



President's Column

David Maron

America will observe Veterans Day in a few days. A number of CABA members are veterans. We owe our gratitude to them and thousands of other veterans past and present who have served and sacrificed in military service to our nation.

I do not know or care what terrorists and tyrants make of our monuments to democracy and the memorials we dedicate to our dead. What's important is what the monuments and memorials say to us.
– General Colin Powell

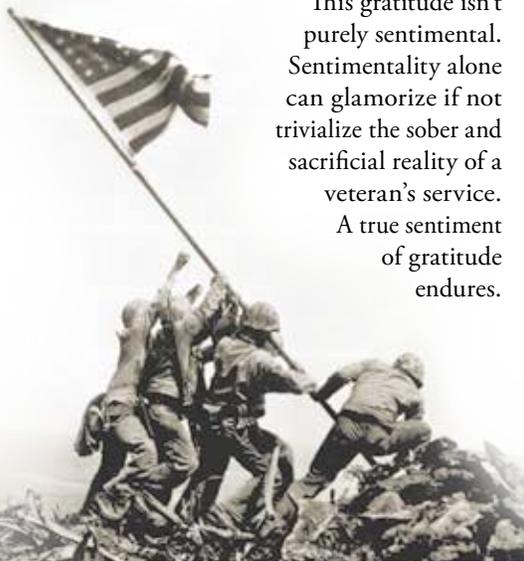


their loved ones are too often unthanked, or thanked inadequately. A busy nation lives its busy life; but veterans' days go on long after the parades. Several years ago I stood in an airport terminal in Fayetteville, North Carolina. It was filled with soldiers and their families from Fort Bragg. As the flights were called and soldiers boarded planes, families hugged, cried, were separated. Many had children my daughter's age.

Some veterans, like Cincinnatus, return to private life. We know them; we go to church together, they're our neighbors, parents of our children's friends, our fellow lawyers and judges. Yet many veterans struggle to reenter civilian life, for a variety of reasons—whether disability, unemployment, PTSD, homelessness. Whatever the circumstance, all veterans deserve our thanks. Let's use this

Veterans Day as a reminder not just to be grateful, but to show and live that gratitude every day.

This gratitude isn't purely sentimental. Sentimentality alone can glamorize if not trivialize the sober and sacrificial reality of a veteran's service. A true sentiment of gratitude endures.



How? Because like a monument, Veterans' Day is a marker, a living memorial that, like Tom Hanks' character in *Saving Private Ryan*, implores a nation to "Earn this!"

Veterans and

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2012 Tennis Tournament
CABA raises \$1,000 for MVLP

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Red Blue Smackdown Debate
October 16th debate: Taggart vs Nash

Upcoming Events

December 06, 2012

Christmas Social (with the Jackson Young Lawyers Association)
5:00 PM to 7:00 PM
Old Capitol Inn

CABA will be celebrating its 80th year and honoring its past presidents at this event. JYL will also collect Toys for Tots at the Christmas Social.

The views expressed in the articles published are solely those of the authors and do not represent the views of CABA, its officers, directors, or staff.

CABA CLE Membership Meeting

November 16, 2012 • 1 pm – 4 pm

Where to Meet

Copeland, Cook, Taylor & Bush
1076 Highland Colony Concourse 600
Suite 100 in Ridgeland, MS

What's the Topic?

- Contempt actions in family law cases
- The basics of guardianships and adoptions
- An ethics hour

FREE for CABA members!

It's \$50 for everyone else. For more information and to sign up, contact Denita Smith: denitansmith@gmail.com

I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man. — Thomas Jefferson

Jefferson was right. And our nation's history, beginning with the Founders who pledged life, fortune and sacred honor, tells the stories of thousands of veterans who sacrificed and served, defended liberty, fought and freed nations from oppression, tyranny and unutterable cruelty against mankind. That history—whether or not we take the time to learn it—compels our gratitude.

Because of the courage and sacrifice of American veterans, liberty has been defended and tyrants defeated around the globe. But the World War II era history is personal to me. It illustrates that the beneficiaries of our veterans' sacrifices go well beyond American soil: in the European Theater—Anzio, Normandy, Berlin, Bastogne and liberating Nazi concentration camps—and in the Pacific and China Burma India theaters—Midway, Guadalcanal, Airmen flying impossibly dangerous missions over the Himalayas. I am a grateful beneficiary

of that service.

I have a certificate that is one of my family's most treasured possessions: my father's certificate of naturalization. My father, who died in 1990, was born in West Prussia in the late 1920s. The allies defeated Hitler. But not long after the celebrations of VE-Day, the carnage of war was draped by what Winston Churchill described as the descending Soviet "iron curtain." My father and his family became DP's—displaced persons, refugees—stuck in Soviet occupied territory. But for the American courage to stand against aggressive Soviet expansion, that's where my father would likely have remained trapped.

The post-war service of our veterans preserved a free western Europe. Nowhere was this service more vividly displayed than in the Berlin Airlift where American servicemen flew impossible cargo missions into a Soviet-blockaded Berlin. America's political will and military strength persevered, and the Soviets ended the blockade, their expansion halted. That stand by a war-weary America preserved a way for my father and many like

him to make a new start in the USA. In 1947 he escaped from the Soviet-controlled Eastern Zone (later East Germany) to the American sector of what later became West Germany, and in 1951 completed the immigration process and came to America. My family and I will forever be grateful for the service and sacrifices that defeated tyranny and made the hope of American liberty possible for so many.

How can we begin to thank all our veterans adequately? Holidays? Monuments? As General Powell wrote, "What's important is what the monuments and memorials say to us." We need to think about it more often than on holidays. We need to act and live as a grateful nation.

God grants liberty only to those who love it, and are always ready to guard and defend it.
— Daniel Webster

A war memorial inscription reads "the honor of the heroic dead is the inspiration of posterity." What gratitude do we inspire in the next generations for those who sacrificed so much? Do they love liberty? Do they know the cost to those who defend it? Have we told them? 🇺🇸

CABA Membership Meeting October 2012



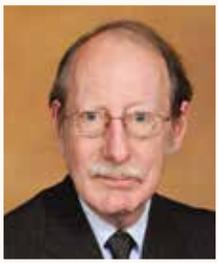
Local political commentators

Andy Taggart & Jere Nash were the speakers at the October CABA Membership Meeting. Pictured are CABA President David Maron, Taggart, CABA Vice-Chair for Programming Committee Meade Mitchell, and Nash.

JOEL HOWELL

» On Computing

Focused on the Contemporary Lawyer



This month we honor our veterans. Here is a site that gives you an opportunity to do so. The National League of Families of American Prisoners and Missing in Southeast Asia (www.pow-miafamilies.org) was incorporated in the District of Columbia on May 28, 1970. Voting membership is comprised of wives, children, parents, siblings and other close relatives of Americans who were or are

listed as Prisoners of War (POW), Missing in Action (MIA), Killed in Action/Body not Recovered (KIA/BNR) and returned American Vietnam War POWs. Associate membership is comprised of POW/MIA and KIA/BNR relatives who do not meet voting membership requirements, veterans and other concerned citizens. The League's sole purpose is to obtain the release of all prisoners, the fullest possible accounting for the missing and repatriation of all recoverable remains of those who died serving our nation during the Vietnam War.

Manuals are for smart people who want to know how to get the most out of their products. But what if you've lost it? Or maybe you bought a used product that didn't come with a manual. No problem!

Look for it at ManualsLib.com. It's an online library packed with manuals for a wide variety of equipment. This database consists of more than 868,349 PDF files and becomes bigger every day. Search results include manual name, description, size and number of pages. You can either read the manual online or download it to your computer. Moreover, documents can be shared on social networks.

More and more, computing includes the power of portable devices. The following applications and web addresses may prove helpful. *Thanks to Cheryl Niemeier.*

ABA Journal – Instant access to legal news and monthly articles reported by the most well-know United States' legal journal.

CCH IntelliConnect Mobile – Available to IntelliConnect subscribers, this app includes content from several Aspen treatise titles and Smart Charts from IntelliConnect in a variety of areas including: corporate governance, federal banking, financial reform, and secured transactions.

CLEMobile – Created by Westlaw, this app allows the user to search and download CLE courses. You can then watch and listen to them on your iPad and get CLE credit if your state allows.

Congressional Record – Access to the daily edition of the Congressional Record and permits browsing of editions back to Jan. 4, 1995 on your iPad.

Constitution – Access to the entire United States Constitution.

DocketLaw – Calculate court deadlines based on rules specific to a jurisdiction. Calculations can be performed based on the rules of more than 300 federal and state courts.

E-Delaware – Access to Delaware corporate and alternative entity statutes, Articles 8 & 9 of the UCC and law summaries from the Delaware Chancery and Supreme Courts.

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MISSISSIPPI COLLEGE LAW LIBRARY HOURS

FALL 2012

AUGUST 15 – DECEMBER 19

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

THANKSGIVING HOLIDAY: NOVEMBER 16 – NOVEMBER 25

Friday (Nov. 16th)	7:30 a.m. – 5:00 p.m.
Saturday & Sunday (Nov. 17th & 18th)	CLOSED
Monday – Wednesday (Nov. 19th – 21st)	7:30 a.m. – 5:00 p.m.
Thursday – Sunday (Nov. 22nd – 25th)	CLOSED

EXAM SCHEDULE: DECEMBER 2 – DECEMBER 12

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

DECEMBER 13 – DECEMBER 19

Thursday – Friday (Dec. 13th – 14th)	7:30 a.m. – 5:00 p.m.
Saturday & Sunday (Dec. 15th – 16th)	CLOSED
Monday – Wednesday (Dec. 17th – 19th)	7:30 a.m. – 5:00 p.m.

Hours subject to change without notice.
For more info, call the Circulation Desk at 601-925-7120.

CABA VETERANS

CABA would like to recognize members of our organization, and we are proud to count among our membership so many service men and women who are veterans of the Armed Forces. Thank you for the tremendous sacrifices you have made to defend us and our freedoms that we all too often take for granted. The CABA members listed below provided the newsletter with information about their military service.

Jackson H. Ables, III
Lieutenant, U. S. Navy

Rhesa H. Barksdale
Captain, U. S. Army

Bernard H. Booth
Lieutenant Commander, U. S. Navy

Richard Bradley
Colonel, U. S. Air Force Active Reserve

Charles L. Brocato
Staff Sergeant, Air National
Guard and Air Force Reserve

Rusty H. Comley
Captain, U. S. Army

Thomas Crews
Captain, U. S. Air Force

Thomas W. Crockett
Lieutenant, U. S. Air Force,
Colonel, U. S. Army

Toby Gammill
Captain, U. S. Army

Wayne Ferrell
Lt. Colonel, MS Air National Guard

Clarence T. Guthrie, III
Major, U. S. Marine Corps

Jerome C. Hafter
Major, U. S. Army Corps of Engineers

Stephen Huwe
Captain, MS Air National Guard

Samuel W. Keyes, Jr.
Lt. Colonel, MS Air National Guard

Steven A. Kohnke
Captain, U. S. Air Force

M. Mark Majors
Lieutenant Colonel, MS
Army National Guard

J. Morton Matrick
Sgt. First Class, U. S. Army

Kent McDaniel
First Lieutenant, U. S. Army

John Land McDavid
First Lieutenant, Air Force,
Army (Airborne)

David W. Mockbee
Captain, U. S. Army Reserve

Alan Moore
Specialist 5th Class, U. S. Army

James W. O'Mara
Captain, U. S. Army

James Peden, Jr.
Brigadier General, MS
Air National Guard

Robert H. Pedersen
Major, U. S. Army

Ben J. Piazza, Jr.
Captain, U. S. Navy

Bill Purdy
First Lieutenant, U.S. Marine Corps

Charles P. Quarterman
Captain, U. S. Air Force

Barney E. Robinson, III
Lt. Colonel, MS Army National Guard

James H. Rosenblatt
Colonel, U. S. Army

Ermea J. Russell
Colonel, U.S. Army

Michael S. Smith, II
Sergeant, U. S. Marine Corps

Leslie H. Southwick
Lt. Colonel, MS Army National Guard

Adam J. Spicer
Information Systems Second
Class, U. S. Navy

Stephen J. Stubblefield
First Lieutenant, U. S. Army

Davis Lee Davis Thames
Brigadier General, U. S. Army Reserve

David L. Trewolla
LTJG, U. S. Navy

Jeremy C. Vanderloo
Major, United States Marine Corps

Matthew T. Vitart
First Lieutenant, MS Army
National Guard

William L. Waller, Jr.
Brigadier General, U. S.
Army National Guard

Scott W. Welch
Captain, U. S. Air Force

Patrick S. Wooten
Major, Army National Guard

CAPTAIN PERCY, PATRIOT

Reflections on Veteran's Day 2012

By James L. Robertson



“One must be a soldier these days—there is no other part a man may play and be a man.”¹ So said Mississippi lawyer William Alexander Percy² to his mother in a September

25, 1918 letter from the Front, just before entering the Argonne Forest.

By November 4, 1918, Percy was sounding somber notes of the horrors of war.

We Honor all Veterans

Many members of the Mississippi Bar have served our country in time of war. Some made the ultimate sacrifice. We honor all, especially on Veterans Day.

Lawyers try to understand what happened and why. We interview witnesses. Study physical and circumstantial evidence. Parse documents and data. We engage experts who weren't there, then insist on the reliability of their opinions. We assess the character and motives of actors. All subject to, and to be funneled within, rules of evidence and burdens of production and persuasion.

Of all human endeavors, war is most unyielding of the full facts of any particular soldier or any particular moment, much less how we should assess a soldier's faith³ or service as a whole.

Who among us did not learn in grade school that Benedict Arnold was a loathsome traitor, only to learn later that, if Arnold had been killed by the last British bullet fired at Saratoga, his name would rest in the pantheon of heroes of the American Revolution?

On Veterans Day we honor all who served in harm's way. I do so with a profound respect for the ambiguity of all things human, particularly man himself, an experience-based lesson I

have learned along the way that my reason will not let me expel.

William Alexander Percy: *Soldier, Poet, Lawyer, Planter's Son*

November 11, 1918, marked the official end of the war to end all wars. We called it Armistice Day. As we approach this year's version of that renamed and this year even redated day of honor—it's Monday, November 12, 2012—my thoughts turn to the fragments I think I know of the service of Will Percy, a member of the Mississippi Bar with whose life I have recently become reacquainted.

Last Spring a friend told me of a new Percy biography.⁴ I soon realized the author was largely following the story line of Percy's classic autobiography, *Lanterns On The Levee* ["LOL"], published the year before he died. I (re)read LOL, and was struck by lines I had forgotten, like "Again the mad dog is loose,"⁵ written in early 1941 by this veteran of the Argonne Forest and so much more in the Fall of 1918.

WAP was larger than life for those of us growing up in the Delta in the mid-20th Century. He fought The Flood, and for relief for its victims, against natural and manmade obstacles. He wrote poems and books and told Delta folk of their souls. His life personified civic virtue. Walker Percy, his adopted son, called Uncle Will "the most extraordinary man I have ever known."⁶

Leroy Percy State Park just west of Hollandale bears his father's name. "Father" ran the Klan out of Greenville a decade after he lost his Senate seat to the ignoble Vardaman.

When his father died, Will Percy had a sculptor create a bronze monument of a gallant knight of the days of chivalry, the lone large word "PATRIOT" chiseled at its granite foot. Matthew Arnold's "Last Word" is engraved on the reverse side of the stone marker in the Greenville Cemetery.⁷ We say more of ourselves when we do these things, than of the one we

would have the world remember. PATRIOT has its special hold, and not just because few of us had escaped Sir Walter Scott.

A wise lady, herself a member of a first family of the Delta, by no means completely "reconstructed," later the godmother of my oldest son, told me once back in the turbulent early 1960s, "Listen, Jim,"—meaning she was going to say something important—"Not everyone agrees with the Percys. I don't agree with everything they do. (The Percys were Greenville liberals.) But I am sure of one thing; I've never heard and am sure I will never hear of a Percy doing a thing not honorable."

William Alexander Percy was The Percy to my generation growing up in Greenville. And not just because a part of our schooling was—with varying degrees of voluntariness—spending summer and Saturday mornings in the town library that still bears his name. Some of us knew and played ball with his name sake, whom we could not imagine calling anything except Billy.

At The Front

WAP served in France with American 37th Division and was promoted to the rank of captain in the U. S. Army Reserve after being mustered out. The French awarded him the Croix de Guerre with a gold and silver star and L'Ordre du Corps d'Armee. Percy received Le Medaille du Roy Albert from the Belgians.

Four chapters of LOL, pages 156–224, tell of World War I through Percy's eyes, including letters he wrote home in the Fall of 1918.⁸ The quotes and notes that follow cannot capture the power of the whole.

"My mind did not judge, my being affirmed." In 1914 WAP so centered his conviction that "France and England must not be destroyed; Germany must not dominate."⁹

"When ... in the early spring news reached us that our country was about to enter the war and had broken off relations with Germany, there was only shouting in my heart."¹⁰

“[W]e’re going into a gorgeous big battle in a few hours,” Percy wrote his mother in the early Fall of 1918.¹¹ Two weeks later he wrote his father, “I have been through hell and returned without a scar,” after the Battle of the Argonne Forest.¹²

*To be shelled when you are in the open is one of the most terrible of human experiences. You hear this rushing, tearing sound as the thing comes toward you, and then the huge explosion as it strikes, and, infinitely worse, you see its hideous work as men stagger, fall, struggle, or lie quiet and unrecognizable.*¹³

“There was no complaining, little talking, and no thinking. Fatigue, cold and hunger quickly made of us mere animals.”¹⁴

*You couldn’t bear to see men smashed and killed around you and know each moment might annihilate you, except by walking in a sort of sleep, as you might read Dante’s Inferno. The exhilaration of battle—there’s no such thing, except perhaps in a charge.*¹⁵

On November 4, 1918, Percy wrote to his mother of discussing orders for the next day in a “wide low-ceiled room [where] one candle was burning, in the shadows about the big Flemish fireplace,” when a peasant woman

*set down on our table three cups and a pitcher of steaming milk. She couldn’t speak a word of French or English, but she had a cheery, brave, bustling way about her, and in sign of friendship she was giving us all she had. In the old days, when Beowulf fought dragons and fly-by-nights, it was always the wife of the king who poured the mead cup for the heroes before battle, but her gesture could never have been as simple and fine as that peasant woman’s. And the milk was delisch—the first I’d had in four months.*¹⁶

On the way home, safely, WAP reflected: *It’s over, the only great thing you were ever part of. It’s over, the only heroic*

*thing we all did together. What can you do now? Nothing, nothing. You can’t go back to the old petty things without purpose, direction, or unity — defending the railroad for killing a cow, drawing deeds of trust, suing someone for money, coping again, all over, with that bright rascal who rehearses his witnesses. You can’t go on with that kind of thing till you die.*¹⁷

On January 7, 1919, WAP learned that Sinkler Manning, his close friend from Sewanee days, and of a prominent family of planters and public servants from the South Carolina low country, had been killed in action five days before the Armistice was signed.

The Old Percy Law Firm

It was my great good fortune in 1965 to come home and to work in the law office that once bore the Percy name. A plaque in the reception area set out the lineage in firm letterheads, the early ones written in script. The name “William Alexander Percy” appeared at several levels. In those days I felt connected not so much from having played sandlot and little league baseball with Billy, as from WAP’s stories in LOL of Professor Samuel Williston at the Harvard Law School.

*Whatever ability I may have to reason in a straight line from premise to conclusion derives from the discipline of those three years and especially from Professor Williston and his horse Dobbin. I lost hours of sleep, pounds of flesh, buckets of cold sweat over Dobbin, the hero of every supposititious contract, the villain of every supposititious sale.*¹⁸

Samuel Williston died on February 18, 1963, at the age of 101. I was a mere 1L, in awe of the author of Williston on Contracts, Reporter for the Restatement of Contracts, of one who molded the mind of a hero from my home town, in no insubstantial part on the back of a supposititious horse named Dobbin. (I had reread LOL’s chapter “At The Harvard Law School” the summer before.)

William C. Keady, later a great U. S.

District Judge, had practiced law with Percy in the late 1930s. Most know the oft quoted paragraph from *Nelms & Blum Co. v. Fink*, 131 So. 817, 820-21 (Miss. 1930), on the latitude allowed counsel in final argument, viz.,

Counsel may draw upon literature, history, science, religion and philosophy for material for his argument... He may sail the seas of ancient learning... soar into the empyrean heights of attainable eloquence... clothe the common occurrences of life in the habiliments of poetry and give to airy nothings a habitation and a name...

Word was and remains at the old firm that the Court plagiarized the longer version of this extensive paragraph word for word from Will Percy’s brief.¹⁹ Keady insisted it was so, and that a faded copy of the brief lay somewhere in firm archives. The brief was unproduced when Keady became a federal judge in April 1968, and when I left Greenville in the Summer of 1979.

The ghosts of Percys past remained, after the firm left the Weinberg Building and again when it moved across the street from the Washington County Courthouse.

Ben Wise’s New Book

I was excited to learn last Spring that Prof. Benjamin E. Wise of the University of Florida had published a new biography. The title is simply William Alexander Percy. The subtitle is The Curious Life Of A Mississippi Planter & Sexual Freethinker.

Wise’s work is altogether sympathetic. The lone exception is the same as with most WAP admirers. If we had one wish, “A Note on Racial Relations” would be removed from LOL. But, then, many of us wish Holmes had never written *Buck v. Bell*, 274 U.S. 200 (1927).

In today’s terminology, Wise insists WAP was gay. Wise grounds his thesis in what he sees as WAP’s understanding of the virtue of this dimension of his being in Hellenism, so central to WAP’s classical education at Sewanee.²⁰ The obligatory texts are Plato’s “erotic dialogues,” the *Symposium* and *Phaedrus*, in which Socrates is seen approving of male love.

WAP wrote “Sappho in Levkas” while at Sewanee. Wise presents this poem (well known among WAP admirers) as a coded articulation of beauty and the sublime through a depiction of men and male bodies. To Wise, “[t]he fusion of spiritual wholeness and homoerotic desire is the main theme of the poem.”

The lawyer in me was at each page wondering of the admissibility of Wise’s proofs. At one level, Wise’s approach is as worthy as that of many so-called Christians who take texts from the Bible and distort them beyond objective recognition.

I do remember back in my junior high school days in the early 1950s hearing that WAP was effeminate, a sissy. I’m not sure it went much further than that, or that I knew at the time just what “queer” meant. What I remember clearly is that none of that mattered. And not just because I was becoming aware of that vicious strategy of “the closed society” – labeling men opposing the Citizens Councils’ post-*Brown v. Board of Education* racial segregation dogma as “homosexuals” or “queers,” and bringing trumped up criminal charges.

I started rereading LOL along with the parallel chapters in Wise’s new book. If everything Wise says is so, if every opinion

he offers is reliable, what rational and fair minded person cares?

As I (re)read LOL’s account of 1914–1918, I pulled my other Percy books off the shelf and reviewed their largely parallel interpretations. Wise never denies WAP’s obsession that “to be a man was to be strong, to be practical, and to sacrifice one’s body and mind and abilities for the larger good of society. Teddy Roosevelt and LeRoy Percy, among others, would have given table pounding approval to Percy’s portrayal of poetry as child’s play next to the work of war.”²¹ And so on this Veterans Day, 2012, I am thankful that this country has finally done away with “Don’t Ask, Don’t Tell,” an abomination of a political compromise Bill Clinton foisted upon us twenty years ago.

On November 12, 2012, this Nation honors all who served in harm’s way, who are doing so now and will do so in the future. And if there are those who would not so honor soldiers of another sexual orientation, I can only say that one of us doesn’t understand what it means to be an American.

Will Percy’s Final Summation

On November 4, 1918, Will Percy wrote home that “Certainly, no one can ever hate war as a soldier does: it is the wickedest, most

hateful thing man was ever guilty of.”²²

Twenty plus years later, in his final summation, Percy argued:

One by one I count the failures — at law undistinguished, at teaching unprepared, at soldiering average, at citizenship unimportant, at love second-best, at poetry forgotten before remembered...What have defeats and failures to do with the good life?²³

Then Percy smacks you across the face with a two by four.

As one comes beneath the tower, the High God descends and faces the wayfarer. He speaks three slow words: “Who are you?” The pilgrim I know should be able to straighten his shoulders, to stand his tallest, and to answer defiantly: “I am your son.”²⁴

The last words of Arnold’s “Last Word” that William Alexander Percy had chiseled into the granite behind PATRIOT before “Father’s” gravesite read:

*Charge once more, then, and be dumb!
Let the victors, when they come,
When the forts of folly fall,
Find thy body by the wall.* 🇺🇸

1. William Alexander Percy, *Lanterns On The Levee* 201 (1941; LSU Press Paperback Edition published in 1973).

2. For convenience, sometimes herein “WAP” or “Percy”

3. Perhaps on November 12, one should find Holmes’ easily googled “The Soldier’s Faith,” an address on Memorial Day, 1895, to the graduating class of Harvard University. I have often wondered whether and to what extent WAP, at Harvard Law School, 1905-08, encountered Holmes and Holmes’ writings. WAP would surely have concurred with efforts such as “The Soldier’s Faith” and Holmes’ even more famous 1884 Memorial Day Address in Keene, N. H. But what about Holmes’ dissent in *Lochner v. New York*, 198 U.S. 45, 75-76 (1905), which was no doubt a hot topic of discussion while WAP was in Cambridge? Or Holmes’ poetic dissents in *Abrams*, 250 U.S. 616, 630 (1919), and *Schwimmer*, 279 U.S. 644, 654-55 (1929)? It is safe to say, in addition to their view of war, WAP and Holmes had something else in common; each could write like an angel.

4. Benjamin E. Wise, *William Alexander Percy* (Univ. of North Carolina Press, 2012). I disregard in what

follows the injunctions of many Rules of Evidence, particularly Rules 701 and 802, only that I may stay within Rules 401-403.

5. *LOL*, at 156.

6. *LOL*, at xviii. Walker Percy’s Introduction to the LSU Press Edition of LOL published in 1973 is recommended reading.

7. http://www.waymarking.com/waymarks/WM3719/The_Patriot_Greenville_Mississippi; <http://www.greenvillecemetery.wordpress.com/2011/12/10/the-patriot/>; or go to Findagrave, Greenville Cemetery, LeRoy Percy (the father) and click on “more images” on the second page of photos. There is the monument. The story of the meaning of PATRIOT opens the Prologue in Bertram Wyatt-Brown’s *The House Of Percy* 3-4 (1994), and a photograph graces the dust jacket. See also, Benjamin E. Wise, *William Alexander Percy* 224-25 (2012).

8. Bertram Wyatt-Brown describes and interprets WAP’s experiences in World War I in *The House Of Percy*, 208-217 (1994). The years 1914-18 in WAP’s life are covered more fully in Benjamin E. Wise, *William Alexander Percy* 144-160 (2012).

9. *LOL*, at 156.

10. *LOL*, at 163.

11. *LOL*, at 201.

12. *LOL*, at 202.

13. *LOL*, at 205.

14. *LOL*, at 207.

15. *LOL*, at 206.

16. *LOL*, at 211.

17. *LOL*, at 223.

18. *LOL*, at 121.

19. In candor, Justice George H. Ethridge, formally the author of *Nelms & Blum v. Fink*, was the one member of the Supreme Court of Mississippi in 1930 who could turn a phrase with the best.

20. While Wise raises this in chapter three, titled “Sewanee,” pages 42-58, his larger thesis of WAP’s awakening extends through at least the first five chapters, through page 91, and only rarely does Wise go many pages without making mention of it.

21. Wise, at 156.

22. *LOL*, at 209.

23. *LOL*, at 348.

24. *LOL*, at 348.

Veterans & Their Benefits

By Derek Hall



Veterans are entitled to certain benefits and services as a result of their service to our country. These benefits and services are administered by the U.S. Department of Veterans Affairs, the “VA,” by legislative authority found in Title 38 of the United States Code.

The genesis of veterans benefits in North America can be traced back to 1636, when the Pilgrims of Plymouth Colony were at war with the Pequot Indians. The Pilgrims passed a law, which stated that disabled soldiers would be supported by the colony.

The Continental Congress of 1776 passed legislation providing pensions for soldiers who were disabled, in order to get more people to join in the war effort. In 1811, the United States passed legislation establishing the first domiciliary and medical facility for veterans. Prior to that point in time, medical care for veterans was provided by each individual state and local community.

In the 19th century, the Nation’s veterans assistance program was expanded to include benefits and pensions not only for veterans, but also their widows and dependents.

After the Civil War, many State veterans homes were established. Since domiciliary care was available at all State veterans homes, incidental medical and hospital treatment was provided for all injuries and diseases, whether or not of service origin. Indigent and disabled veterans of the Civil War, Indian Wars, Spanish-American War, and Mexican Border period, as well as discharged regular members of the Armed Forces, were cared for at these homes.

Congress established a new system of veterans benefits when the United States entered World War I in 1917. This system included programs for disability compensation, insurance for service persons and veterans, and vocational rehabilitation for the disabled. By

the 1920s, the various benefits were administered by three different Federal agencies: the Veterans Bureau, the Bureau of Pensions of the Interior Department, and the National Home for Disabled Volunteer Soldiers.

The establishment of the Veterans Administration came in 1930 when Congress authorized the President to “consolidate and coordinate Government activities affecting war veterans.” The three component agencies became bureaus within the Veterans Administration.

service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard. The benefits include VA Healthcare, Readjustment Counseling Services, Home Improvement for veterans with service connected disabilities, Mental Health Treatment, Dental Treatment, Nursing Home Programs, Disability Benefit Payments, Pensions, Education and Training (the “GI Bill”), the Home Loan Guaranty Program, Burial and Memorial Benefits, Dependents

“A benefit that often goes unused by Veterans and their families is the Aid and Attendance benefit.”

World War II resulted in a vast increase in the veteran population, and Congress responded by establishing a large number of new benefits for veterans of the war. The World War II GI Bill, signed into law on June 22, 1944, is said to have had more impact on the American way of life than any law since the Homestead Act of 1862. Educational assistance acts were passed for the benefit of veterans of the Korean Conflict, the Vietnam Era, Persian Gulf War, Iraq, and Afghanistan wars.

To be eligible for most VA benefits a person has to be discharged from “active military service” under other than dishonorable conditions. Active service means full-time

and Survivor Benefits, and much more. The VA also provides special assistance for children of veterans born with Spina Bifida to Vietnam and Korean Veterans.

A benefit that often goes unused by Veterans and their families is the Aid and Attendance benefit. Aid and Attendance can cover the costs of caregivers in the home (including sons and daughters who are paid to be caregivers, though not spouses) or be used for assisted living or a nursing home. The benefit can provide quite a boost in hiring help for a homebound veteran. It pays up to \$2,019 monthly for a veteran and spouse, and up to \$1,094 for the widow of a veteran.

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Randal Noller, a VA spokesman in Washington, stated in 2011 that the Aid and Attendance benefit was one of the “lesser known” VA benefits. In 2011, of the 1.7 million living World War II veterans, only 38,076 of them were receiving Aid and Attendance benefits, and only 38,685 of surviving spouses were signed up for the benefit. There are certain income restrictions, but many people readily meet those requirements by the time the allowable deductions for healthcare and assistance are factored in.

It’s almost like the VA is hiding the ball on this benefit. VA criteria states that a veteran or his or her spouse has to be 100% disabled to be eligible for this benefit. What the VA doesn’t readily disclose is that, by law, veterans are considered 100% disabled at age 65.

Obtaining VA benefits can be an arduous

process. Many veterans and their families find the paperwork and the process to be too much. Veterans and their family members may request the services of an accredited veterans attorney if (a) the regional office has denied the claim, (b) the claimant has filed a notice of disagreement (NOD) with that decision, and (c) the NOD was filed on or after June 20, 2007. (For claims in which the NOD was filed before June 20, 2007, the claimant generally cannot hire an attorney until the Board of Veterans Appeals denies the claim.)

Since the beginning of this nation, our government has provided some form of assistance to veterans of its conflicts. Whether as an incentive for people to enlist in the service, or as a duty owed by our citizens to those who have given so much in service to our nation, veterans benefits are available to those who

qualify. Since the nation has sent tens of thousands of troops into harm’s way over the past 50 years, the number of veterans eligible for these benefits is certain to remain steady. And if the past is any indication of what the future holds, many of these veterans will need some form of assistance in obtaining these benefits. We continue to do our part in assisting veterans with their claims for benefits they are entitled to receive. ➔

Derek L. Hall is a founding member of the VA Benefits Law Group, PLLC, Derek L. Hall & Gregory D. Keenum, Attorneys. He is an accredited veterans attorney and is certified to practice before the Veterans Administration at all levels from the Regional Office up through the United States Court of Veterans Claims. For more information, he can be reached at 601-414-3717, or 1764 Lelia Drive, Jackson, Mississippi, 39216, derek@vabenefitslawgroup.com. His firm website is www.vabenefitslawgroup.com.

—A Requiem for—

William Cuthbert Faulkner

By John C. Henegan

William Cuthbert Faulkner died 50 years ago at the age of sixty-four. His family had a small private service for his family and friends in Oxford at Rowan Oak, where he had lived most of his life. His was not the first funeral service to be held there. Caroline Barr, Faulkner’s house servant, a freedwoman who had been a second mother to Faulkner and his three brothers and who lived to be 100, had lain in a casket in the parlor of Rowan Oak 20 years earlier. Then a choral group had sung spirituals, and Faulkner eulogized “Mammy Callie” to the mourning families.

Faulkners grieved privately and buried their dead quickly. The prizes and awards and international fame that Faulkner had received during his lifetime did not cause the family to depart from its firmly held traditions. The day of his death family did not send an obituary to the local paper, and they were surprised to read the first news about his death which



contained numerous errors.

Once word of Faulkner’s death went out over the wire services, reporters and journalists began arriving in Oxford and finding their way

to Rowan Oak. There his brothers, Jack and John, took turns greeting the press, at the entrance of the Rowan Oak driveway on Old Taylor Road, a distance of 100 yards from the house proper. The press were turned away. The brothers asked that the journalists to honor the privacy of Faulkner’s wife, Estelle, and the family, who were there to comfort Estelle and to help make the arrangements for the next day. They told the media that interviews of the family and photographs of the grounds or the residence would not be permitted.

The journalistic onslaught became so great that the brothers held a press conference

that evening at a local restaurant. There they agreed to answer questions about Faulkner’s death because so much erroneous information had by then published about Faulkner and the circumstances and even the location of his death. Later that evening, the Mayor of Oxford announced the time and route of the funeral procession. He also told them the site of the family plot, letting them know that the family had provided a place at the cemetery where the press could stand and watch the private burial at a distance. The Mayor finished with the same message that the brothers had given them: “Until he’s buried, he belongs to the family. After that he belongs to the world.”

Two years earlier, Faulkner told his nephew Jim that he wanted to be buried in the same plain wooden casket with a grey pall that Faulkner had picked out for his mother, Maud. After picking up Faulkner’s body at a sanatorium in Byhalia in the early hours of July 6, the brothers took the body to a funeral home in Oxford where they selected

the casket and pall. They followed the hearse to Rowan Oak and helped place the casket and bier in the front parlor. When Estelle's sister arrived later that day, she saw the plain wooden casket covered with the grey pall, and, without consulting anyone, she called the funeral home and told the director to come to Rowan Oak and pick up the casket. Faulkner's body was picked up, re-deposited into a polished cypress casket with a green pall, and returned to Rowan Oak.

During this time, the Faulkner men had all left Rowan Oak and gone home to clean up and put on fresh clothes. When they returned, they were appalled to see Faulkner in a different casket. Nephew Jim started to call the funeral home and tell the director to return and place Faulkner in the first casket, but when he told his father and uncle what had happened, they began to laugh and told Jim that Bill would have enjoyed hearing the story about the switching of the caskets. They yielded with good humor to the wishes of Estelle's sister and began helping with other pre-service preparations, the selection of casket and pall finally resolved.

The next afternoon the Reverend Duncan Grey, Jr., then Rector of St. Peter's Episcopal

Church of Oxford, presided at the service that began at 2:00 p.m. that Saturday. The day was unseasonably hot, even for a Mississippi July day, and the house was without air conditioning.

Family and close friends stood in the parlor and the dining room, the rooms having been cleared for the casket and bier and the mourners. Over the whirr of electric fans, Reverend Grey read aloud from the Order of the Burial of the Dead in the Book of Common Prayer. He comforted Estelle and the family with Job 19:25-27 and its ancient words of assurance:

I know that my redeemer liveth, and that he shall stand at the latter day upon the earth: and though this body be destroyed, yet shall I see God: whom I shall see for myself, and mine eyes shall behold, and not as a stranger.

The Rector then read the Twentieth and Forty-Sixth Psalms and excerpts from the Eighth Chapter of Paul's Epistle to the Romans, beginning at verse 14, passages that the Anglican Church had been using in its Burial for the Dead for 300 years without change (and which it still uses today).

It is unrecorded if the Rector gave a homily, and in any event, it would have been unnecessary. Most of them had known Faulkner much

longer than even the Rector himself with one exception: William Styron, a young novelist from Virginia had traveled there with Bennett Cerf, Faulkner's editor, to write about the day's events for Life magazine. Styron was able to enter the residence only after Estelle, who, along with William, had read and enjoyed Styron's first novel, had told Mr. Cerf that it was okay for Styron to come into the Faulkner home.

The service concluded with the Lord's Prayer being said aloud in unison. The Faulkner men rolled the bier and the casket onto the front portico of the house, and the pallbearers placed the cypress casket in the waiting black hearse.

Afterwards, the hearse, followed by sixteen vehicles, entered Old Taylor Road. A local patrol car led the procession to the cemetery. It turned left onto South Lamar Street. From there, the procession moved north toward the courthouse square turning right at the marble statue of the Confederate soldier on the south of the courthouse lawn and then passing the War Memorial on the north side of the courthouse.

Faulkner had penned without attribution the epitaph for the servicemen of Lafayette County whose names appeared on the bronze plaque of the War Memorial that had been

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built and dedicated after the Korean War by the local VFW. The epitaph reads:

THEY HELD NOT THEIRS,
BUT ALL MEN'S LIBERTY
THIS FAR FROM HOME,
TO THEIR LAST SACRIFICE.

For a long time, these were the only words of Faulkner's that appeared on any public building or monument in Lafayette County with the exception of the titles of Faulkner's novels that had been made into movies and displayed on the marquee and film posters exhibited at the local movie houses.

On the afternoon of his burial, local businesses temporarily closed their doors, even though it was Saturday market. Many had posted the handbill that Nina Goolsby, Editor of *The Oxford Eagle*, had printed and distributed earlier that day:

IN MEMORY of
WILLIAM FAULKNER
This Business Will Be
CLOSED
From 2:00 to 2:15 PM
Today, July 7, 1962

Photographs of the procession as it wound slowly through the square show blacks and whites standing together and filling the sidewalks. They watched in silence, eyes fixed on the passing procession.

Today a bronze statue of Faulkner in his signature British tweed sports jacket and tie, sitting on a bench with pipe in hand, fronts the City Hall on the east side of the square where the procession passed. Faulkner sits comfortably staring at the point where the black hearse had turned right and north onto North Lamar Street.

The patrol car led the procession to Jefferson Avenue where the motor vehicles turned right. They remained on Jefferson until making a final left onto Sixteenth Street and going down the steep incline to what was then the new section of the cemetery. When the procession arrived, mourners who had not attended the private service were waiting to give their condolences to the family. After Rector Gray spoke to the family and said his final prayers, Faulkner's casket was lowered into the earth. A photograph of the graveside

burial published in a national news magazine is on display at Rowan Oak.

Earlier that day, as William Styron walked through the residence before Faulkner's service, he found Shelby Foote in Faulkner's library, which looks today as it did then, complete with oil portraits painted by his mother, Maud, and a bronze bust of Cervantes. Foote asked Styron to help him find *The Marble Faun*, with "My Epitaph," an early poem by Faulkner. The final two stanzas of the poem conclude Styron's now celebrated 1962 article about Faulkner's funeral and the Faulkner biography by Joseph Blotner. They do not appear on his tombstone.

Faulkner said that he once told Malcolm Cowley that he wanted a simple epitaph: "He made the books and he died." Neither this sentence nor for that matter any writing of Faulkner's is inscribed on his tombstone or the Faulkner family monument. His tombstone bears a simple unadorned message—"Beloved, Go with God"—words almost certainly chosen by Estelle.

Rowan Oak and the Lafayette County Courthouse have become national icons of Oxford, and along with Faulkner's grave, they are sites of pilgrimage. Rowan Oak sits on five and a half acres in a quiet residential neighborhood in the 90 degree turn on Old Taylor Road. The house is surrounded by the dense plot of 30 acres of land known as Bailey's Woods just as it was when Faulkner purchased it in 1930.

Today the grounds of Rowan Oak are open to the public during daylight hours. For a modest fee, you will be admitted to the classic Greek Revival residence, which retains more than 90 percent of its original furnishings. Rowan Oak is open every day but Monday and certain Holidays. Displays about Faulkner's life and career in the wide first and second floor hallways are extremely engaging with a good mix of narrative, images, and memorabilia.

The courthouse square is a pleasant walk or a short drive from Rowan Oak. During his lifetime Faulkner often walked to the square, sometimes alone and sometimes with friends. He went to conduct business or simply to sit on the courthouse benches and watch the people of Oxford go about their lives. Today you will

sometimes see visitors sitting on the bronze bench where Faulkner now sits in front of City Hall, having their photograph taken with him.

The county courthouse has been restored since Faulkner's passing. A quotation from one of Faulkner's works about the influence of the courthouse in the mythical community of Jefferson, Yoknapatawpha County, Mississippi, where most of Faulkner's works are set, has been placed on the outside of the courthouse. The VFW recently updated the War Memorial on the courthouse lawn, and Faulkner's name now appears under the Memorial's epitaph.

An avid reader of Faulkner could, if asked, fill virtually the entire square with quotes from Faulkner works about the people who lived in Jefferson and in Yoknapatawpha County and the events that took place on the square and elsewhere. Thankfully, this has not yet happened. Maps of Yoknapatawpha County prepared by Faulkner may be found in *Absalom! Absalom!* and Cowley's edition of *The Portable Faulkner*. His works and maps are a proper guide through his mythical creation although long time residents can regale you with more details about Faulkner's sublimation of "the actual into the apocryphal" of his creation.

Faulkner's grave site is only a short distance from the square. Today an historical marker along the right-of-way of Sixteenth Street, the western boundary of St. Peter's Cemetery, tells you when you are 30 steps from Faulkner's grave. If you arrive at sundown, you may come upon two or three people who have raised a glass of bourbon to the memory of Faulkner before they go to dinner, a tradition begun by Willie Morris while he lived in Oxford as a writer-in-residence at the University. If you arrive at some other time, you may simply find, as I did on a recent Saturday afternoon, fresh flowers placed on his tombstone along with a few coins to commemorate his memory and the lives of the characters that he created in his works. Visitors can stand under the water oaks that have provided shade for the grave site since he was first lowered into the earth and read a passage from a favorite Faulkner work before heading home. Faulkner would have certainly enjoyed the toast, and one would like to think that he would not object to a reading from one of his works, particularly if one did not read aloud. 🍷

2012 TENNIS TOURNAMENT

Co-authored by

Stephanie Jones

Tiffany Graves



CABA raised \$1,000 for MVLP

On October 4, 2012, the Tennis Tournament Committee hosted the Battle of the Barristers Tennis Tournament at River Hills Club in Jackson. Participants enjoyed an afternoon filled with good food, fabulous weather, and smashing tennis. Players participated in a round robin mixed-up doubles format. At the conclusion of eight rounds of play, scores were tallied and four participants had tied for the lead. Will Ballard, Jay Jacobus, Whit Rayner, and Quentin Whitwell played in a heated play-off which resulted in Will Ballard and Whit Rayner being 'crowned' champions.

They donned their winning barrister wigs with pride. Not to be outdone, David Maron and Wes Webb were named court jesters for the event having proven themselves the most entertaining players on the court. They were the recipients of gift certificates for tennis lessons with River Hills' Director of Tennis and Head Tennis Professional, Dave Randall. Door prize winners were Venecca Green Mason, David Clark, Will Ballard, Quentin Whitwell, Wes Webb, and Elizabeth Maron.

Event sponsors included BKD CPAs & Advisors; Baker, Donelson, Bearman, Caldwell & Berkowitz, PC; Blue Cross Blue Shield of Mississippi; Biggs, Ingram, Solop & Carlson PLLC; Carroll Warren & Parker; Forman Perry Watkins Krutz & Tardy LLP; Jones Walker, Law Offices of Richard C. Roberts, III; and, Williford, McAllister & Jacobus, LLP. Contributors were Kinkade's Fine Clothing, Massage Envy Spa, USTA Southern Mississippi, and Taylor Reporting. Tennis Tournament Committee members are Jay Jacobus, Jennifer Johnson, Kristi Johnson, Stephanie Jones, Doug Morgan, Ryan Perkins, and Whit Rayner.

The Tournament raised \$1000.00 for the Mississippi Volunteer Lawyers Project (MVLP), a 501(c) (3) non-profit legal aid organization. Formed in 1982, MVLP is the nation's first formal association of a state bar association, the Mississippi Bar Association, and the Legal Services Corporation (LSC). MVLP's long-standing relationship with the Mississippi Bar and the LSC has resulted in a professional and productive partnership, with attorneys unselfishly offering their time



and talents to serve Mississippi's poor and less fortunate. Funding for the program is provided by a variety of sources that include grants and private donations.

In recent years, MVLP has experienced substantial cuts to its funding. The cuts have affected MVLP's programmatic offerings and the number of clients that it can assist. More cuts are expected in the coming year, which has made developing relationships with legal organizations, like the CABA, very important. "MVLP's partnership with the Capital Area Bar Association has meant so much to our staff, our volunteers and our clients. The support we receive from the annual Battle of the Barristers Tennis Tournament goes such a long way toward helping us fulfill our mission of providing high quality legal assistance to low-income Mississippians," said MVLP General Counsel Tiffany M. Graves. 🏏

Tennis Tournament photos continued on the next page...



TENNIS TOURNAMENT 2012

Scenes from the CABA Tennis
Tournament held on October
4, 2012 at the River Hills Club



CAPITAL AREA BAR ASSOCIATION DEBATE

October 16, 2012 • Volume 1 of 1

The following is a transcription of the presentation by political commentators Andy Taggart and Jere Nash at the October 16, 2012 membership meeting, prepared by Bowers Court Reporting.

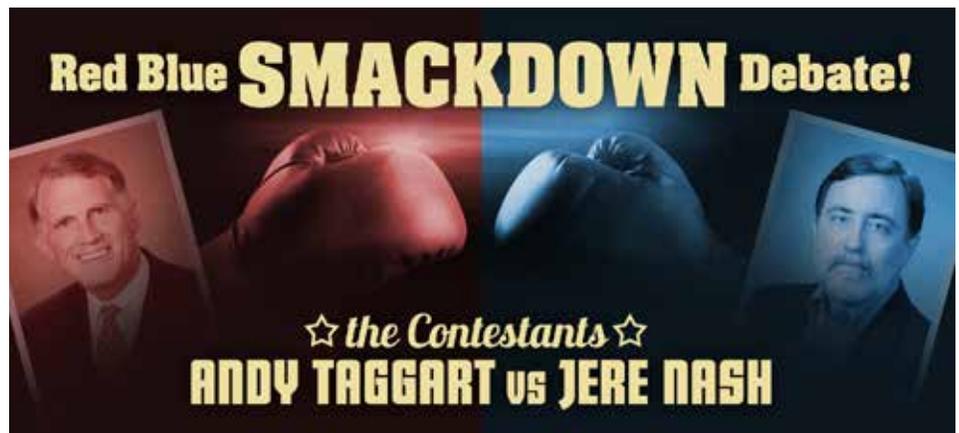
MEADE MITCHELL: It's my pleasure to welcome Andy Taggart and Jere Nash to our program today. When I was arranging all of this and I was sending e-mails, it was right about the time of the Republican Convention, and there were a lot of great e-mails going back and forth with them about the Eastwood Chair and you may hear a little bit about that as they talk. Let me tell you a little bit about both of them.

Andy Taggart is a partner in the law firm of Taggart, Rimes & Usry. He was formerly chief of staff to Governor Kirk Fordice. He previously served on the Madison County Board of Supervisors and was president of that board.

He's a frequent speaker on a variety of topics. He's been instrumental in the Republican party over the last several decades, serving as the executive director of the party and the political director of the party.

Jere Nash is a consultant on matters ranging from political campaigns, marketing, public relations, to commercials. He previously served as the CEO of Stewpot. He was the former chief of staff to Governor Ray Mabus. Prior to that he served as deputy for the State auditor. He has been extremely involved in the Democratic party, included — including serving as campaign manager for Governor Mabus. Both Andy and Jere co-host the Red and Blue Review, a weekly program covering state and national politics on WLBT; and I'm glad to have WLBT here today to record this event. They've also co-authored a number of books including; Mississippi Politics: The Struggle for Power, Mississippi Fried Politics: Tall Tales from Back Rooms.

I want to welcome both Jere and Andy to our program. Please give them a hand.



(Audience applause.)

JERE NASH: I'd like to start this off with a moment of personal privilege. My son Oliver recently was awarded his Eagle Scout from First Baptist Church. Justice Waller and his brother Bob are big, big supporters of the scouting program at First Baptist Church.

Judge Waller, we're grateful for everything that you and your church and your family have done to make that such a successful program. I am — I was not a scout growing up, but I am a true believer in the scouting program now and we're grateful for what First Baptist Church and y'all have done with that program. That will be the only nice thing that I say about Republicans and other people for the rest of the day.

(Laughing.)

ANDY TAGGART: I was about to say, I always try to say nice things about the Chief Justice of the Supreme Court.

(Laughing.)

JERE NASH: But have I some good news for you, Mr. Taggart. Y'all may know that Kirk Fordice's daughter wrote a memoir of her parents, which just was published by the

University Press. And, Andy, the good news is that you are not mentioned in this book.

ANDY TAGGART: The very first thing I did was go to the index to make sure I'm not in that book.

JERE NASH: You are not in that book.

ANDY TAGGART: Yeah, that's very good news indeed.

(Laughing.)

JERE NASH: I have to admit to y'all that this comes at a very, very bad time for me, emotionally and psychologically. Before Wednesday of two weeks ago, I was reading 20 blogs, newspapers, magazines about politics every hour on the hour. I could tell you the latest polls in every state and every race the minute you asked. I have not opened up my computer since Wednesday two weeks ago, the debate for me was that debilitating. And I've been sort of been able to get through life by not reading newspapers or magazines or the Internet for the last two weeks just hoping against all hope that things would turn themselves around.

But I felt like that we were asked to do this program, I should at least open up my

computer and pull out my newspapers that are now two weeks old and review the shape of things so that I could carry on a conversation with Andy in front of everyone. And, Andy, it is not quite as bad as it could be. It's bad, but it's not quite as bad as it could be. The problem with this is before Wednesday of two weeks ago, the President of the United States had Governor Romney on the mat with his foot on his neck and could have just knocked him out Wednesday two weeks ago. Instead, he took his foot up off of his neck and reached down and gave him a helping hand and picked him off the mat and said, "Let's keep going for the next four weeks."

So it has just been very, very difficult to comprehend how that could happen. It is almost malpractice that a campaign manager would allow a candidate to walk off — to walk out into a debating situation and deliver that kind of performance. To this day, I don't know that anyone has an adequate explanation for it, and I'm sure in the books that follow, somebody is going to uncover how it happened; but be that as it may, if the vote were held today, President Obama would get re-elected with 289 electoral votes. You give the President everything that he won four years ago, Andy, and you give Romney Florida, Indiana and North Carolina.

ANDY TAGGART: And Virginia.

JERE NASH: So that leaves the President with 289 electoral votes. The states that matter, then, are Virginia, Colorado and Ohio.

ANDY TAGGART: I'll even give you a little more than that. If we don't win Virginia, we won't win the election.

JERE NASH: Well, the President could lose Virginia and still get 270 electoral votes; right?

ANDY TAGGART: Mathematically.

JERE NASH: Mathematically. So if the President loses Florida, if the President loses North Carolina, he can lose Virginia but he has to win Colorado and he has to win Iowa. And, ladies and gentlemen, that's sort of what it comes down to. It's at 289 electoral votes right now. Florida is neck and neck, Colorado is neck and neck, Virginia is neck and neck, Iowa is a little bit trending toward the President, Nevada is trending toward the President, North Carolina is trending toward

Governor Romney.

This is a very, very close race, and it actually is going to come down to how these two campaigns run their campaigns over the next three weeks, how these two candidates perform in the two debates that follow, and then the entire get-out-the-vote operation that's going to take place on election day. There are a couple of things that we've learned from this campaign. We've learned what we already knew, which is that money, more than any other factor in politics and America today, is what determines the winner. As of September the 30th, these two candidates and their "superpacs" have raised and spent \$1.6 billion, that's through September the 30th.

ANDY TAGGART: That's like one one-thousandths of the yearly deficit in the Obama administration.

(Laughing.)

JERE NASH: Anyway.

(Laughing.)

JERE NASH: I thought we were talking about politics and not policy.

ANDY TAGGART: And on your state analysis, let me respond to that. Think about it a little bit differently — and, by the way, I'm not suggesting that I think this is going to happen — but give Romney Florida, North Carolina and Virginia; which without the three of those, I don't think Romney can win. So I have to put those in my category. Then add Ohio, which I don't think we will win but if he were to win those three plus Ohio, that brings Romney 266, which means he has to win one of any of the other battleground states. I don't think we will win Ohio, so I think we've got a better chance than Wisconsin even though we're behind today. If he wins Wisconsin plus those other three, then he must win two of the other battleground states to break 270. Either scenario is perfectly plausible. I agree with Jere that if the election were held today, I don't think Romney would quite get there but the election is not going to be held today. So that's how the math works from Romney's standpoint.

JERE NASH: Well, here's something that's fascinating that we don't know about in the South, is that most of the other country allows for early voting. In most of these battleground states, people are already voting and have

already voted. In many of the battleground states, a substantial number of people have already voted before the debate two weeks ago, and there have been, obviously, a lot more that have voted since then. So in many ways, what is happening over the course of these last four weeks is not going to affect a substantial portion of the voters in these battleground states.

ANDY TAGGART: Well, we just don't know but it is an important phenomenon that we just haven't seen in the past, which is how many people are voting now that won't be affected by what's happening now.

JERE NASH: So, we've learned that money matters. We knew that going in and the Obama and the Romney campaigns have crystallized that once again. They have already spent \$1.6 billion. By the end of the election they would have spent \$2 billion. The congressional candidates and the independent pacs associated with the congressional candidates will have spent another \$1 billion dollars. So in a period of 12 months, roughly \$3 billion would have been spent on Washington politics, which is an enormous figure, but it's why all these races that we're talking about and all of these states that we're talking about are so competitive. It's because each one of these candidates is fully funded in order to get their message out and in order to respond to other messages that come their way.

The second thing that we learned that we already knew but it's been re-enforced is that negative ads work. It is literally the only way that you can communicate in today's world of politics, and that is talk about the other person.

The third thing that we learned that has been re-enforced from four years ago but it's been magnified is the importance of the nontraditional media, the talking heads on cable television, the blogs, the Internets. They have, to a large degree, determined sort of the ebb and flow of the national political scene in terms of the presidential race, not necessarily the congressional races because they don't focus on it. But more than any other factor, I believe, it was all of the outcry that you saw in the nontraditional media over the debate two weeks ago that helped define that narrative and that helped, I think, influence the polls.

ANDY TAGGART: Well, what a great point, Jere. I had said for many weeks leading up to the presidential debate that debates just don't matter, and I really do believe that's true. The last time you can really measure a debate having a direct effect on elections is probably 1960 when Richard Nixon looked sort of like a brooding, old guy against the fresh and vital J.F.K in those televised presidential debates. After that, unless somebody just completely self-destructs, they just don't matter. Well, who would have foreseen what was going to happen two weeks ago and, in fact, the debate had a profound effect, not only because of the point Jere just made, which is this extraordinary new wave of information that's just pumping all the time out of people's garages and kitchens just as well as out of the war rooms with the big networks, but also because the President did so unpredictably poorly. No one could have foreseen that sort of thing happening or measured the impact that it is already having in the election.

And if you don't mind, Jere, let me kind of jump from there to talk a little bit about where we think all of this is also affecting congressional politics. You know, all the focus, of course, from the national media is on — on the presidential race but we've got 33 US Senate races going on and 435 races for the House of Representatives, and the role of Barack Obama and Mitt Romney at the top of the respective tickets affects all of that. Another thing that affects all of that is the 2010 census and 2011 reapportionment and redistricting. We are not facing the same electoral map that we faced in 2008. Many of the states that Barack Obama one-handedly lost electoral votes and the members of Congress at the same time, of course. In the Midwest, Indiana, Illinois, Ohio lost two, and Pennsylvania all lost members and consequently electoral votes, Barack Obama won all of those states. In the Northeast, Massachusetts lost, New Jersey lost, New York lost two, Obama won all of those states. In the South, on the other hand, Texas picked up four, Florida picked up two. We lost Florida but won Texas. Georgia picked up one, South Carolina picked up one, Arizona picked up one. So the electoral map

itself is different, both in terms of members of the Congress and, of course, votes that are cast for the presidency. And the impact that this has in an election with a margin as razor thin as we think this one really might be, could really affect the results of the election. That is to say how the electoral votes actually have shifted since the last election took place.

The other place I think that is so important is what does that mean about the races for the Senate and the House of Representatives? Of course, popular votes don't matter in presidential elections, except on a state-by-state basis. Barack Obama got 69 million popular votes in 2008. We thought George Bush's record of 62 million in the election before that was earth shattering. Sixty-nine million? Put that into perspective just a little bit. Remember how badly Ronald Reagan beat Walter Mondale in 1984? Mondale only won Minnesota and DC. In 1984, Ronald Reagan got 15 million fewer votes than Barack Obama got in 2008, that's what 69 million votes represent.

And, of course, that would have a profound effect if we ever thought that 69 million people were going out to vote for Barack Obama in November, it would have a profound effect on Senate races and House races all over the country, but nobody believes that 69 million people are going out to vote for Barack Obama in 2008. If I'm right about that, then give the House of Representatives roughly a push. Right

now I think there are five vacancies, roughly 240 Republicans, 190 Democrats. I may be one or two off one way or the other but a margin of about 50 votes, give it a push. I don't think we'll win many, I don't think we'll lose many. Some would say, well, you picked up 62 or 63 seats in the election year in 2010, a lot of those were districts that Republicans really shouldn't win on paper; and so, you ought to lose those in a presidential election year.

Typically, I would agree with that premise but not in this presidential election year because of the points that I just made. The legislatures in those same states that were losing and gaining members of Congress were also being controlled by Republicans as a consequence of the 2010 elections. And so, districts that were redrawn both for states that were losing members of Congress and for states that were gaining members of Congress were seeing their districts redrawn primarily by Republican-controlled legislatures. So the districts within which members of Congress incumbents and challengers are running in November are different districts than we saw as recently as 2010, and that also inures to the benefit of the Republican. So even though we had the big, big pickup in 2010, it strikes me as very reasonable to believe that it will roughly a push, maybe gain. Or we might pick up or lose four or five seats one way or the other. And this will be my final point and then



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you can bash all on me if you want to about congressional politics, in the Senate right now we're behind 53 to 47. Fifty-one Democrats plus two independents that caucus with the Democrats, so 53 to 47. Give the Democrats pickups in Massachusetts, where I think we've still got a chance against the Native American but probably going to lose Massachusetts and give them Maine, where Olympia Snowe is retiring. Give us Montana, Nebraska and North Dakota, and most objective observers would say that's probably about right. So a net pickup of one: 52 Democrats, 48 Republicans. Then you've got sort of six battleground states — if I can remember them all: Florida, Virginia, Ohio, Pennsylvania, Wisconsin. What am I leaving out?

JERE NASH: Missouri.

ANDY TAGGART: And Missouri. Out of those six, three or four months ago I would have thought our chances are really good at winning more of those than we lose, then our candidate in Missouri went completely crazy; but, fortunately, he's running against an incumbent who is a really, really bad candidate. So Akin in Missouri's still got a chance to be elected. I think we've got a legitimate shot to win in Florida, we've got a legitimate shot to win in Virginia, we've got a legitimate shot to win in Missouri. Tommy Thompson has got a legitimate shot in Wisconsin. We're competitive, although I can't tell you I think we're going to win Ohio and Pennsylvania, but if I'm right about that — if we win three or four out of those six, then we end up with a net one or a net two Republican majority in the U.S. Senate. I think those are very plausible scenarios. I think a 50/50 tie is very plausible, which makes the election for the White House even more important because the vice-president would be, of course, casting the deciding votes. So, there you have it.

JERE NASH: One of the reasons Andy and I get along so well is we agree almost completely about political analysis, and you just heard a great analysis of the value of reapportionment. When the Republicans can gain 60 seats in 2010, and it's difficult, then, for Democrats to win the 24 or 25 that we've got to win this year in order to regain

a majority, it's difficult for us to win back a third of it in a presidential year because of the way the district's lines have been redrawn in the last year. It's a very powerful analysis of the importance of reapportionment and I agree with him completely, nobody gives the Democrats a chance at winning 25 or 26 seats in these House races. Andy, in the Senate races, gave you a great analysis of the Senate races. Although he is hoping against the trend lines that we now see in Wisconsin, that we see in Florida, that we see in Virginia, the way that those state polls are working, in those key states of Wisconsin, Ohio, Virginia, the Senate poll trend lines more or less mirror the presidential trend lines. So that right now the President is doing better than Romney is in Wisconsin, the President is doing better than Romney is doing in Pennsylvania and Ohio, so that the Senate trend lines are roughly the same. In Florida, the Democrat in Florida is doing better in Florida than Obama is doing in Florida and Tim Kaine in Virginia is doing a little bit better than Obama is doing in Virginia, but those are very, very close which brings me to the one thing that we have learned in this election, that we have never learned before, that we've never seen before, and that is the role of technology, and it's specifically the role at gathering data about individual voters and using that data to communicate with those individual voters, that these campaigns have invested millions of dollars with very smart people to design software systems that can track the habits of individual voters. Because people are on Facebook, they can attach a cookie to your computer and they know what you do on Facebook, they know the sites that you surf on the Internet, and they can link that to voter registration records and voter history records, and they can pinpoint who they need to target down to the person. And only until this year have we had the technology and the — the money to create the kind of voter tracking system that allows that kind of get-out-to-vote system to operate.

Here in Mississippi we typically can get voter history and we know when people vote and we can call them and we can talk to them, but when you spend \$800 million

in a campaign, you can create your own patented software to send out web crawlers, to get on people's Facebook pages and begin to accumulate this kind of detail that we've never seen before. And it is — it is, I think, going to make the difference in these battleground states. The campaign that has been the most sophisticated voter contact operation is the one that's going to turn out the votes, I think, in these battleground states.

ANDY TAGGART: All right. I've got about seven minutes until 1:00 if there are particular thoughts or issues on someone's mind that you would care for us to address, we're happy to do that, but we're perfectly capable of filibustering to the end as well.

JIM ROSENBLATT: I know Mississippi is not a swing state and we haven't had any media attention. We've got no statewide elections, except for judges. The congressional races seem to be conceded. What kind of voter turnout do you think we're going to get in Mississippi?

ANDY TAGGART: All of that is exactly accurate. The one point that I would say that makes me optimistic about voter turnout is that we always really do well in Presidential election years. Mississippians are patriotic enough to go vote in Presidential election years and I think that from a percentage basis, we will have a relatively higher voter turnout that we typically do, notwithstanding the fact that we just don't have many competitive races here. Although there certainly is an important race here in the Central Supreme Court District and I'm for all the incumbents, let me just say, as far as that.

(Laughing.)

JERE NASH: As you know, we were not a battleground state four years ago and Mississippi generated its highest turnout that it's ever recorded four years ago in the Presidential race. Whether that happens again or not, I don't know that you'll see that high a Democratic turnout. Andy swears to me that we'll see as high a Republican turnout as we had four years ago.

ANDY TAGGART: Well, Republicans are far more motivated to go vote now than we were four years ago. I promise you that.

JERE NASH: Right.

JOHN MCCULLOUGH: What do y'all see as the impact of the election of the respective candidates on lawyers and the legal system?

ANDY TAGGART: Well, that's a hard question to answer and — and one that I haven't really considered. I guess what I would say is, if you believe as I do that ObamaCare represents the biggest regulatory change instituted by the Congress really in my adult lifetime, then I think I would say if the President is reelected, that is sort of the fair employment act for lawyers for the rest of time, just in managing what ObamaCare means and it's rolled out from a regulatory perspective. If Romney is elected and both houses of the Congress become Republican, then in pretty short order, I think you'll see ObamaCare unraveled.

JERE NASH: Following what Andy said, if Romney is elected President and both houses of the Congress go Republican, I think you'll see some national tort reform.

CHAD HAMMONS: In the days after the election, do you think we're going to hear anything about the Bradley Effect? In terms of people not being honest with pollsters.

ANDY TAGGART: Frankly, I didn't know know there was a name for that. I've always found it to be the case, that people are a little disingenuous with pollsters and even exit polling; which is why I'm also always so reluctant to put much stock in exit polling on the day of an election; but do I think we'll hear something about it? I don't think that it's going to be much different than it typically is.

JERE NASH: I assume you're talking about this idea many, many years ago when Bradley, an African American, was running for mayor of Los Angeles, African and the polls showed him with a huge lead going into the election, and he won very narrowly and some claimed that the Bradley Effect was people are not going to tell a pollster that they're got going to vote for or against the African American for whatever reason, and that was talked about a lot four years ago, thinking that the polls had Barack Obama winning very handedly going into the election and they were wondering if the reality would agree

with the polls and, in fact, it did. And and in some cases, the reality was better than the polls. So I think most professional pollsters this year discount that effect.

JOHN HENEGAN: Could y'all compare both candidates' Presidential campaign advisors this time with the ones that were in charge of the campaigns last time and tell us what kind of differences you see in what they're doing.

ANDY TAGGART: Of the key campaign advisors for both campaigns in 2012 as opposed to 2008? It's a little hard for me to do that because I know more about the team now than I knew in 2008 and I don't mean to sound cynical but in 2008, whoever the professionals were on the Republican side were working with sort of insurmountable odds both in terms of the juggernaut that Barack Obama represented and also the challenges of John McCain as a candidate. I think what I would say is that I think Romney's campaign staff have gotten a little bit of a bad rap leading up to the debate when people were sort of throwing off on why can't they get their message straight, why can't they get focused, all that sort of thing. My judgment was that the campaign staff and plan had a message and a focus, and our candidate was too defused in what he was saying. On Obama's side, I think the challenge that the campaign staff faces there is that he more or less listened to his advisors in 2008 and he's not listening to anybody in 2012, that's my assessment.

JERE NASH: I think campaigns matter, I think the competence of campaigns matter, and I think it's more than just the candidate. I think it's the organization of a campaign. Up until Wednesday of two weeks ago, it would be hard to argue that the Obama campaign was running an error-free campaign. Their decision to attack Romney, their reliance on technology, their fundraising, the convention that they held, all of that was campaign management superb. And the Romney campaign was unable to respond really to any of it, they were always being put on the defensive; but I operate under the principle that Democrats rarely win campaigns, Republicans lose campaigns. And I thought it was Romney's to lose until he chose Paul Ryan, and I think the day he

chose Paul Ryan he flipped it and said, it's now Obama's campaign to lose. In the same way that I thought the McCain/Obama campaign four years ago was very close until McCain chose Sarah Palin, and I thought that one decision flipped it, and I still think that it's Obama campaign to lose, and tonight we're going to find out if they're still trying to lose it or not.

UNIDENTIFIED MALE SPEAKER: Can you speak to the VP debate?

ANDY TAGGART: The vice-presidential debate between Biden and Ryan was one of the most entertaining political events I've ever seen, I really do mean that. I thought that the opportunities for Joe Biden to be lampooned would be driven by what he would say. In fact, I even made the observation before the debate that Barack Obama was relying on Biden to stop his campaign's freefall but it's a little like when Barbosa in Pirates of the Caribbean called out the crack and you never knew who was going to get destroyed by the monster, that's what I thought would happen with Joe Biden. Instead he gets lampooned for his mannerisms, not really for the content of his comments. I had a great time that night.

JERE NASH: I think the conventional wisdom is that Biden stopped the freefall and the polls would back that up.

ANDY TAGGART: In whose convention?

JERE NASH: Well, all you've got to do is look at the polls, Taggart, and you can see the way that they've turned around.

ANDY TAGGART: We'll see you on November 6th.

(Laughing.)

(Audience applauding.)

DAVID MARON: Thank you very much, Andy and Jere. And thank you to Bowers Court Reporting for recording this for us. It was entertaining and informative. I hope this evening's debate will be as informative and enjoyable as this one was. Thank you again, gentlemen. 🍷

CAPITAL AREA BAR ASSOCIATION DEBATE was taken on the 16th day of October, 2012, before Megan Reeves, CCR in and for the State of Mississippi, reported by machine shorthand, at the location of Capitol Club, 125 South Congress Street, in the City of Jackson, State of Mississippi.

CAPTAIN EQUITY

ELECTION 2012

LAW SCHOOL METAPHORS & THE POLITICAL WORLD

Were this Presidential election restricted to law school, Mitt Romney would fail Ethics and Barack Obama would fail Moot Court. Unfortunately, the Professors dispensing these grades are not the Professional Responsibility and Appellate Advocacy faculty, but rather a large percentage of 308 million Americans who bother to register to vote and who will actually show up on November 6 to cast their ballot. And as far as tuition is concerned, both candidates are the recipients of full ride scholarships that would make even Law School Deans blush, plus stipends for jets, campaign staffs, ad buys, et al., thanks to influence seeking Super PACs as well as corporate and interest group donors on both sides. And then for nostalgia buffs, there are even some individual contributors who are actually concerned about what is best for the overall interests of America. To be sure, the good government donors are, unfortunately, a charming anachronism, but they still deserve to be listed on the annual law school donor report as “friends,” despite their ever decreasing influence on the election. Hanging in the balance is not a potential J.D. degree, but rather the future of a troubled America plagued by debt, Wall Street and corporate fraud and mismanagement, economic underperformance, and compromised governmental elites that range from a Do Nothing Congress to a bloated TSA (They’re Standing Around) bureaucracy who increasingly seems to be using its access to air travelers’ luggage for nefarious purposes (Five Finger Concourse Discount On iPads Anyone?) Throw in a quickly changing global landscape that ranges from the fanatic excesses of the Arab Spring to an emerging worldwide middle class vying for the life style and finite resources most Americans have come to take for granted and you have all the ingredients for an uncertain future. And finally, there is the stark fact, seldom if ever acknowledged, that despite daily calls for fundamental reform necessary to preserve the American way of life, nobody really wants to give up anything when it gets right down to it.

Oh yeah, and let’s hear it for the troops. That is until they come back from Afghanistan minus an arm or leg, thanks to the Taliban or our allies (it is kind of hard to distinguish between the two lately) wanting federal V.A. benefits or a job. Are these people Patriotic

Protectors or Dependent Government Employees? I suppose a lot of it depends on who you listen to on cable television and talk radio. I would submit that however they are characterized, at the end of the day, they are people who deserve to be treated as such.

So much for orthodoxy, let’s consider the candidates. The Republican challenger, Willard “Mitt” Romney, strikes me as an ambitious and intelligent law student who comes from a well to do family of lawyers spanning multiple generations (read politicians). Success for him in law school and beyond is a given. His primary goal is to “Be” something rather than to “Do” something. His privileged background makes

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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.

him uncomfortable around other students who might be the first in their family to go to law school. Mitt is the kind of guy who has aspired to the United States Supreme Court (read the Presidency) since the fifth grade. He learned a long time ago to tell people exactly what they want to hear. That means that his favorite course is Torts. But in Property, he tells the professor that his first words were not Mommy or Daddy, but rather, Fee Simple Absolute. If the professor prefers to lecture, Willard sits attentively but mute. But if the professor wants classroom participation, Mitt turns into what is derisively known by some as a “Spring Butt” or a “Gunner.” This type of student always has his hand in the air waving manically to attract the professor’s attention. Do any of you former law students recall a former classmate matching this description?

As far as his approach to law school, student Romney understands that success built on pragmatism requires a situational approach to life. Recall when he sought Senator Kennedy’s seat in Massachusetts he tried to run to the left of Teddy, complete with being a confirmed Pro-Choice, Pro-Gay Rights candidate. As Governor of Massachusetts, he implemented omnibus, universal health care reform that was to be his legacy, the centerpiece of which was the personal mandate that everyone buy health insurance. But when seeking the Republican Presidential nomination last Spring, he ran to the right of Rick Santorum, Rick Perry, Newt Gingrich et al. with a perfectly straight face. Suddenly, what used to be Romneycare is now Obamacare. Mitt promises to repeal it on his first day in office. I didn’t know Executive Orders were that handy. Now with nomination in hand, Mitt is suddenly a reasoned moderate. After all, you don’t make A’s in Torts and Property without each one being your favorite course, each professor being your favorite professor, and doing what is necessary no matter how oily and unseemly. Secretly, of course, Contracts is and always was Willard’s favorite course. In the end, winning is everything, period.

This brings us to Mitt’s Ethics grade. As all lawyers know, there is a Truth Continuum

ranging from The God’s Honest Truth on the upside to Dirt Road Fraud at the opposite end of the scale. (Note: the term Dirt Road Fraud was coined by the late George Hewes of the Brunni firm. As far as I am concerned, this is a negative superlative that says it all). In descending order from The God’s Honest Truth is Superior Information and Business Acumen, Silence, Permissible Non-Disclosure, Misleading Statements, Impermissible Non-Disclosure, Concealment, Misrepresentation, Fraud and Dirt Road Fraud. The downside of terminal pragmatism and winning at all costs is that all these terms start to run together after a while. That is not good for any would be lawyer, but it has disbarment proceeding written all over it once you are sworn in and start representing real clients (read The American People).

Unfortunately for the potential client, I suspect that Mitt uttered the God’s Honest Truth at the Boca Raton Fundraiser when he advised those who paid \$50,000 admission that 47% of Americans were devoid of personal responsibility and dependent on government for everything. It is kind of ironic that it was one of the low wage 47 percent servants who taped Mitt and smuggled it out to the media right after he filled the Plutocrats wine glasses. (At least he had enough initiative to do that much). Of course, now Mitt says it’s not true, he really cares about everybody. It is kind of like telling the law review that footnotes are your favorite thing only to be overheard by the Moot Court Board Chairman forcing you to suddenly choose oral argument as your favorite past time.

Black’s Law Dictionary has dedicated an entry to former Governor Romney, to wit: “Res Ipsa Loquitur” or “The Thing Speaks For Itself”... if it speaks at all. For example: ‘I’ll close loopholes and deductions to balance the budget.” “Which ones, Mitt?” “It’s a Secret.” Can you say Character and Fitness Committee?

And then there is law student Obama. He is the first in his family to go to law school and is smart as a whip if not a little aloof. A likable guy who likes to play basketball, he astounded his law school class by running for

student body president as a 1L and winning; unprecedented to say the least. His platform was a guaranteed curve with B as the lowest grade. There would also be the abolition of being called on in class and free beer every Friday afternoon. It sounded particularly good following the tenure of a tyrannical dean, several overzealous, mean-spirited professors and a collective 2.12 law school GPA (read Bush, Cheney and Rumsfeld). And as welcome as the message of hope and change always is in tough times, it got 1L student Obama elected President of the Student Body. But now, even with the Dean retired and the demanding faculty members visiting away at different California law schools, the enthusiastic Student Body President has overdrawn the student activity fund on beer together with a newly established, unfunded Student Legal Defense Fund necessitated by five law student DUIs, all on Fridays. The Student Body President also failed to convince the Dean and faculty to install a B curve. As he seeks reelection, law student Obama looks tired. Hope and change didn’t exactly pan out. The new Dean turned out to be worse than the old one, while the new visiting faculty members not only call on students, but require that they stand to recite. To quote B.B. King: “The Thrill Is Gone” for Student Body President Obama. Now he just wants a clerkship with any law firm who will have him. He seems to have lost interest in what he has been doing and is actually looking forward to taking the bar exam. Based on the first Presidential Debate in October, does any of this sound familiar?

So, who wins in November? It is still a toss-up as of this writing in mid-October. The only thing I know for sure is that life often imitates law school, but it takes someone who has been through the rigors of a three year legal education to fully understand that. Unfortunately, there are 307 million plus voters that never had the privilege of surviving Torts, Property, Contracts, Ethics or Moot Court. As a cut rate fortune teller at the Fair recently predicted, “We shall see what we shall see.” And that is what scares me the most. 🍷

Media Distortions Undermine Benefits of Free Press

By Cory Wilson

“Let the people know the facts, and the country will be safe.” – Abraham Lincoln



There was Dan Rather’s 2004 “gotcha” about George W. Bush’s National Guard service (which relied on documents created by word processing software, which did not exist in 1973 when

W. was actually in the Guard). Barack Obama was hardly questioned by an adoring media in 2008, though there was (and is) plenty in Obama’s background that would raise red flags for a conservative candidate. Some more balanced vetting would have been useful.

But instead of accountability, what we have gotten is largely whitewash, and “gotcha” attacks on Mitt Romney and Republicans. MSNBC has been caught twice this year blatantly doctoring footage of Mitt Romney to change the context of what Romney actually said into something that made Romney appear out of touch, or an inept campaigner.

But it isn’t just MSNBC, which hardly passes for a network. For weeks, polls have been almost fraudulently depicted to prove beyond any doubt that Obama has already defeated Romney. Despite data showing significant oversampling of Democrats (and Romney winning Independents in those same polls), the media have relentlessly pushed the story that Romney’s chances are over. Why hasn’t the media focused on Obama’s underperformance? Under 50% as an incumbent usually means that the incumbent is in big trouble. Crickets chirp. The real-time reaction to the first presidential debate tells it all: Stunned journalists could not believe how badly President Obama was routed by a more presidential Romney. Rather than report the news, they felt obliged to explain Obama’s performance, and in many cases make his “points” for him.

And it isn’t just politics. This spring, NBC News was caught editing the 911 audiotape in the Trayvon Martin case, cutting out material statements made by accused George Zimmerman, and changing the entire slant of the story in the process. NBC News launched an “internal investigation,” but the irresponsible journalism could have had a real impact on a criminal

investigation and trial.

The longer-term impact of media partisanship is even more troubling. A press that is reduced to serving as a discredited arm of the Democrat party is dangerous for sustaining our democracy.

Yet that is exactly the public’s perception of the media, and it seems to be growing. A September Gallup poll found that 60% of respondents—an all-time high—had “little or no trust in the mass media to report the news fully, accurately, and fairly.” In a recent poll by Pew, the New York Times’ “believability” dropped 13 points from 2004 to only 49%. The Gray Lady is seen by most Americans as senile.

Most people have abandoned the mainstream media and are increasingly filtering their news to validate their own beliefs. The “free” press is contributing to our country’s polarization. And, if the public tunes out, how will the public stay informed?

Democratic pollster Pat Caddell says that the media have crossed a “dangerous” threshold and are now sitting on stories and distorting facts to support the government (well, the Obama Administration). Think about the coverage on Libya, Afghanistan, and Fast and Furious. Can anyone seriously contend that these would be downplayed if the President was a Republican, or named Bush? Mainstream journalists have spent more energy coordinating their reporting to catch Romney in a “gaffe” than on making the Administration explain its keystone cops response to a 9/11 terror attack. And so on.

Late journalist Charles Kurault put it right: “The one thing that’s worse than hearing about all that violence and all that bad news on television is not being permitted to hear it.”

The late James Madison (who wrote the First Amendment) was more explicit: “A people who mean to be their own governors must arm themselves with power which knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both.”

Bet you won’t hear that on NBC. 🗡️

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The First Amendment guarantees that “Congress shall make no law...abridging the freedom of speech, or of the press...” A free press is foundational to many of the other freedoms we enjoy as Americans.

The guarantee arose in response to laws in Great Britain that allowed for prosecution of statements published against the government, under a theory of sedition. The Founders wanted to make clear that the government could not enact laws that would curtail criticism of those people whom the people elected to be their representatives.

Congress may not have to worry with a law abridging freedom of the press. That freedom is being willingly ceded by the very media that are supposed to be its most vigorous practitioners.

In 1992, about 90% of the DC press corps voted for Clinton over Bush. Their worldview is vastly more liberal than the public’s. Having one ideological view so overwhelmingly represented of course slants coverage.

Perhaps in days past, the slant was more unintended. In the past few years, the mainstream media are not even bashful about it. The “legacy” newspapers and television networks have largely abdicated their vital function of speaking truth to power. They are no longer “equal opportunity SOB’s,” challenging both sides to accountability. Instead, the media have joined one team to work actively against the other. Democrats get a free pass; Republicans get “accountability.”

The short term implications of the media’s dive into the tank for the left are more obvious; the long term, more frightening. And the problem is not that the media are liberal while many more Americans self-identify as conservative. It is that the media are picking the winners (or maybe the losers). It would be as problematic for our constitutional system if the media all lined up to cheer for the right. Rather than reporting news, the media are “shaping” facts to lead the public to vote as they “should.”

There are many blatant examples of media tampering with news to fit a leftist “narrative.”

On Computing (continued from page 3)

Fastcase – Web-based legal research service with access to U.S. cases and statutes. Especially effective for searching state statutes.

HeinOnline – Provides access archival federal registers, law review journals, ABA Journal titles, etc. in a PDF format.

LawStack – Complete legal library on your iPad, plus the Constitution and the Federal Rules with an option to add the various codes and state statutes.

Legal Edge – Legal News App to help you stay informed about current legal development in all areas of the legal field.

Lexis Advance – The app is free, but a subscription is required to access the Lexis Advance content.

Manual of Patent Examining Procedure – Easy searching capabilities of the MPEP. A must for every patent attorney,

OpenReg – Access to regulations published in the Federal Register; track significant

and economically significant regulations published in the Register. Have access to recently published notices regarding final and proposed rule-making and the ability to browse regulations by agency.

Patent Portal – Use this app to retrieve patents and patent applications from the U.S. Patent and Trademark office. Add notes to documents you retrieve and e-mail document sets to others with your notes intact.

PictureItSettled – An app to help you better picture your case negotiations and plan the next steps. This app can be used to track multiple negotiations. Tracks the dollar intervals between moves and the time intervals between offers. The offer history is then extrapolated in both dollar and time to assist parties in seeing whether and when they will reach a deal.

PUSH Legal – Provides access to the Federal Rules and Bankruptcy Code, Federal

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