and increased costs to civil litigants; and

WHEREAS, Mississippi's judges are the lowest paid in the nation according to the National Center of State Courts. They have not received a pay increase since 2003; and

WHEREAS, increases in the salaries of other important public officials have far outpaced judicial salaries. For example, the Chairman of the Mississippi Workers' Compensation Commission earns \$112,436 annually, and a Commissioner earns \$108,698 annually. Both of these salaries are more than the salaries of the judges who most often review the Commission's cases, including the Chief Judge of the Court of Appeals. As another example, the Commissioner of Public Safety, who ensures that Mississippi's laws are enforced, is paid \$138,115 per year. And the Commissioner of Corrections, who oversees the state prison system, earns \$132,760 annually. Yet, trial judges who make the critical decisions in criminal cases earn substantially less-- \$104,170 per year; and

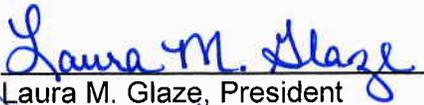
WHEREAS, because of current economic and political realities, funding raises through general fund appropriations is simply not feasible. Raises funded solely by user fees, however, are achievable; and

WHEREAS, the Capital Area Bar Association, consisting of lawyers and state and federal court judges from Hinds, Madison, and Rankin Counties with 1,208 members, believes that an independent judiciary is the cornerstone of our democracy, and that adequate pay is essential to maintaining an independent judiciary;

IT IS, THEREFORE, RESOLVED by the Board of Directors of the Capital Area Bar Association that a judicial pay bill should be enacted into law during the 2012 Session of the MS Legislature;

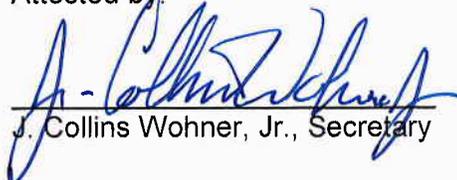
IT IS FURTHER RESOLVED that the legislation should include the following three major components; (1) a four-year, step-pay increase for Supreme Court Justices, Court of Appeals Judges, Circuit Court Judges, Chancery Court Judges, and County Court Judges; (2) increased civil filing and appellate court fees to fund the increases; and (3) a periodic review and recommendation by the State Personnel Board concerning adequate levels of pay for justices, judges, staff attorneys, and law clerks.

ADOPTED by unanimous consent of the Board of Directors of the Capital Area Bar Association, this 6th day of December, 2011.


Laura M. Glaze, President


David F. Maron, Vice-President

Attested by:


J. Collins Wohner, Jr., Secretary

To Deregulate or Not to Deregulate, That is the Question

By John Land McDavid

The Brookings Institution recently published a book entitled *First Thing We Do, Let's Deregulate All The Lawyers*, written by Clifford Winston and Robert W. Crandell, both Brookings Fellows, and Vikran Maheshor, an assistant professor at the University of Houston. The writers contend that because of regulation and other factors, U.S. lawyers receive an "inefficient earnings premium", which is the difference between what lawyers now earn and what they would earn if there were no regulations, assuming there are no factors which would make the earnings premium "efficient", that is, justified. The writers state they could find no evidence that there are such efficiencies to explain lawyers' premium. In other words, the premium (excessive earnings of lawyers) cannot be justified. The writers have calculated that lawyers' "inefficient earnings premium" at the present time is about fifty percent. Stated another way, the Brookings Institution writers contend lawyers should be making one-half of what they now earn. The Brookings book further asserts that the inefficient earnings premium enjoyed by lawyers contributes to the income inequality (income gap between the poor and the rich) in the United States. The writers also argue that even if entry restrictions (regulations) do not generate inefficient earning premiums, there should still be deregulation because (i) consumers of legal services would continue to recognize differences in skills and ability and (ii) lawyers would still be hired but in a more competitive environment.

The authors apparently realizing they were taking a dramatic, if not drastic, position and because the book is a publication of the highly regarded Brookings Institution, the book is written with Ph.D. level economic and statistical terminology together with 105 footnotes, 6 charts, 8 tables, 7 equations and

7 pages of references to other publications. For example, one of the footnotes is the following:

(2) We corrected for serial correlation in the regression. When we lagged the number of lawyers one year and estimated earnings premiums, the coefficient was 0.044 with a standard error of 0.010 ($R^2 = 0.40$).

Some of the regulations, policies and factors which the writers claim should be eliminated are:

1. The American Bar Association's authority to accredit law schools.
2. Laws in most states which require an applicant to have graduated from an ABA-accredited law school.
3. The ABA's reluctance or slowness to accredit law schools.
4. State laws which allow the ABA to enact regulations as to the type of legal service which firms and lawyers can offer. For example, a firm is prohibited from offering legal services unless it is owned and managed by lawyers.
5. A law school which lowers its LSAT requirements to admit more students risks being put on probation by the ABA because it has accepted too many students who failed to pass.
6. ABA regulations, State laws and bar association rulings which broadly determine which activities constitute the practice of law.
7. The practice of state and federal government to adopt laws and regulations which require more lawyers.

Winston and Crandell, two of the writers, had an op-ed article in the Wall Street Journal (August 22, 2011) in which they stated in summary the arguments of their book for lawyer deregulation. A few days later blogs picked up the issue. There now appear many blogs and comments

which may be found by a Google search for "deregulating lawyers". *Truth on the Market* at www.truthonthemarket.com quickly organized an internet symposium for last September 19 and 20 which considered the following questions:

- Should lawyer licensing be abolished?
- What alternative regulatory approaches or structures should be considered?
- What would a deregulated market for legal services look like?
- Does lawyer regulation raise issues different from those of licensing and regulating other professions?
- Does delegating to lawyers the power to restrict the right to practice law violate the antitrust laws?
- What are the First Amendment implications of regulating what non-lawyers can say about the law?
- To what extent can national or global competition alone break down barriers to law practice even without deregulation?
- What are the implications of deregulation of the profession for law schools?

The above questions are those which would normally arise when the question of abolishing lawyer licensing is discussed.

The September 5, 2011 issue of the print edition of *The Economist* had an article summarizing the book. The article concluded with the comment that "(t)he question is whether the tens of billions of dollars being wasted on the system are an acceptable cost for keeping a few bad lawyers, alongside many decent ones, from offering their wares". The cost referred to includes the cost of an undergraduate degree and a law degree, the cost for being prepped for the bar exam, the annual \$64 billion earnings premium and \$10 billion in annual "deadweight" loss, which is defined as economic activity stifled or deterred by the cost of lawyer regulation.

The bar has long recognized the problem for lower and middle income people to afford legal services. The primary bar response has been the *pro bono* program which is vigorously promoted at the national, state and local levels. The *pro bono* program, understandably, does not involve deregulation. The *pro bono* concept is that lawyers will render legal services free of charge to qualified persons. The Mississippi Supreme Court is in the process of adopting new rules or amending old rules having to

do with client conflicts of interest so that it is easier for lawyers to give free legal advice through radio and television talk shows as well as legal clinics. An article by Deborah H. Bell, Professor of Law, University of Mississippi, which appears in the Summer 2011 issue of *The Mississippi Lawyer*, discusses the proposed changes.

The fact the prestigious Brookings Institution commissioned three scholars to produce a book (as compared to a “white paper”

or an article) to advocate the deregulation of the legal profession must be taken seriously by lawyers. The premise of the Brookings book may not gain traction. On the other hand, the issue of deregulation might get drawn into the national political discussion by the student-loan and cost-of-higher-education issues which have come up in the recent “Occupy” movement and are now being discussed by elected politicians. ➔

Hinds County Law Library

Free Lexis? Free Westlaw? Indeed, every lawyer in the tri-county area has free access to both Lexis and Westlaw—paid for by Hinds County filing fees designated to support the county law library. The only catch is that you have to go to the State Library for Westlaw or to the Eudora Welty Library or courthouse libraries for Lexis to get access—still it’s a great deal.

Hinds County has been more creative than most in the use of its county law library funds. The money comes from the public and the benefits should be available to both the public and the bar. To that end, satellite law libraries have been established in multiple locations.

All three county courthouses (Circuit, Chancery, and Raymond) have basic legal materials—Mississippi Reports, Mississippi Code, Encyclopedia of Mississippi Law, and other books. Both the Circuit and Chancery Courthouses in Jackson have at least one computer workstation that can be used to create and print documents or to access Lexis.

The State Library is mainly funded through the Mississippi Supreme Court; but its Westlaw subscription is paid for through county filing fees and is available to all library users at no cost other than printing, though CABA members are not charged for printing. The Library’s law collection is extensive and it is a major resource in the state for legal materials.

The Eudora Welty Library on State Street has the most hours of availability. Filing fees pay for the basic legal materials housed there in hard copy and for access to Lexis through designated library computers. There is a charge for printing.

A brochure describing law library hours, services, and availability is available on the CABA website.

Ben Piazza chairs CABA’s Law Library Committee, which meets with representatives of all the satellite libraries, reviews issues relating to law library service, and makes recommendations to the CABA Board. In turn, the CABA Board makes recommendations to the Board of Supervisors. If you have suggestions about Hinds County Law Library services, please send them to Ben at bjpiazza@schoolaw.com. ➔

This article was Carol West’s last newsletter contribution, which, as was her practice, she submitted well prior to the print deadline.

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HOLIDAY HOURS

- January 1st** New Year’s Day
- January (3rd Monday)** Birthdays of Robert E. Lee’s and Dr. Martin Luther King, Jr.’s
- February (3rd Monday)** George Washington’s birthday
- April (last Monday)** Confederate Memorial Day
- May (last Monday)** . Nat. Memorial Day / Jefferson Davis’ birthday
- July 4th** Independence Day
- September (1st Monday)** Labor Day
- November 12th** Armistice / Veteran’s Day
- November *** Thanksgiving Day
- December 25th **** Christmas Day

* The date of Thanksgiving is fixed by proclamation by the Governor and shall be fixed to correspond to the date proclaimed by the President of the United States. The Governor, at his discretion, designates any additional day(s) for further observance of the Thanksgiving Season by the same proclamation.

** 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.

President's Column (continued from Page 1)

1. Stewpot needs 15-20 people to prepare and/or serve lunch for 250 people (50 of those are the meals on wheels program). Contact: Tara Lindsey, Director of Volunteer Services, (601) 353-2759.

2. Habitat for Humanity is looking for volunteers to work on several build projects they have going on Monday, January 16. Contact: Cindy Griffin, Executive Director, 601-353-6060 Ext. 209.

3. Operation Shoestring has several wish list projects that would be great for numerous individuals or firms to adopt. Contact: Dr. Martha Alexander (601) 594-1725 or Ms. Amber May (601) 353-6336.

(a) #1 priority – Operation Shoestring Afterschool Care Program need 75 stackable chairs to use in their homework/tutoring

room. Our research shows that Sam's Club has commercial vinyl "lifetime" stackable chairs for about \$115 per 4-pack.

(b) Operation Shoestring's large multi-purpose room (57'x36') needs repainting. One wall is red; the other walls are yellow. This project would require approximately 15 gallons of paint, painting equipment, and willing painters.

(c) The multi-purpose room also needs some area rugs for reading areas.

(d) The multi-purpose room also needs storage for books and arts and crafts supplies. Our research shows that Lowe's carries an "Enviro Elements" multipurpose storage cabinet, measuring 70"x35"x18", for \$129. Operation Shoestring needs 3. Lowe's also carries a free standing shelving unit that

measures 72"x36"x18", for \$80. Operation Shoestring needs 3 of these.

(e) Operation Shoestring's Community Room needs to be re-painted yellow. This project would take 12-15 gallons of paint, painting equipment, and willing painters. Additionally, the storage floor wooden tiles are coming up in places and could use some repair work.

4. Build Your Own Project. Perhaps you already have a relationship with an organization or want to begin one. CABA encourages you to build your own Martin Luther King, Jr. Day Project, take pictures, and tell us about it. We want to feature Martin Luther King Day Projects in the next CABA Newsletter. ➡

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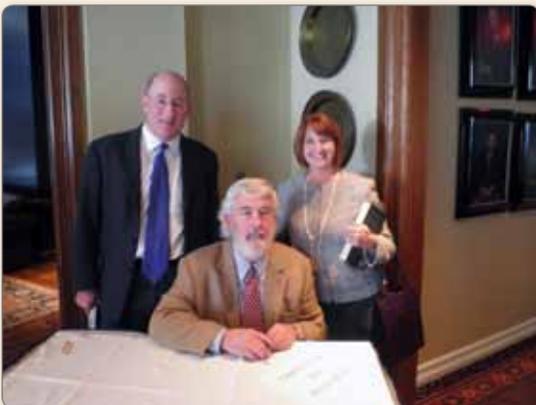
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CHRISTMAS SOCIAL

CABA and the JYL co-hosted the annual Christmas Social on December 1 at the Old Capitol Inn.



October Membership Meeting



Curtis Wilkie, author of The Fall of the House of Zeus, was the speaker to an overflow crowd at the October 2011 CABA Membership Meeting. Pictured are Peyton Prospere, Wilkie, and CABA President Laura Glaze.

- A** Amanda Green Alexander and Laura Glaze, CABA President
- B** Mary Clay Morgan, Danielle Ireland, Doug Manuel, David Kaufman
- C** David Maron, CABA President-Elect, Marcus Wilson, Susan Tsimortos
- D** Judge Linda Anderson and Marlane Chill
- E** Tom Alexander and Pat Evans, CABA Executive Director
- F** Tammra Casico, Roger Riddick, Debbie Foley, Nina Tollison
- G** York Craig, Judge Tom Lee, Dean Jim Rosenblatt, Ricky Luke
- H** Cory Wilson and Collins Wohner, CABA Secretary-Treasurer

Joel Howell On Computing»

A Column for the Contemporary Lawyer



» How to Simplify E-Book Management

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BOOK REVIEW

REFLECTING ON THE LIFE OF WALKER PERCY AT THE 50TH ANNIVERSARY OF THE MOVIEGOER

Reviewed by John C. Henegan

This year marks the fiftieth anniversary of Walker Percy's receipt of the National Book Award for Fiction for *The Moviegoer*, his first published novel. The recognition was an unanticipated turn in the life of Percy, who had published several essays in a few academic and literary reviews with publishing houses rejecting his first two attempted novels. Percy had twice experienced profound tragedy; first as a teenager in the summer of 1929 with the suicide of his father, a prominent attorney in Birmingham, Alabama, then with the suicide of his mother three years later in Greenville, Mississippi. After contracting tuberculosis while interning as a pathologist, he had to abandon his medical career.

The Moviegoer was at the end of the twentieth century on every "Top 100 Novels of All Time" list published in America—along with the works of other Mississippi writers such as Faulkner, Welty, and Wright. Today his six novels and most of his essays remain in print. His writings are the subject of multiple full length biographies and numerous critical essays, works popular enough to be stocked

“Anthologized poets and writers, including Sandburg, Benet, Lindsey, and Faulkner, either visited or stayed at the Percy home.”

in abundance next to Percy's own literary corpus at Lemuria.

Yet, when I sometimes mention *The Moviegoer* to my contemporaries, I generally find that with the exception of those from Greenville, only a few have read his work, and most

are unfamiliar with *The Moviegoer* altogether. Perhaps this is because the first novel appeared in our pre-adolescence or early teens. Even without consideration of its adult themes, it would be a simple matter for the first novel of an unknown author such as Percy, even a novel subject to critical acclaim, to be crowded out by the works of other more prominent writers.

After the father committed suicide, Mattie Sue Percy and her three sons, Walker, Leroy, and Phin, left Birmingham for her

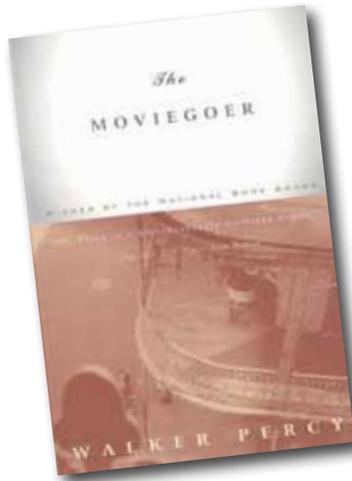
hometown of Athens, Georgia. Mrs. Percy later moved the family to Greenville, Mississippi at the invitation of William Alexander Percy, a much older first cousin of the three boys. Like his own father who had been a U.S. Senator, Will Percy was deeply

admired by the entire Percy family. Will Percy was by that time a lawyer, successful farmer, hymnist, accomplished poet, author, public servant, and decorated infantry officer of World War I. After Mattie Sue's death in a single-vehicle automobile accident, Will Percy adopted the three boys, and he reared them on Percy Street in Greenville.

As a Greenville teenager, Walker became a close friend of Shelby Foote, who was a few months younger than Walker and lived a few blocks away. Like Walker, Shelby's father had died when Foote was a young boy, and Will Percy had also taken Shelby under his wing. Will introduced Walker and Shelby to classical literature and classical music. Anthologized poets and writers, including Sandburg, Benet, Lindsey, and Faulkner, either visited or stayed at the Percy home. Under Will's influence, Walker and Foote became avid writers for the high school paper, contributing poetry, news features, and other commentary during their four years there.

Walker decided to become a scientist after going to the 1933 Chicago World Fair with Cousin Will and his two brothers. After high school, Walker attended the University of North Carolina at Chapel Hill, majoring in chemistry. He then entered the medical college at Columbia University in Manhattan. Unbeknownst to his professors or fellow students, he regularly saw a psychiatrist for three years as he tried to come to terms with the deaths of his father and mother.

While Walker was in medical school, Will Percy wrote *Lanterns on the Levee*, which he dedicated to Walker, Leroy, and Phin. *Lanterns* is Will's memoir, covering his days at Sewanee and Harvard Law and as an infantry officer, the Great Flood of 1927, and the first quarter century of Mississippi politics when Will's father, Leroy Percy, was defeated for re-election as a U.S. Senator by James K. Vardaman. *Lanterns* came out in 1941, the same year as *The Mind of the South* by W. J. Cash. Both works, nationally praised when published, remain in print with *Lanterns* in some ways a microcosm of Cash's work. *Lanterns* is essential reading for anyone who wants to develop an understanding about Mississippi political, social, and economic history.



Will first went to a tuberculosis sanatorium in the Adirondacks and later to another one in Connecticut. While convalescing, he read the works of European existential philosophers and theologians. He later studied Aquinas after a fellow patient challenged Will's professed lack of religious faith. Will thus began his journey toward becoming a Roman Catholic, which finally happened several years later.

In the fall of 1945, Will joined the medical faculty at Columbia, but he withdrew before the first semester ended due to his illness. He went back to Greenville. Brother Leroy soon returned from the Army. Brother Phin returned from the Navy. Shelby Foote came home from the Marines. Foote resumed his writing with Ben Wasson helping Foote be published in *The Saturday Evening Post*. Foote encouraged Walker to begin writing, and he also ridiculed Walker about his interest in Roman Catholicism warning him that he was "in full intellectual retreat."

Walker's poor health forced him to leave Greenville and find another tubercular cure

site, this one south of Santa Fe, New Mexico. While there, Walker called and wrote Mary Bernice ("Bunt") Townsend. Percy had met Bunt earlier while he was home working at a medical clinic and she was training as a medical technician at King's Daughters Hospital. After returning to medical college, Walker had written Bunt intermittently over the years as she moved from Greenville to Jackson and then to New Orleans. Walker flew from Santa Fe to New Orleans to see Bunt, and at the end of their visit, he proposed.

They later married in New Orleans with Walker making all the arrangements. The ceremony was extremely modest; there were no invitations and no rehearsal. Foote was Walker's best man. Bunt and Walker honeymooned outside Sewanee, returned for a time to New Orleans, where they became communicants in the Roman Catholic Church, and then moved to Covington, Louisiana, where they resided the remainder of their lives.

Walker Percy dedicated *The Moviegoer* to Cousin Will who had passed away 20 years

earlier while Walker was a medical student. *The Moviegoer* takes place in New Orleans and along the Mississippi Gulf Coast, with a life-changing trip to Chicago, during the final week of Mardi Gras. The protagonist is John Bickerson Bolling, a 29-year-old stock broker and bond dealer, who is called "Jack" by his family and his clients and "Binx" by his former college fraternity brothers and classmates.

Binx Bolling has lived for the past four years in Gentilly. He is a "model boarder and a model citizen" who "take[s] pleasure in doing all that is expected" while he works in the satellite office of a small but successful New Orleans brokerage firm. Binx tells us early on that his family is "somewhat disappointed" in his line of work. They thought that he might go into law or medicine or even pure science. He confesses that he had "dreamed of doing something great." But "there is much to be said for giving up such grand ambitions and living the most ordinary life imaginable, a life without the old longings; selling stocks and bonds and mutual funds; quitting work at five o'clock like everyone else; having a girl

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and perhaps one day settling down” with a Southern girl and having a “flock” of children. Nevertheless, there is no serious prospect of marriage or children on the horizon.

In the opening paragraph of *The Moviegoer*, Binx lets us know that Aunt Emily has summoned him to her home in the Garden District for lunch for one of her “serious talks. It will be extremely grave, either a piece of bad news about her stepdaughter Kate” or about Binx’s “future and what I ought to do.” Binx confides that the proposed meeting “is enough to scare the wits out of anyone, yet I confess I do not find the prospect altogether unpleasant.”

Perhaps it is his anticipation about lunch with his Aunt. In any event, as Binx dresses for work and places his wallet, notebook, pencil, and keys into his pockets, he discovers that they all look “both unfamiliar and at the same time full of clues.” So “for the first time in years, there occurred to me the possibility of a search.”

What is Binx searching for? “It is the fear of exposing his own ignorance that constrains him from mentioning” the subject. He avers that he does not know. Later he confides that “[a]ny doings” of his father—a physician who was overwrought and had enlisted and died in World War II—“even his signature, is in the nature of a clue in my search.”

Binx tells us of his prior “vertical search” where he “stood outside the universe and sought to understand it.” Then he sat in his room reading “key books on key subjects...” Upon finishing his last book, Binx laments that while “it seemed to me that the main goals of my search were reached or were in principle reachable...The only difficulty was that though the universe had been disposed of, I myself was left over...still obliged to draw one breath and then the next.” Thus, his vertical search was over.

Binx has now undertaken his horizontal search which requires that he leave his “room and wander in the neighborhood.” His curiosity and self awareness had previously manifested themselves as self absorption even an acute self obsession. When encountering other people during his vertical search, even those very different from him, Binx noticed

nothing, or if he did, what he noticed was altogether unremarkable. Having awakened to the horizontal search, he now encounters people anew as though “for the first time... like Robinson Crusoe seeing the footprint on the beach.”

During his vertical search through the ideas found in “fundamental” books, he “wandered as a diversion.” Now, he tells us, “I wander seriously and sit and read as a diversion.” Binx confides that there are still times when he “awake[s] in the grip of everydayness. Everydayness is the enemy. No search is possible.” He defiantly tells us, “I’m a son of a bitch if I’ll be defeated by the everydayness.”

Neither his mother’s family nor his father’s family understands Binx’s search. The former are devout Roman Catholics, and they think that Binx has lost his religious faith. The latter send Binx notes with quotations of Marcus Aurelius. They are ascetics who believe that “the world makes sense without God and that anyone but an idiot knows what the good life is and any one but a scoundrel can lead it.” As for Binx, he says he doesn’t “know what either of them are talking about. Really I can’t make head or tail of it.”

As a result, members from both families—his mother, Aunt Emily, and her stepdaughter Kate—poke gentle fun at Binx and his quest. Binx’s mother and Aunt Emily do so because the need for such a search is foreign to both. Kate pokes fun for different reasons. She has always been somewhat shy and bookish. In the eyes of her stepmother, Kate still takes her “girlish socialism”—acquired while at Sarah Lawrence—too seriously. Despite all of her misfortune and vulnerability and increasing withdrawal from the daily routines of the Bollings’ life, Kate believes she is the one person who has any insight or understanding into Binx’s pilgrimage. While Aunt Emily believes Binx is a “proper Bolling” and Uncle Jules thinks Binx is a “go-getter”, Binx does not fool Kate. She tells him, “You’re like me, but worse. Much worse.”

But we have ample reason to doubt that Kate is reliable in such matters. Her first fiancée died in an automobile accident while she was in the car. She is now engaged to Walter Wade, who has not caught on

to the Bollings’ elliptical ways and is more attuned to what Mardi Gras krewes that Binx might join rather than Kate’s well being. Kate has had a breakdown of sorts and is seeing a psychiatrist. She tells Binx that her psychiatrist is “charmed” with her, but she herself sees no sign of improvement.

Aunt Emily has summoned Binx to Wednesday lunch to ask him to invite Kate out to watch one of the Mardi Gras parades at a friend’s house. Speaking to his Aunt, he learns that Kate is not afraid of another accident; she is afraid of a “general catastrophe.” Kate is having more and more difficulty getting out to meet people. Walter is a krewe captain, and he “can’t possibly get away.” Sam Yerger, an old friend of the family who is an writer and lecturer on books about the Deep South, is one of the only two people that Kate listens to, but he won’t arrive until the weekend. Binx and Kate have always gotten along, and Binx is one of the only two people that Kate ever listens to. Binx tell us that what Aunt Emily really means is that she hopes that he “can hold the fort with until Sam arrives.”

What follows as we travel with Binx is as fully drawn and objective an accounting of the individual characters whom Binx encounters as one will find in a novel. Yet it is humorous and compassionate and endearing and affectionate, even loving. In these encounters, Binx engages in his search without yielding or compromising, without sentiment or condescension, and without rancor or defensiveness. The passage about his life as part of his father’s family—a Bolling of Feliciana Parish sitting on the porch in the dark talking about the size of the universe and the treachery of men—and his very different life as part of his mother’s family—a Smith on the Mississippi Gulf Coast eating crabs and drinking beer under a 150 watt bulb—is one of my favorite pieces of writing. Binx’s openness to the lives of others and their difficulties is not without challenge or risk, but as a part of his search, he believes, and continues to believe, that whatever should follow is worth the candle. *The Moviegoer* is well worth the read, and even a second reading. ➡

Tribute to Professor Carol West

By Jim Rosenblatt

Dean, Mississippi College School of Law

Carol West, a longtime professor at Mississippi College School of Law, passed away on December 5, 2011. Professor West personified the culture of our law school in terms of caring for students, promoting learning, and overseeing the well being of MC Law and Mississippi College. Professor West was with MC Law from its beginning in 1975. She oversaw the creation of our all-important law library when books were the primary source of legal research. Later she became a tenured faculty member and was well known and respected for her teaching in the areas of family law, advanced legal writing, criminal law, and experiential learning.

Professor West loved the law school and its students. She devoted extraordinary amounts of time to meeting with students, listening to them, and offering advice and encouragement. Students appreciated the genuine interest she showed in them and responded in ways that demonstrated the confidence she showed in them. The phrases I have heard uttered so often by her former students in this last month are “She believed in me when no one else did” or “She saw value and worth in me.”

Professor West was a superb writer and took great effort to ensure that her students approached writing projects with care, attention to detail, and an eye for clear and precise communication. While students would cringe at the amount of red ink on the first draft of their writing projects, all would admit that their product—after undergoing the iterative reviews from Professor West—was better for her advice and critique.

Always one willing to take on more than her fair share of duties in the university and law school governance systems, Professor West gave of her service to the Mississippi College Faculty Council and several critical law school faculty committees. She was one of the primary authors of the law school’s most recent self-study.

Professor West’s service extended to the

legal community. She volunteered on several legal committees and was instrumental in the creation of the Evelyn Gandy lecture series, an event which is still held annually for women lawyers throughout the state. Professor West devoted many years of service to the Capital Area Bar Association. Patricia Evans, CABA Executive Director, recalls that “Carol served as long as anyone can remember as the Editor of the CABA newsletter. She was the perfect editor. She was always thorough and timely. If Carol ‘corrected’ something in an article, all the contributors knew not to argue because her edits were always right. The kind of talent Carol possessed is going to be greatly missed

by the entire Editorial Board.”

I will always be thankful for the eight years I shared with Professor West at MC Law. The conversations we had in my office were always helpful, insightful, and pleasant. Her light will continue to shine as we remember her time with us. Innumerable students and graduates who were touched by her life will continue as a living testament to her contributions to the legal profession and to individual attorneys.

MC Law will host a memorial service for Professor West at 3:30 pm on Friday, January 20, 2012. We will share comments about the life and contributions of Professor West. The service will take place in the Student Center Auditorium at the law school, located at 151 E. Griffith St. in Jackson. 📍

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