



## President's Column: *Teamwork Makes the Dream Work*

By Tiffany M. Graves<sup>1</sup>

As I prepare to round the corner of my year as CABA President, I am struck by the hard work and diligence of our committees. I have often commented to Board members and others about how lucky we have been this year to have a committee chair roster full of attorneys who are dedicated to their committees and the association as a whole. I want to use this, my penultimate column, to brag on their good works and, in doing so, remind all of you of everything we have accomplished together so far this year. They say "teamwork makes the dream work." Well, in the case of CABA's committees, that phrase is definitely true.

### Bench & Bar Relations

We will hold the final membership meeting of this Board year on April 17. The Bench & Bar Relations Committee, chaired by **Kyle Williams**, has planned a new appellate judges panel for the meeting that will include the following justices and judges: Justice Dawn Beam, Justice Robert Chamberlin, Judge Sean Tindell, and Judge Latrice Westbrook. Kyle has done an outstanding job of securing these judges for the panel. I am excited to hear their

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perspectives as both new judges and attorneys who answered the call to public service.

### Evening Honoring the Judiciary

We are incredibly fortunate to have **Margaret Cupples** leading our annual judges' dinner where we recognize and thank our local, state and federal judges and present awards to outstanding CABA and Jackson Young Lawyers Association members. This is Margaret's second year leading this committee. She stepped in (and saved us) last year when the chair we appointed moved to Texas. The Honorable Bernice Bouie Donald, U.S. Circuit Judge for the Sixth Circuit Court of Appeals, is the keynote speaker. The committee has done an excellent job of planning what promises to be a special evening for CABA members and our distinguished guests.

### Community Outreach & Pro Bono

While several of our committees offer service opportunities for members, the Community Outreach & Pro Bono Committee was

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## Upcoming Events

### March 26

26th Annual CABA Golf Tournament  
Jackson Country Club

### March 27

CABA Diversity CLE  
Mississippi Civil Rights Museum

### April 25-28

Joint Spring Meeting  
Sheraton New Orleans Hotel

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**CABA**  
**Diversity CLE**

Civil Rights & the Legal Profession

March 27, 2018 at 9am • Mississippi Civil Rights Museum



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created to coordinate both non-law related public service events and pro bono projects. **Jasmine Andrews** and **Ashley Hendricks** have worked hard this year to bring service opportunities that are a bit different from the norm. The committee held an Immigration CLE in the fall and followed it up with an Immigration Legal Advice Clinic at St. Francis of Assisi Church in Madison. Immigration continues to be a hot-button issue in our country. I commend the committee for developing programming around the issue with an eye toward increasing awareness and expanding the network of volunteer attorneys who are helping the local immigrant community overcome legal and other challenges. The committee is planning a legal advice clinic with New Horizon Church in Jackson. It will likely be held in early May.

## Diversity

For the second year in a row, **Nakimuli Davis-Primer** has led CABA's diversity efforts. She has a strong committee, and they are dedicated to finding ways to educate our membership about the importance of diversity and inclusion within the legal profession. The committee has provided "Did You Know" moments at our membership meetings and submitted a diversity column in the previous issue of this newsletter. They are currently planning a CLE program at the new Mississippi Civil Rights Museum that will include a panel discussion and an opportunity for members to tour the museum. The program is scheduled for March 27 from 9:00–11:00 am. Watch your email for more details.

## Annual Golf Tournament

For the 26th year in a row, CABA will host its annual Golf Tournament on March 26 (26 on 26, get it?) at the Country Club of Jackson. **Lanny Pace** and **Ashley Stubbs** chair the Golf Tournament and have done an outstanding job of planning this year's event. Per the usual, we expect the tournament to raise a significant amount of money for the Mississippi Volunteer Lawyers Project. We are grateful to the law firms, law schools, and other organizations that contribute to and

play in the tournament. We are fortunate to have many long-standing "package" supporters of this event and the Evening Honoring the Judiciary.

## Law-Related Education

**Cydney Archie** and **Alicia Netterville** have taken on the big responsibility of chairing our Law-Related Education Committee. As you likely know, the committee conducts an annual essay contest for 6th and 7th-grade students at Jackson area schools. This year, the committee has been proactive about reaching out to schools that have not historically participated in the contest (or only minimally so) and encouraging them to do so. Last year, the committee received over 100 essays submissions. We will honor the 2018 essay contest winners at our membership meeting in June.

## Library

For more years than I can remember, former CABA President, **Ben Piazza**, has led our Library Committee. Ben's commitment to the committee cannot be understated. He has done a fantastic job with his fellow committee members of administering a fund that provides free Westlaw access portals for CABA members and increases technology at our local courthouses. I would encourage all of our members, but especially our solo and small firm members, to take advantage of the free Westlaw portals.

## Newsletter

I may be biased, but I think CABA has one of the best bar association newsletters around. **Kate Margolis** has been the Editor of our newsletter for many years, and she does an outstanding job. **Meta Copeland** is our Newsletter Coordinator, and she is responsible for making article assignments and gathering the content for each newsletter. I have to also recognize **Tripp Douglas**, the Creative Director of Crema Design Studio. Tripp works closely with Kate and Meta to design and publish the newsletter for us. We are extremely lucky to have Kate, Meta, and Tripp, and their newsletter committee members—many of

## New CABA Officers!

*CABA wishes to congratulate the following members who have been elected to the 2018–19 Board of Directors:*

**Jennie A. Eichelberger**  
Secretary-Treasurer

**Kaytie Pickett**  
Director – Post 3

**Lanny Pace**  
Director – Post 4

whom are long-standing—working on the newsletter and regularly sharing our events and accomplishments.

## Professionalism Award

Each year at the Evening Honoring the Judiciary, CABA presents the Professionalism Award to a member who has demonstrated consistent adherence to professional standards of practice, ethics, integrity, civility, and courtesy; encouraged respect for, and avoided abuse of, the law and its procedures, participants, and processes; and shown commitment to the practice as a learned profession, to the vigorous representation of clients, and to the attainment of the highest levels of knowledge and skill in the law and contributed significant time and resources to public service. CABA's Past President, **Meade Mitchell**, has assembled an impressive committee of lawyers and judges to select our 2018 recipient.

## Small Firm/Solo Practice

CABA is an organization full of lawyers with diverse practices, and we strive to provide learning and networking opportunities for all of our members. **RaToya Gilmer** and **Jessica McLaurin** are planning an all-day "How to Hang Your Own Shingle" CLE program on April 6 at the Mississippi Bar Center. The event

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will include substantive legal topics as well as topics about the business and administrative sides of operating your own law firm. Details about the CLE should reach your inboxes soon.

## Social

At times, we just need to let our hair down. We also need time and space to network with colleagues and talk about something other than the law. Led by **Scott Murray** and **Stephanie Taylor**, our Social Committee has held three events this year, and two in partnership with other bar associations. We held a fall social at The Manship to welcome new attorneys admitted to the Bar in September. We have also held two Bar Review events, at Sombra in Flowood and Fondren Public in Jackson. We partnered with the Rankin County Bar Association for the Sombra Bar Review. We joined the Madison County Bar Association and the Mississippi Women Lawyers Association at Fondren Public. The Social Committee will hold one final event this year, a spring social for those admitted to the Bar in April. The

event will be held on April 26. We hope to release the location details soon.

In addition to our appointed chairs, over 100 CABA members serve on our committees, and they have assisted with the above activities in some meaningful way. We are fortunate to have members who are committed to CABA's success and who believe in providing education and outreach opportunities to their fellow local attorneys. I commend our committee leaders for reaching outside of CABA to partner with other bar associations to enhance networking, social and learning possibilities.

## Women's Initiative

For the second year in a row, **Kaytie Pickett** and **Keishunna Webster** have led our Women's Initiative Committee. The committee was created to plan and oversee programs and projects that would be of interest to our female members as a way to promote and further gender diversity and inclusion in the profession. The Committee recently hosted a panel titled, "Balancing the Scales: Leading Women Lawyers on Meeting the Challenges

of the Legal Profession." The well-attended event featured Margaret Cupples, Bradley Arant Boulton Cummings LLP, La'Verne Edney, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Charlene Priester, The Priester Law Firm, and Aileen Thomas, Jones Walker LLP. The panel was moderated by Stephanie Rippee, Watkins & Eager. The panelists engaged in an honest, open discussion about mentoring, work/life balance, and the changing culture of the legal profession. We are sincerely grateful to Kaytie and Keishunna for planning the panel and to Baker Donelson's Women's Initiative and Jones Walker for co-sponsoring the event with us.

If you have not been involved in our committees this year and would like to be next year, please contact Will Manuel, CABA's President-Elect, at [wmanuel@bradley.com](mailto:wmanuel@bradley.com). I know Will wants to assemble a "dream team" for the 2018-19 Board year, so please let him hear from you, and let's get you even more involved in CABA.

Thank you for your support of CABA. I look forward to seeing you at our April and May events. 🍀

# JANUARY 19

## Lawyers in Transition: Protecting the Present and Planning for the Future

Shown below are photos from the event



# PICTURING MISSISSIPPI, 1817-2017 LAND OF PLENTY, PAIN, AND PROMISE

By John C. Henegan<sup>1</sup>



*"PICTURING MISSISSIPPI, 1817-2017, LAND OF PLENTY, PAIN, AND PROMISE"* is an exhibit of multi-media art, photography, pottery, sculpture, furniture, maps, books,

and movies curated under the auspices of the Mississippi Museum of Art. Of those events commemorating Mississippi's statehood bicentennial, this is a "must" see, offering an invaluable primer and overview of the subjects covered at the Mississippi History and Civil Rights Museums.

The events covered by the exhibit precede Mississippi's admission to the Union by 250 years. The first room includes maps and paintings depicting the explorations of DeSoto, who traveled across present-day Mississippi after landing at Mobile Bay, and his death and burial in the Mississippi River at Greenville in the 16th century. It also covers the explorations of LaSalle, who came down the Mississippi River from what is now Canada and claimed the Louisiana Territory for France in the 17th century.

Each room moves forward in time from the 16th century to the present with works of artists, artisans, and cartographers that portray many of the State's key political and cultural figures or reflect many of its key historical, military, political, and social events as well as its racial and economic conditions. There are master works by artists such as John Audubon, Louis Bahin, Winslow Homer, Thomas Hart

Benton, Henri Cartier-Bresson, Walker Evans, Robert Indiana, Andy Warhol, Walter Anderson, Kate Freeman Clark, William Dunlap, William Eggleston, Sam Gilliam, and Mildred Wolfe.

Under the tireless leadership of Betsy Bradley, Director of the Mississippi Museum of Art, the exhibits bring together works of art about Mississippi from across the nation, many of which are being shown here for the first time. The exhibit is part of the annual Annie Laurie Swain Hearin Memorial Exhibition Series at the Mississippi Museum and is on view now through July 8, 2018.

Take some extra time at lunch and grab a bite to eat at the Museum Café catered by La Brioche, Tuesdays through Saturdays, 8 a.m. - 3 p.m., and tour a room or two before you go back to work. Or you can go by one evening before heading home from work and take in one of the many special events where

special guests address different works of art on display at the exhibit. Or you can also take an entire Saturday or Sunday afternoon to explore the entire exhibit at one time. Admission is free, and you will be generously rewarded if you take multiple trips to the Museum and explore its multi-layered presentation of our State and its history and people.

If you put off going to the Bicentennial Exhibit until later when you have "more time," you should go online, [www.msmuseumart.org](http://www.msmuseumart.org), or call the Museum at 601-960-1515 now and ask to be placed on the Museum's email list for its weekly calendar of special events about *"PICTURING MISSISSIPPI, 1817-2017."* You can also download the Museum's free Art App for the exhibit on your cell phone and explore the exhibit and hear more about its key works before you even get there. See <http://bit.ly/msartshow>. ➔



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# Identifying and Responding to POTENTIAL WARNING SIGNS OF COGNITIVE IMPAIRMENT

By Chip Glaze<sup>1</sup>



The Lawyer's Creed expresses the duties to which we, as attorneys, pledge our effort and fidelity. As its first sentence clearly indicates, a healthy mind is vital to our professional pursuits. Unfortunately, some of

us and our colleagues will experience cognitive impairment, which may compromise the ability to effectively offer such service. As professionals, we are called to prepare for this possibility and to be ready to address it.

Some initial caveats should precede any discussion of signs and symptoms that you, a colleague, or a loved one may be experiencing cognitive impairment. The purpose of this article is *NOT* to diagnose or treat dementia. It is to identify signs that someone may be suffering with potential cognitive impairment. Further, its purpose is to prepare you to discuss your concerns with that person. The goal of such a conversation is, at a minimum, scheduling a thorough medical examination with a focus on these issues, either with their primary care physician or an assessment at the **UMMC MIND Center**. It is further important to note that the behavioral and other indicators described below are generally not malicious, or even volitional. Rather, these may be indicators of a medical issue. Additionally, the person may be completely unaware of the presence of these indicators. These indicators may also be

*To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.*

– *The Lawyer's Creed*

entirely outside their ability to control. Finally, such symptomology may not always be associated with advanced age, so it is important that we can recognize these issues in ourselves and our colleagues regardless of age.

All potential signs and symptoms should be considered in light of two key questions. Is the behavioral or physical indication a break from the norm? Is it an aberration? While continuation or exacerbation of pre-existing problematic conduct may be a concern, it is not necessarily indicative of cognitive impairment. Does the person seem to have a level of insight into signs which may be causing concern? A person's level of insight is key. Whether someone has insight into what is going on will greatly influence what actions may be necessary to address potential problems.

### *Changes in physical appearance and physiological symptomology that may also indicate potential cognitive impairment:*

- Weight gain or loss
- Tremors
- Facial drooping
- Weakness
- Imbalance or unsteady gait
- Decreased energy
- Disheveled appearance

- Poor hygiene
- Dizziness
- Pain
- Headache
- Nausea
- Insomnia or narcolepsy
- Blurred vision

### *Behavioral indications that one might be experiencing cognitive impairment may include:*

- Change in work focus, quality of work product, or timeliness
- Disorganization/misplacing things/missing appointments or hearings
- Decreased socialization at work and/or in community/family
- Other significant behavioral change

### *Cognitive impairment may also be evident in one's increased or reduced emotional expression:*

- Impatience or lower frustration tolerance
- Increased emotional volatility
- Quick to anger
- Apathy
- Seems uncaring
- Doesn't seem to "get it"

Someone experiencing, or observing, mild cognitive impairment may wish to postpone or avoid a medical evaluation. People may be justifiably anxious when considering any discussion of potential cognitive impairment, fearing that such will open a Pandora's Box. Words like Alzheimer's, dementia, and incapacity may come to mind. Observation of symptoms does not necessarily indicate such diagnoses.

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*There are numerous other possibilities, including but not limited to:*

- Depression/Anxiety
- Dehydration
- Infection
- Medication side effects
- Substance abuse
- Hearing loss
- Thyroid issue
- Vitamin deficiency
- Metabolic disturbances
- Nutrient deficiencies

If the foregoing may be ruled out by appropriate assessment, but symptoms continue, one may be tempted to avoid further inquiry, fearing once again “the worst.” It is important to note that while individuals with mild cognitive impairment (cognitive changes serious enough to be noticed by the individual or other people, but not severe enough to necessarily

interfere with daily life or independent function) have an increased risk of developing Alzheimer’s or another dementia, but not all people with a mild cognitive impairment get worse; some get better.

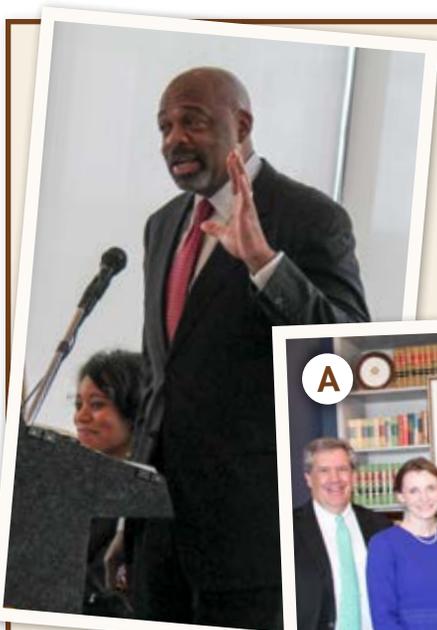
*It is also important to recognize that a medical evaluation may provide opportunities to address significant issues:*

- Cause may be reversible or treatable; treatment/medication can begin when most beneficial
- Maintain/Preserve the individual’s dignity and reputation
- Advance planning while the individual is competent (will, practice succession, powers of attorney, advance directives)
- Safety issues (e.g. driving, self care, supervision of others)
- Individual, family, and colleague stress and misunderstanding (blame, denial)

- Early education and support of the attorney, family and colleagues about how to help the individual (resources, engagement)

The Mississippi Bar Lawyers and Judges Assistance Program (LJAP) offers voluntary, confidential, free assistance to our colleagues who may be struggling, or may know someone who may be struggling with the issues described here. We have also gathered useful tools for assessing these situations as both a self-assessment, or for use as an observational checklist. The observational checklists can offer objective data to aid a potential conversation with a colleague or loved one. Further, these instruments can facilitate an accurate recitation of concerns at a medical evaluation. The checklists are available on The Mississippi Bar website [here](#). If you or someone you are concerned about appears to be exhibiting signs of cognitive impairment, you can always contact me at 601-948-4475 or [cglaze@msbar.org](mailto:cglaze@msbar.org). ➔

# CABA Membership Meeting February 20



**A** CABA Board pictured with special guest speaker, Judge James Graves of the U.S. Court of Appeals for the Fifth Circuit (center).

**B** CABA Board pictured with MC Law student Sharon Spencer (center), the 2017 recipient of CABA’s Reuben Anderson Scholarship.

# THINKING SENSIBLY ABOUT GUNS

By James L. Robertson



I know a thing or two about guns because I've seen thing or two. The same goes for gun rights and regulation.

Unlike many of my friends back in Greenville and the Delta, I did not grow

up around guns. My non-school hours growing up were consumed with the organized sports, baseball and then basketball.

What I know about guns begins with the summer of 1961. I had been in Army ROTC while a student at Ole Miss, still playing a lot of pick-up basketball in the gym now known as Martindale. Six weeks of summer camp at Fort Benning, Georgia, loomed large, before my senior year in college. Learning everything there was to know about the M-1 rifle was going to be a big part of that experience.

I was nervous at first. I didn't know much about the use of rifles. But I got to where I could take an M-1 apart and reassemble it about as fast as most. We were assured this was a life-saving skill if you ever got into combat. [Yes, we'd heard the M-14 was about to take over but rookies like us would have to earn our spurs first with the WWII-style M-1]. Then came the rifle range. After training and practice runs, our exam was lying flat on the ground with that M-1 and plenty of ammo. Pop-up "aggressors" would appear suddenly, at irregular intervals, and widely differing distances, near and far, differing angles left then right. You had two seconds at most to bag the "aggressor" [of course, before he got you].

Long story short, I shot "expert." That was fun. Any angst about my inexperience with guns vanished. I can do this!

As fate would have it, I soon washed out of Army ROTC. I had developed an arthritic condition in both hip joints. Can't honestly say I was disappointed when I came to understand that this meant no visit for me to Southeast Asia at the Government's expense in the mid-to-late 1960s.

\* \* \* \* \*

I was admitted to the bar in 1965. Over the years that followed I had many and varied—and many quite serious—learning encounters involving guns. Thanks to the famous SCOTUS decision in *Gideon v. Wainwright*, I was appointed to defend lots of persons charged with crimes. More than a few of these involved gun violence.

I came to know a number of law enforcement officers. My father was good friends with two successive chiefs of police in Greenville.

That opened doors. The husband of a lady who worked in our law office was married to a police detective. We became friends. I came to know and visit socially with the chief criminal deputy sheriff in Washington County. And more than a few others.

In time I became aware of an important insight. Many instances of criminal activity involving gun violence occurred when both shooter and victim were armed. I was told by more than one cop, "you can recover from a robbery, but not from a homicide," or words to that effect.

The drug abuse era began and reached Mississippi. Not so much as advice, but just in talking, experienced police and law enforcement friends would tell me, if you encounter a person "high on drugs" who is armed, nothing could enhance your own danger more than for the druggie to know that you are also armed.

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### 2018 HOLIDAYS

|          |   |
|----------|---|
| April 30 | Confederate Memorial Day                |
| May 8    | Memorial Day/Jefferson Davis's Birthday |
| July 4   | Independence Day                        |
| Sept 8   | Labor Day                               |
| Nov 11   | Veteran's Day                           |
| Nov 22   | Thanksgiving Day                        |
| Dec 25   | Christmas Day                           |

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\* \* \* \* \*

I became more involved in criminal defense practice, though with an otherwise small town law firm. More exposure to tragedies wrought by guns.

Also, through much of the 1970s, again while I was still practicing law in Greenville, I defended a number of prisoner damage suits brought against the state penitentiary board, top officials at Parchman and guards charged with prisoner abuse. These experiences culminated in *Bogard v. Cook*, 586 F.2d 399 (5th Cir. 1978).

I learned a lot in that decade. I was on the side of the prison officials, working with lawyers from the state Attorney General's office. I got to know every walk of life in the Parchman hierarchy, from superintendent down to trusty guards and more than a few prisoners.

The most surprising lesson there was that no prison official carried a gun. I asked about this and was assured that no prison official in his right mind would pack a weapon inside the prison. His and others' lives would be in great danger if he carried a gun.

I became involved in the post-conviction proceedings in capital murder cases. Often the victim had been armed, even well trained in the use of firearms. He was still dead. See *Bell v. Watkins*, 692 F.2d 999 (5th Cir. 1983); *Jones v. Thigpen*, 555 F. Supp. 870 (S.D. Miss. 1983).

It was my privilege to serve on the Supreme Court of Mississippi for close to ten years (1983–1992). I was challenged to study and understand many instances of gun violence, and in a wide variety of contexts. Views that I had picked up along the way were reinforced.

In many homicide cases I saw as a judge, the victim was armed or at least had done something that threatened the defendant. I recalled the street-smart good sense of cops I had known. Again, you can survive a robbery, but not a homicide.

\* \* \* \* \*

Fast forward. Most people have heard about the 2008 SCOTUS decision in the *Heller* case.<sup>1</sup> There are ironies here.

For one thing, the decision was far from

ordained by the text of the Second Amendment. Given the penchant of so many to argue that the meaning of the Constitution should be a function of the “original understanding” of the Founding Fathers, many objective lawyers thought the decision likely to go the other way.

Textualists argue that all clauses and phrases of a legal document must be given meaning and effect. This is so whether the document be a will, a contract, a statute or a constitution. The Second Amendment begins with two important phrases, *viz.*, “a well-regulated militia,” and “the security of a free state.” These are core concerns expressed by the constitutional draftsmen.

The tenor of the times, 1789 variety, was a function of the problems colonists had with the British leading up to and during the Revolutionary War. A secondary threat was the perceived danger from hostile Native Americans. No fair-minded lawyer can deny that these ideas dominate the original understanding of the Second Amendment.

The second irony is that pro-gun political action has been so much more passionate in the ten years since *Heller* than it ever was before. But the gun lobby *won* in *Heller*. Any objective court watcher surely knows that the chances of *Heller* being watered down anytime soon are the proverbial “slim and none.” Some people just won't take “yes” for an answer.

Third, I have heard otherwise sensible persons passionately defend their Second Amendment rights, with no apparent clue that the state constitution gives them far greater rights. “The right of every citizen to keep and bear arms in defense of his home, person or property... shall not be called into question.” Miss. Const., Art. III, § 12. No such wording appears in the Second Amendment.

Some lawyers seem unaware as well that as a general rule states are free to grant and enforce personal rights, more favorable to the citizen than anything found in the U. S. Constitution. State Constitution Section 12 does that.

Lastly, you've heard the line, “if guns are outlawed, only outlaws will have guns.” Horsefeathers! If gun access is sensibly restricted

consistent with the *state* constitution, common sense suggests a lot fewer outlaws will have guns.

Discussions of gun rights these days generally yield more heat than light.

\* \* \* \* \*

As fate would have it, mass gun violence has become a part of the American experience. The first I recall was the Texas Tower shooting in 1966 where a lone rifleman took 17 lives.

Everyone of my generation was stunned by the almost back-to-back assassinations of Martin Luther King and still boyish Bobby Kennedy in the Spring of 1968. And by the 1981 attempt on the life of President Reagan, albeit unsuccessful.

It came closer to home in 1997. Young Luke Woodham, a student at Pearl High School in Rankin County, shot and killed three and wounded seven others.

In 1999, Columbine High School in Littleton, Colorado was in the headlines with the tragic news of two senior class students, Eric Harris and Dylan Klebold, killing more than a dozen and wounding many more. They had knives as well as their firearms.

In 2007, some 33 persons were savagely gunned down at the Virginia Polytechnic Institute in Blacksburg, Virginia.

The list goes on. You know it as well as I do.

\* \* \* \* \*

For some time, enough has been known to greatly curtail mass killings, even if never eliminated altogether. Real background checks for gun purchases. Few have legitimate need of assault rifles.

We tolerate intrusions into our personal liberties at airports and in other group settings. We know our safety and the safety of others depends on it. Common sense suggests stricter scrutiny of gun purchases. Yet many balk, and with fury.

Mental health professionals armed with increasingly sophisticated risk identification insights could have been provided, though there's way too much Monday morning quarterbacking here. More importantly, there's no

1. *District of Columbia v. Heller*, 554 U. S. 570 (2008).

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known cure for a psychopath.

I've followed the coverage of all of the mass gun violence since Pearl High School and then Columbine. I've never seen a credible report from qualified professionals suggesting that any—not one!—of the perpetrators could have been “cured” with timely intervention before his rampage.

No reasonable lawyer has ever read *Heller*, much less Mississippi's Section 12, to preclude the strictest scrutiny of persons trying to buy rapid-fire, assault weapons. People like nineteen-year-old Nicholas Cruz.

\* \* \* \* \*

Every constitutional right is subject to reasonable regulations as to time, place and manner. Every one. As with other rights, reasonable regulation of time, place, and manner is allowed.<sup>2</sup>

The police power of the state is an independent and alternative source of constitutional power to regulate the use of firearms.<sup>3</sup> This is particularly important as the constitution squarely declares that “the exercise of the police powers of the state shall never be abridged.”<sup>4</sup>

One example of the exercise of this regulatory power is the statute providing that persons under the age of eighteen (18) years may not possess a firearm or other deadly weapon.<sup>5</sup> This same regulatory power authorizes the legislature to increase the minimum age for possession of a firearm to twenty-one (21) years, should it decide to do so, or to twenty-five (25) years, for that matter.

The legislature has enacted an elaborate licensing scheme authorizing a person to have permission to carry a stun gun, concealed pistol, or revolver. The Department of Public Safety has been authorized to cooperate with the Federal Bureau of Investigation within the National Instant Criminal Background Check System.<sup>6</sup>

Permits are required before certain employees, such as bank guards, company guards, watchmen and certain others not sworn law enforcement officers, may carry “pistols, firearms

or other suitable and appropriate weapons.”<sup>7</sup>

Court clerks are required to keep records regarding certain persons with mental illnesses or intellectual disabilities and report promptly to the Department of Public Safety.<sup>8</sup> Possession of arms by persons having been convicted of a felony is well regulated.<sup>9</sup>

Nothing in the Second Amendment, much less state Section 12, says we can't or shouldn't do more. A lot more. For starters, a person has to be 21 to buy a beer. Why not the same for guns? That's the easy one.

\* \* \* \* \*

I know I do not have the power to stop gun violence in American society. Over time I have learned that the odds of someone being shot and killed in the course of a criminal activity are substantially reduced if the crime victim is not armed. To be sure, I might be killed. Some criminals still want to silence potential witnesses. The teaching of the law of averages is pretty clear. My chances are much better if I am unarmed, and don't do anything stupid.

Like many, I have been intrigued and quite interested that Richard Thaler was recently awarded a Nobel Prize for his research and insights in the field of behavioral economics. The third such prize in recent years. Thaler and others have proved that people are not nearly as rational actors as they think they are.

This insight holds in many contexts. Most people tend to follow the herd. Appearances and emotions affect our behavior more than reality and reason. Preconceived ideas are difficult to dislodge. And much more along these lines.

I am not aware that behavioral economics has dug deeply into gun use behavior, but I see no reason why its common sense insights do not apply. It is one of the lessons of life that passion and particularly fear often preclude rational thinking.

Why is it not plain common horse sense that, where both sides are armed, the one on offense is more likely to win? That arming some school teachers with concealed weapons is nuts? We need light, not heat.

\* \* \* \* \*

I have no beef with legitimate hunters, though it never occurred to me that hunting would be something I would want to do. I have wondered how anyone could enjoy killing an animal as beautiful as a deer with antlers. And why would anyone ever shoot a doe? Fish and fowl, fine. But a majestic mammal? Why? Unless one really needs that meat to feed one's self and family.

I do not recall being moved when my hunter friends would tell me the importance of thinning out the deer population in the Delta, without which there would be too many and lots of deer would starve. When I hear farmers complain that deer help themselves to soybean crops in the fields, I wonder why well-placed fences would not help substantially with this one. I rather suspect all of this is apparent for anyone stumbling upon the opinion I authored in 1985 in *Pharr v. State*,<sup>10</sup> a deer headlighting case. Or the political cartoon in the Clarion Ledger the next day.

\* \* \* \* \*

As I cascade towards 78 years old, I have many thoughts and reflections about matters that seem of genuine concern to others. I am as aware as any of the Mississippi gun culture. I dare say overall I have had a more varied experience with guns and gun violence than most others, though I've never been a hunter.

As a lawyer, I know my Second Amendment rights. I know my more extensive rights under state constitutional Section 12. Do we not all have lots of rights that for the most part we never wish to or need to exercise?

And so I offer only the silent witness of one, that long life can be lived, cherished and flourish without a gun anywhere to be found.

No, it's not that I've just been lucky, though everyone who lives to play in the fourth quarter has dodged a few bullets along the way.

I've long known the odds and tried to act accordingly. ➡

2. *Mississippi Publishers Corp. v. Coleman*, 515 So. 2d 1163, 1166 (Miss. 1987) (free speech); *McLellan v. Mississippi State Bar Ass'n*, 413 So. 2d 705, 707 (Miss. 1982) (commercial speech).

3. Miss. Const., art. vii, § 190; see also, e.g., *James v. State*, 731 So. 2d 1135, 1137 (¶9) (Miss. 1999).

4. Miss. Const., art. vii, § 190.

5. Miss. Code Ann. § 97-37-1(2).

6. Miss. Code Ann. § 45-9-103(2).

7. Miss. Code Ann. § 97-37-7(1).

8. Miss. Code Ann. § 9-1-49; see also, Miss. Code Ann. § 97-37-5(4).

9. Miss. Code Ann. §§ 97-37-5; 97-37-7(1)(b).

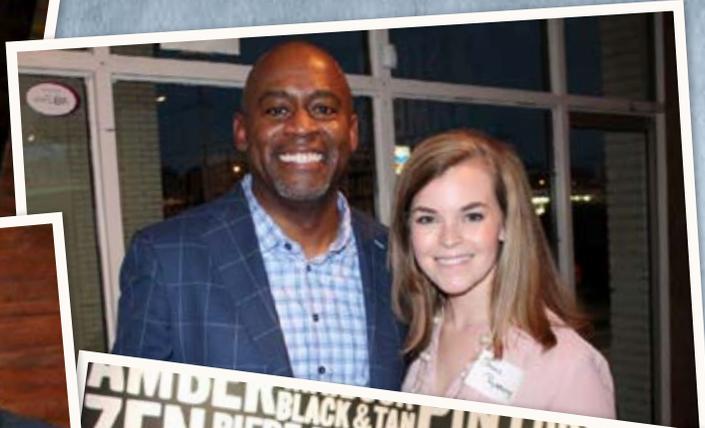
10. *Pharr v. State*, 465 So.2d 294 (Miss. 1985); see also my article *Practical Benefits of Law in Literature, and Their Limits*, 35 Miss. Coll. L. Rev. 266, 304-312 (2016).

FONDREN  
PUBLIC

# CABA BAR REVIEW

February 22, 2018 at Fondren Public

*Photos from this event are shown below*



# MISSISSIPPI'S "CAMOUFLAGED" COURT

By Ira Rushing



In Mississippi, there is an important court that almost no one has heard of: the Mississippi Court of Military Appeals. It is located in the Mississippi Military Department, and has sole jurisdiction over military appeals. In fact, to this date, it has convened only once, to review a single petition. That particular case, between the Governor and the Adjutant General of the Mississippi National Guard, highlighted the tension that can exist between state leadership and their military counterparts.

To better understand why the Mississippi Court of Military Appeals is important, one must have a basic understanding of the military justice system as a whole. Our current military justice system mirrors closely that of the civilian world. Military courts are governed by the Uniform Code of Military Justice, which serves as the foundation of military law in the United States. Individuals in the US armed forces are subject to a dual system of criminal justice. That is, a violation of both civilian *and* military law may be prosecuted under both. However, military justice rules apply only when an individual is in military status. Therefore, in applying a code of military justice, a soldier's status is key. "Full-time" soldiers are those typically found on active duty; they are virtually always subject to the UCMJ. "Part-time" soldiers are those whose

service is typically in the Reserves or, in the context of this article, a state's National Guard. They are subject to a state's code of military justice only if in the status of a soldier when the crime occurs, usually during drill once a month or during two weeks of annual training.

A criminal trial in the military is referred to as a court-martial. A panel of members acts as a jury, and many of the same rules and procedures are followed as in civilian courts. Boards of Review originally existed to review cases in which the sentence included dismissal, a dishonorable discharge, or confinement in a penitentiary. The Judge Advocate General's office reviewed all other court-martial cases. Cases found legally insufficient by The Judge Advocate General were then referred to a Board of Review. The Boards were granted broad power to review court-martial records of trial, determine questions of law and fact, weigh evidence, and reduce sentences.

While revising the UCMJ in 1968, Congress redesignated Boards of Review as Courts of Military Review, which were again renamed to Courts of Criminal Appeals in 1994. The Court of Military Appeals was also renamed the United States Court of Appeals for the Armed Forces in 1994. Under these federal statutes, Court of Criminal Appeals decisions can be appealed to the United States Court of Appeal for the Armed Forces, but this court chooses which cases to take, so a service member's request for review to the Court of Appeal may be turned down. Convictions can ultimately also be appealed to the United States Supreme Court, which accepts even fewer appeals than the Armed Forces appellate court.

In 1981, the Mississippi legislature

somewhat mirrored the 1968 changes to the federal statutes, "to revise and update the Mississippi Code of Military Justice in conformity with the Uniform Code of Military Justice..." The rules, codified in Miss. Code Ann. § 33-13-7, apply "to all members of the state military forces who are not in active federal service."

A somewhat interesting and unintended change was included in these updates. The Mississippi Court of Military Appeals was created, staffed, and given its mission all in one section of the Code: § 33-13-417. The court was provided a finality of review that apparently prevented review of its final decisions by the Mississippi Supreme Court. Because a right of appeal is derived only from statute, there was no explicit authority to appeal from the Court of Military Appeals to any civilian court. The Court of Military Appeals therefore seemingly remains the ultimate destination for appellate review within the Mississippi National Guard. Additionally, the court's review remains almost entirely discretionary.

While great effort has been made to increase the efficiency and effectiveness of courts-martial, they are seldom-conducted. A more efficient method of adjudicating military violations is "nonjudicial punishment," in which a soldier undergoes a hearing before his commander. Although the proceedings generally may not be as consistent or structured from one command to another, the possible punishments are much less severe than in courts-martial. Nonjudicial punishment may also be preferred by a commander in cases where a court-martial would be difficult or cost-prohibitive. Thus, courts-martial in Mississippi are rare; in fact, the Court of Military Appeals has had only one petition for review to consider. That occasion was extraordinary for a host of reasons. To best convey the significance of the event, this article relies heavily on discussion provided by Judge Leslie Southwick. Judge Southwick, himself a former Lieutenant Colonel and Army Judge Advocate, wrote a much more detailed analysis of this case and Mississippi military structure, which I enthusiastically recommend.<sup>1</sup>

The office of the Adjutant General (TAG)

1. Judge Leslie Southwick, *Military Justice for Foreign Terrorists and for American Soldiers: Comparisons and a Mississippi Precedent*, 72 Miss. L.J. 781 (2002).

*Continued on page 12...*

is the highest position that can be attained in the Mississippi National Guard, although, as the chief administrative officer, he is not the soldier who would lead troops into battle. The position of Adjutant General first became an office recognized by the constitution in 1869, and it also appears in the 1890 state constitution. The current term of service for the Adjutant General of the Mississippi National Guard is four years, beginning with a new governor's term. Only the governor, as commander-in-chief, outranks him when the Guard is in state service. Since the Adjutant General is the executive head of the state agency known as the Mississippi Military Department, as well as the commissioned military officer to whom all other officers of both the Army and Air Guard answer, he is the state equivalent of Secretary of Defense and Chairman of the Joint Chiefs of Staff—all in one person. He is one of the first appointments a newly-elected governor will typically make.

Ray Mabus was elected Governor of Mississippi on November 4, 1987. Three months later, he appointed Major General Jim Farmer as The Adjutant General. The new TAG had excellent connections with his commander-in-chief. Farmer was a retired airline pilot and long-time member of the Guard. He had raised significant funds for the Mabus campaign, personally contributed a large amount, and flew candidate Mabus across the state.

Two years later, in January 1990, the Clarion Ledger published an article revealing that the TAG had purchased land outside Camp Shelby, in Hattiesburg, MS. The article accused him of using confidential information that the National Guard facility would expand to make the purchase, thereby increasing the value of his land. That same month, the Clarion-Ledger revealed that the General sold his interest in the land. However, the article also revealed that the Governor had asked General Farmer to resign over the controversy, but the General refused.

Mississippi's Constitution ends the TAG's term only with the expiration of the governor's term of office. Therefore, Governor Mabus did not appear to have authority to fire or otherwise remove General Farmer from his position. In response, the Governor simply reassigned General Farmer to special projects of little significance, and gave the responsibilities of TAG to an assistant adjutant general,

Brigadier General Denver Brackeen. General Farmer was also assigned to a different office, one not typically occupied by the TAG. Shortly afterwards, General Farmer attempted to regain control of his position by physically occupying the office he once held. Mississippi Highway Patrol officers were dispatched to the location by Lieutenant Governor Brad Dye to escort the General out, and he was prohibited from stepping foot on any National Guard facility.

The situation escalated on May 1, 1990, when General Farmer filed a lawsuit in federal district court against Governor Mabus, seeking a declaratory judgment on the unconstitutionality of the Governor's actions. In response, the Governor charged General Farmer with three violations of the Mississippi Code of Military Justice: absent without leave from the office assigned to him by the Governor, failure to obey orders, and bringing discredit to the armed forces stemming from both his land purchase and wearing rank insignia appropriate to the TAG's rank (although that rank had been withdrawn by the Governor).

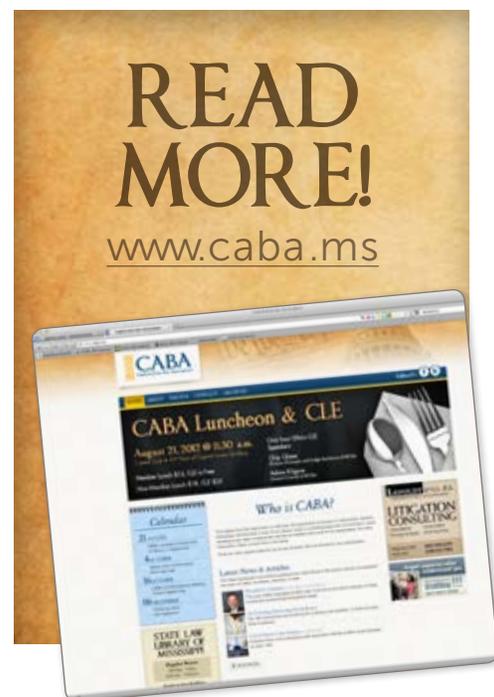
The subsequent military investigation concluded that General Farmer's court-martial could proceed on the basis that his land purchase had created a conflict of interest in violation of § 33-13-529 of the Military Code of Justice. He was ordered to stand trial by a general court martial on October 18, 1990. General Farmer moved to stay the court-martial proceeding in federal court, which was denied by District Judge William Barbour. That case was eventually dismissed by the United States Court of Appeals for the Fifth Circuit on the basis that the claims were non-justiciable.

General Farmer then moved to dismiss the charges in his court-martial on October 23, 1990, citing unlawful command influence ("UCI") by Governor Mabus. UCI occurs when a person bearing "the mantle of command authority" pressures—or even appears to pressure—military judicial proceedings. General Farmer essentially alleged that the proceedings were brought for ulterior reasons, former Adjutants General were wrongly excluded as potential court members, the Convening Authority failed to exercise independent judgment in selecting potential panel members, and there was a risk of selecting a possibly hostile potential panel member. The presiding judge, Lieutenant Colonel William Eshee, found sufficient evidence to create a prima

facie case of discriminatory intent on the part of the Governor, and dismissed the charges.

On appeal, the State moved to restyle the proceedings to seek extraordinary relief under the Mississippi Rules of Court-Martial, including a writ of mandamus directed to the military judge to reinstate the charges. This appeal convened the first session of the Mississippi Court of Military Appeals. It conducted a hearing on May 18, 1991, in which the dismissal of charges was affirmed as being within the trial judge's discretion. The unpublished opinion revealed many of the nuances of military justice, on which the Court was clearly divided. Of main concern to some, including Chief Judge Donald Kruger in his dissent, was the notion that if UCI would disqualify the governor from instituting proceedings under the Mississippi Code of Military Justice, the Adjutant General would be left above the system of military justice that applies to everyone else. Neither side sought further relief.

Shortly afterwards, a new governor was elected, and a new TAG appointed. This brief call to duty was the first and last time the Mississippi Court of Military Appeals revealed itself. The system remains true to its charge, however, and continues to grant protections mirroring that of its civilian counterpart. Mississippi's citizens still receive proper access to justice, regardless of whether they wear a suit or camouflage to court. ➔



# BACKING UP THE SUPREMES

By Terryl Rushing

When I told God that I wanted to be a back-up singer in a Motown band, I think he got confused. You'd think he'd have caught the reference to gold lamé. At any rate, it was 1985; I was about to graduate from MC Law School; and I needed a job. In 1985, MC was definitely considered the "lesser" of the two law schools, and jobs weren't exactly falling out of trees. Some law firms came to interview only grudgingly, barely hiding their intent to offer their open associate positions to Ole Miss graduates. A partner from one firm actually threw my resumé across the table at me and asked, "Who is this 'Frass-Cogg-Na' guy you clerked for?" The same partner observed to a classmate, "With grades like this, you could have gone to Ole Miss." By spring, I was getting nervous, so when a justice of the Mississippi Supreme Court called to set up an interview, I was ecstatic. It paid a whopping \$16,000 a year—about half what an associate at a law firm was paid to start (yes, this was the "Dark Times")—but exactly \$16,000 more a year than I was getting.

It was a different world then—post Gloria Steinem, but before the "Me, Too" movement. No, the interviewer wasn't *supposed* to ask me about my plans to start a family, but he did. And, yes, I did tell him that I had no plans, but got pregnant my second week on the job. (And, by the way, the clerkships started right after law school then, because, until the year I graduated, Ole Miss students didn't have to take the Bar Exam.) I guess I should be glad I wasn't being interviewed by the NFL. By

the time my son—forever nicknamed after a stuffed bear named "Bebo"—was born, it had all worked out. From the time I was obviously pregnant until... well, now, I guess... I was known at the court as "Little Mother."

Dan Lee hired me as his law clerk. In those days, we were still in the Gartin Building, and chambers were set up to accommodate the judge<sup>1</sup>, a secretary, and a law clerk. After the legislature permitted the judges to hire two law clerks, space was carved out in the basement area for the second clerks. We called ourselves "Upstairs" law clerks and "Downstairs" law clerks, but only for geographical purposes, not merit. In fact, I retained the upstairs office for my entire two-year clerkship, and I have since been told that I missed out on a lot of fun.

Sitting upstairs for two years did give me a front-row seat to observe not only my judge, but the workings of the court in general. Anyone who ever met, or appeared before, Dan Lee would agree that he was unique. From my chair, I saw a good man and a fair judge who had some—how shall I put it?—eccentricities.

Justice Dan Lee – "Judge Lee" to those of us lucky enough to be in his chambers – grew up in rural Mississippi; he and I could be found, in early summer, eating raw tomatoes like apples, with generous shakes of salt. We'd lean over the sink in the break room, so the juice would have an acceptable place to drip off our elbows. He told me once that one of the real lures of law school was getting out from behind a plow. Judge Lee understood working for a living, and, if he had a bias, it was for the little guys. I never heard him begin a phone call with anything other than "This is

Dan Lee." Apparently Mrs. (actually, Doctor Lee) felt the same. I was told that, prior to my clerkship, the Lees threw a party at their home and invited <gasp> not just judges, but staff. The party was catered, and one of the servers came out of the kitchen with a big bowl of colorful liquid. She tripped, and the Lee's beautiful, plush white carpet was suddenly red. I hear that Doc never even looked at the carpet, but lifted the poor lady up and made sure she was alright, wiped her off, and told her the carpet was fine.

Judge Lee had a real problem with utility companies; I'm not sure he ever paid a utility bill on time. The opinions he issued needed to be legally correct, but, even more, they needed to make "walking-around sense." We once argued for two days over whether to use a quote from *King Lear* in an opinion about a will contest. Like many newly minted lawyers, I was overly impressed with my writing skills and my knowledge, and I guess I wanted everyone to know that this country girl from the Delta read Shakespeare. Judge Lee was the wiser of the two of us, and gently requested that I remove it, saying, "Little Mother, it just won't sound like me." Of course, he was right. On the other hand, I once drafted an opinion that he thought was a little *too* nuts and bolts, and he handed it back to me with the instruction to "put something Constitutional in it."

The Judge also had a great, but unusual, way to remember case law. He might not be able to precisely articulate the legal theory he was looking for, and he might not be able to remember the parties' names. He'd tell me, though, that he was pretty sure there was a

1. The terms "judge" and "justice" are used interchangeably in this article. Yes, I know that,

technically, the Supreme Court is comprised of "justices," but I've never been corrected when

using the friendlier term.

*Continued on page 14...*

case on point from, oh, about 1966, out of Yalobusha County. The trial judge was so-and-so, and the prosecutor was so-and-so, and go see if I could find it. He was right. Every. Single. Time.

Not only did Ira and I get nicknames working for Dan Lee, but cases got them, too. One case in which the State of Mississippi adopted the Uniform Child Custody Jurisdiction Act (a decision largely influenced by the presence in the record of a highly scandalous photo of the soon-to-be non-custodial parent), was forever known as the “Interstate Jeremy” case. Another case declared that it was legal, under Mississippi’s Native Wine Act, to manufacture and sell muscadine wine in Itawamba County. It became known as the “Wine is Fine” case.

The Judge felt strongly that the court should be accountable to the people. He once told me that, in his opinion, being a supreme court justice should be something that caps off a long legal career, not a career position, in order to prevent the intrusion of outside influences. He was accessible—sometimes too much so. A few weeks after an opinion reversing and remanding a capital murder case out of Lauderdale County, the victim’s father called Judge Lee. Judge Lee, to everyone’s astonishment, took the call and talked to the man for almost an hour. I don’t know if the father felt better or worse after the conversation. I do know, though, that Judge Lee’s chambers were right under the Great Seal on the front of the Gartin Building, and, like all of the chambers, had floor-to-ceiling glass windows. A few weeks later, I was sitting at my desk when I heard something crash into the glass. Certain that I had been shot, I waited for a few seconds to feel pain. When I didn’t, I started looking for blood and bullet holes. Instead, I just saw... feathers. Lots of them, floating outside the window. The Judge promised that he wouldn’t talk to any more disgruntled parents, and I found owl decals for the windows.

Judge Lee was not the only character up there; his secretary, Marguerite, was inadvertently hilarious. The judge used to tell me that I was the first law clerk she ever liked; I suspect that doing my own word processing had a lot to do with that. Although she was one of the most ladylike people I’ve ever met, one day I

walked into the office to find her proofreading an opinion with a big frown on her face. When I asked her what was wrong, she said, “This is boring.” “What do you mean?” “It’s just an old contract case. When are we going to get another rape or murder?”

Of course, we got a look at the other Judges, as well, particularly when Judge Lee was working with them to come to an agreement about an opinion. While there were some strenuous disagreements about outcomes, I never witnessed the hostility that I have heard about with later courts. In fact, I can’t imagine anyone raising his voice in front of the gentlemanly Neville Patterson or Roy Noble Lee. The disputes may have been muted; however, they were—nonetheless—, real, although not without humor. In those days, Judge Lee, Justice Lenore Prather, Justice Jimmy Robertson, and Justice Mike Sullivan, all had (or once had) various shades of strawberry blond hair. They tended to vote as a liberal coalition, and they called themselves “The Redheads.” When Reuben Anderson joined the court, he also voted with that group. Since Justice Anderson’s hair was not exactly a natural auburn, they gave him a bottle of red dye and named him an “Honorary Redhead.”

One of the law clerk’s duties was to attend oral argument on cases to which they were assigned. It was a treat to once watch a young legislator from North Mississippi named John Grisham argue a case. He was damned good, and I’m not just saying that to get an autograph. On the other hand, I’ll never forget the time that an over-zealous Assistant Attorney General referred to the Fourth Amendment as “a procedural nicety.” I thought Justice Sullivan was coming over the bench. The funniest incident, however, took place during an *en banc* session, where a death penalty case and a civil case were being argued on the same day. The civil case was assigned to me, so I went down and sat through both arguments. When it came to the civil case, one of the attorneys, whom we will call “Lawyer X,” apparently had an inflated idea of his oratorical skills. In fact, he was downright condescending to the justices, pretty much telling them that if they had a brain in their heads, they’d rule for him. The justices retired to their *sanctum sanctorum* to consider the cases (a familiar sight was Judge

Lee walking to the conference room with his hemorrhoid donut over one arm), and, when he came back to the office, I asked him what they decided. “Oh, we’re going to free the murder defendant and execute Lawyer X.”

The most profound experience I had at the court actually involved an execution. It was a case that had not been originally assigned to Judge Lee, but after it wound its way back to the state court after all of the collateral proceedings had been exhausted, the original Justice had retired, and we got it. Judge Lee called me into his office and said, “Look, I have no moral opposition to the death penalty in itself, but if my name is going on this execution warrant, we’re going to do it right.” In those days, executions took place at midnight, after a day of business as usual at the court. The offices all closed at 5:00, and anyone seeking an emergency stay from the court would have to locate a justice on his own. Judge Lee had the Clerk of the Court stay at her post until midnight, as did we. At about 11:45, when there was no request for a stay, Judge Lee called us all (we had marshaled a couple of law clerks from other chambers to help) into his office and announced that we were going to pray for the young man who was about to be executed. At about 12:15, we got word that the prisoner had been pronounced dead. Judge Lee called us all back into his office, where we prayed for the soul of the deceased prisoner, the deceased victim, and both their families. To this day, I get choked up thinking about it, and it motivates me every day to do the best job I can, in my own small way, to facilitate the administration of justice.

They say that no one should watch either law or sausage being made. I don’t have any desire to fill casings, but my clerkship at the Mississippi Supreme Court was an experience that I wouldn’t trade—even for two years at a much more lucrative associate position. I saw ordinary men and one ordinary woman who were imperfect but did their best to do their jobs fairly and well. Now when I disagree with an opinion, I’m much less likely to assume some nefarious motivation, and I just repeat the mantra, “Reasonable minds may differ.” Either that or somebody hired a really dumb law clerk. 🍌

# BACCHUS,

## *A True Friend of the Court and of the Cherished Values of Western Civilization*

BEFORE THE CHANCERY COURT OF  
RANKIN COUNTY, MISSISSIPPI

JIM HOOD, ATTORNEY GENERAL  
OF THE STATE OF MISSISSIPPI, Ex Rel.  
THE STATE OF MISSISSIPPI;  
COMMISSIONER OF REVENUE HERB  
FRIERSON, MISSISSIPPI DEPARTMENT  
OF REVENUE

PLAINTIFFS,

VS.

WINE EXPRESS, INC.;  
CALIFORNIA WINE CLUB;  
GOLD MEDAL WINE CLUB;  
BOTTLE DEALS, ETC.

DEFENDANTS,

Civil Action No. 17-02964

Give me a bowl of wine, In this I bury  
all unkindness.

– Brutus to Cassius and others, in Wil-  
liam Shakespeare, *Julius Caesar*, Act  
IV, Scene 3, lines 158–159

And the third day there was a mar-  
riage in Cana of Galilee, ... when they  
wanted wine, the mother of Jesus saith  
unto him, They have no wine... Jesus  
saith unto them, Fill the waterpots  
with water. And they filled them to  
the brim... [T]he ruler of the feast  
had tasted the water that was made  
wine... And saith unto him... but thou  
has kept the good wine until now. This  
beginning of miracles did Jesus...

– The Gospel According To St. John,  
ch. 2, ¶¶ 1–11 [KJV]

“Good wine is a necessity of life for  
me... Wine... the true old man’s milk  
and restorative cordial.”... “By making  
this wine vine known to the public  
I have rendered my country as great  
a service as if I had enabled it to pay  
back the national debt.”

– Thomas Jefferson

“Wine makes daily living easier, less  
hurried, with fewer tensions and more  
tolerance,” “The discovery of a wine is  
of greater moment than the discovery  
of a constellation. The universe is full  
of stars.”

– Benjamin Franklin

*Continued on page 16...*

### Answer and Counterclaim in Intervention

BACCHUS, eternal god of wine for the  
Romans and the rest of the Western World,  
a/k/a DIONYSUS by the Greeks, acting on  
behalf of all of Western Civilization, particularly  
including but not limited to the thousands of  
good, law abiding, cheerful taxpaying citizens  
and quality wine lovers of Mississippi, has a  
few things to say – respectfully – about the  
Amended Complaint filed February 1, 2018,  
and shows unto this Honorable Court as follows:

#### Wisdom of the Ages

BACCHUS first calls the Court’s attention

to the Wisdom of the Ages of Western Civiliza-  
tion, a few vignettes from which are,

Wine can of their wits the wise  
beguile, Make the sage frolic, and the  
serious smile.

– Homer, *Odyssey*

He causeth the grass to grow for the  
cattle, and herbs for the service of man;  
and he may bring forth food out of the  
earth, And wine *that* maketh glad the  
heart of man.

– The Book of Psalms 104:14–15 [KJV]

"[Wine is] poetry in a bottle... To take wine into your mouth is to savor a droplet of the river of human history. A bottle of wine begs to be shared, I have never met a miserly wine lover."

–Clifford Fadiman, Journalist

"Wine is the most civilized of things in the world and one of the most natural things of the world that has been brought to the greatest perfection, and it offers a greater range for enjoyment and appreciation than, possible, any other purely sensory thing."

–Ernest Hemingway.

"Drinking good wine with good food in good company is one of life's most civilized pleasures."

–Michael Broadbent, British wine critic.

generally cheap, low end wines, not much above the level of the proverbial Ripple wines. The sale of wines in great volumes is consistent with the public policy of Mississippi.

- II. Among the citizens of Mississippi are thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers.
- III. Retail sales of wines are subject to and severely limited to the stranglehold of a cartel or combination in restraint of trade under the control of Plaintiffs and particularly the Alcoholic Beverage Control Division of the Plaintiff Department of Revenue. Participating and wholly compliant members of the aforesaid cartel or combination are the producers and vendors of cheap, low end wines who are determined—and with the assistance of named Plaintiffs have succeeded—in avoiding competition from producers of better middle and high end wines, from

around the Western World, and particularly from boutique wineries operating in states other than Mississippi.

- IV. On information and belief, BACCHUS advises this Honorable Court that none of the following wines have been sighted on the shelves or otherwise available for consumer purchases from the cartel member, retail distributors, *viz.*,
  - A. First Growth and other high end wines produced and marketed by world-wide famous chateaux such as Chateau Lafite Rothschild, Chateau Margaux, Chateau Haut Brion, Chateau Latour, and Chateau Mouton Rothschild, and other premier wines that Thomas Jefferson recommended to all Americans;
  - B. World famous Burgundy red wines such as Chambertin wines which were Napoleon's favorite, and Vosne-Romanee, and Burgundy white

### Wisdom from The Supreme Court of Mississippi

Cartels and other combinations in restraint of trade are "frowned upon by all courts as tending towards a deprivation of rights and aimed at creating monopolies." *Wilby v. State*, 47 So. 465, 466 (Miss. 1908). The Court has no truck with those who "for the ostensible purpose of raising revenue" on behalf of the State of Mississippi would "control the business to which it is directed, to shut out competition, create a monopoly, and force those unable to pay the tax... to look to the ones in control of the monopoly for employment." *Id.* at 466–67.

### Wisdom According to The Mississippi Legislature

"Any... association of persons whatsoever" which shall (a) Restrain or attempt to restrain freedom of trade or production" shall be unlawful. Miss. Code Ann. § 75–21-3.

### Relevant Facts

- I. Certain wine sales in Mississippi are permissible and practiced. These are

## MISSISSIPPI COLLEGE LAW LIBRARY HOURS

### SPRING 2018

#### January 10—May 10

|                 |                  |
|-----------------|------------------|
| Monday—Thursday | 7:00 am—midnight |
| Friday          | 7:00 am—7:00 pm  |
| Saturday        | 9:00 am—7:00 pm  |
| Sunday          | noon—midnight    |

### EXCEPTIONS

#### EASTER: March 30—April 1

|                                     |                 |
|-------------------------------------|-----------------|
| Friday & Saturday (Mar 30 & Mar 31) | 9:00 am–5:00 pm |
| Sunday (April 1)                    | CLOSED          |

#### GRADUATION: May 11

|        |                 |
|--------|-----------------|
| Friday | 7:00 am–5:00 pm |
|--------|-----------------|

**Final Exam Hours to be posted at a later date.**

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

Continued on page 17...

wines such as Chablis Grand Cru and Montrachets;

- C. High quality Italian wines such as Brunellos and Barolos, for which BACCHUS has a particular affinity;
- D. High quality Spanish wines from the Rioja region;
- E. Medium and high quality wines from California;
- F. Wines produced by boutique wineries in California and other western states.

BACCHUS could go on. He and the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers would love to be proved wrong in the aforesaid allegations.

- V. As a result of the stranglehold heretofore maintained by the aforesaid cartel, and which Plaintiffs would tighten further by this punitive enforcement action, the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers have no practicable choice but to go to all of the trouble and expense of traveling to retail wine venues like Martin’s Wine Cellar in New Orleans and Buster’s Wines in Memphis, if they wish to purchase acceptable quality for sharing and sipping and fostering good cheer among family and friends.

Enough. The above is only the beginning of the picture that BACCHUS would like to paint for this Honorable Court of equity and good conscience.

Turning to the Amended Complaint, BACCHUS respectfully suggests:

**Jurisdiction and Venue**

- I. BACCHUS agrees that this matter lies within the subject matter jurisdiction of the chancery courts of equity and good and civilized conscience of Mississippi and that venue is proper in Rankin County. BACCHUS reserves the right to take discovery on more amenable and sophisticated wine loving parts of the Western World in order to educate this Honorable Court and Plaintiffs regarding the joy, pleasures, good cheer and other benefits wrought by truly wonderful wines. For reasons unknown to BACCHUS, the Plaintiffs and the monopolizing cartel that

they operate are determined to keep the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi from gaining reasonable and lawful access to any but the cheapest and less desirable wines.

**Parties**

- II. BACCHUS respectfully acknowledges the legal authority and responsibilities of the Plaintiffs as set forth in paragraph 2 of the Amended Complaint. For reasons unknown to BACCHUS, Plaintiffs have failed and refused to protect “the good of the whole” of the people of Mississippi, as they are required to do by Miss. Const., Art. 3, § 5, or to secure the “safety and happiness” of the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi, as required by Miss. Const., Art. 3, § 6. Plaintiffs have not fessed up to this Honorable Court that they are managing and operating a monopolizing cartel contrary to all law and good order and civilized living. Because of their monopolizing cartel and the pernicious effects it is having among the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi, Plaintiffs’ hands are very dirty, sufficient that they should not be allowed to proceed further.
- III.–VI. BACCHUS knows nothing of the four Defendants named in paragraphs 3, 4, 5 and 6, except that, upon information and belief, they offer quality wines to good wine lovers everywhere, and that Plaintiffs’ cartel has filed suit against them in the interests of denying quality wines to the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi in furtherance of their rights secured by Sections 5 and 6 of the Mississippi Constitution.

**Facts**

- VII.–X. BACCHUS has read paragraphs 7 through 10 and finds no statements of fact, only propositions of law. That Plaintiffs do not know the difference between

facts and law is disturbing, suggesting that Plaintiffs may have been partaking excessively of the cheap wines that their cartel markets in Mississippi, all to the detriment of the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi.

- XI. Because of the illegal and monopolizing cartel that they operate, the Plaintiffs have very dirty hands and should be precluded from enforcing the statutes they cite.
- XII. Plaintiffs complain here of the sale of “one (1) bottle of bourbon whiskey” in Rankin County. BACCHUS has no interest in such vile and pedestrian consumptive activities.
- XIII. Plaintiffs complain here of the sale of “two (2) bottles of champagne.” There are, of course, very cheap champagnes that no self-respecting wine lover would knowingly purchase. Before pleading further to this particular charge, BACCHUS needs to know if the champagne said to have been sold and delivered in Forrest County was in fact available through the state’s illegal and monopolizing cartel at a price competitive with that offered by Grand Wine Cellar. A bill of particulars, please. On information and belief, BACCHUS would show that the Plaintiffs engaged in illegal and otherwise devious acts of entrapment in procuring the evidence, if any, upon which these charges are based.
- XIV.–XV. Plaintiffs complain here of the sale of three (3) bottles of Lockwood Pinot Noir wine. Before pleading further to these particular charges, BACCHUS needs to know if the Lockwood Pinor Noir wine said to have been sold and delivered in Rankin County was in fact available through the state’s illegal and monopolizing cartel at a price competitive with that offered by Wine Express. A bill of particulars, please. On information and belief, BACCHUS would show that the Plaintiffs engaged in illegal and otherwise devious acts of entrapment in procuring the evidence, if any, upon which these charges are based.
- XVI., XVIII., XX., XXIV. Plaintiffs here complain of the sale of bottles of wines to minors—persons under 21 years of

*Continued on page 18...*

age—in Madison and Rankin Counties. BACCHUS agrees that wines should not be sold to persons under 21 years of age. BACCHUS will waive his defense of the state’s dirty hands by reason of the state’s operation of an illegal and monopolizing cartel, if the state will agree to prohibit the sale of guns, arms and other deadly weapons to persons under 21 years of age, and enforce that prohibition effectively.

XVII., XIX., XXI., XXIII., XXV., XXVI., XXVII., XXVIII. Plaintiff complains here of the sale of bottles of wine in Adams, Bolivar, Harrison, Madison, Rankin, and Winston Counties. Before pleading further to these particular charges, BACCHUS needs to know if the wines said to have been sold and delivered in said counties were in fact available through the state’s illegal and monopolizing cartel at a price competitive with that offered by vendors named in these paragraphs of the Amended Complaint. A bill of particulars, please. On information and belief, BACCHUS would show that the Plaintiffs engaged in illegal and otherwise devious acts of entrapment in procuring the evidence, if any, upon which these charges are based.

XXIX. On information and belief, BACCHUS believes that the only reason the Defendants have been able to sell or deliver the aforesaid wines is that the state’s illegal and monopolizing cartel has failed and refused to offer to the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi the sale, delivery and other marketing services of these wines at prices and on terms competitive with those offered by vendors named and charged in the Amended Complaint.

XXX. As to the allegations of paragraph 30 of the Amended Complaint, BACCHUS says, “Don’t be silly!” Any damages suffered by the State of Mississippi are self-inflicted wounds. If Plaintiffs would disband its illegal and monopolizing wine cartel, as aforesaid, so that the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi could have access to and enjoy the sale, delivery and other marketing services of these wines

at prices and on terms competitive, the State would suffer no damage. Without qualifying the foregoing, BACCHUS agrees completely that wines should not be sold to persons under 21 years of age, and would cheerfully join and support the state’s efforts in this regard, if the state would prohibit the sale of guns, arms and other deadly weapons to persons under 21 years of age, which sales heretofore have caused and inflicted upon the State of Mississippi infinitely greater damages than those that the State has suffered through sales of wine to minors.

### Affirmative Defenses

- I. Plaintiffs come before this Court with very dirty hands, as aforesaid.
- II. On information and belief, Plaintiffs have obtained substantially all of the factual information that they set out in Paragraphs 12 through 28 of their Amended Complaint through entrapment, deceit and/or other impermissible evidence gathering tactics.
- III. Except in the instance of their charge that wines should not be sold to minors, by reason of Plaintiffs’ creation of, management of and enforcement of the anti-competitive cartel described above, Plaintiffs are estopped from proceeding with their claims.

### Plaintiffs’ Claims for Relief

In paragraphs 31 through 44, and at pages 15 through 22, Plaintiffs make claims for relief. By reasons of their very dirty hands, BACCHUS respectfully suggests that the Plaintiffs and the State of Mississippi on whose behalf they purport to proceed are entitled to no relief from this Honorable Court of equity and conscience. Provided, however, BACCHUS agrees completely that wines should not be sold to persons under 21 years of age, and would cheerfully join and support the state’s efforts in this regard, if the state would prohibit the sale of guns, arms and other deadly weapons to persons under 21 years of age. Moreover, BACCHUS advises this Honorable Court that he is reliably informed that the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi, would

gladly pay taxes lawfully assessed consistent with the Constitution and laws of the United States and, subordinate thereto, of the State of Mississippi. BACCHUS advises this Honorable Court that he is reliably advised that the aforesaid quality wine lovers of Mississippi accept without qualification that fundamental practical reality of social existence in a democracy that taxes are the price they pay for civilization. BACCHUS would add that their reasonable access to quality wines in Mississippi would greatly enhance the civility of life here and would facilitate the peace, prosperity and pursuit of happiness consistent of the people with the Constitution and laws of the United States and Article 3, Sections 5 and 6 of the Constitution of the State of Mississippi.

### Complaint in Intervention

- I. BACCHUS proceeds in accordance with Rule 24, Miss. R. Civ. P. In the alternative, BACCHUS respectfully advises this Honorable Court of equity and good conscience that he is its very good friend in moral support of the core values of Western Civilization, and, notwithstanding all else, asks the Court’s leave to participate as *Amicus Curiae*.
- II. BACCHUS reasserts all of the allegations he has made hereinabove, including those made on information in belief.
- III. BACCHUS makes claim for declaratory relief, Rule 57, Miss. R. Civ. P., in addition to coercive relief.
- IV. As set forth herein above and as may be shown at the hearing hereof, Plaintiffs and Counter-Defendants have created, coordinated and are practicing a cartel, trust or combination in restraint of the freedom of trade in quality wines in the State of Mississippi, contrary to the Sherman Act, 15 U. S. C. § 1, and other federal antitrust laws, and, as well, contrary to Miss. Code Ann. § 75–21-3.
- V. As set forth herein above and as may be shown at the hearing hereof, Plaintiffs and Counter-Defendant have engaged in or acted with intent to facilitate unfair methods of competition affecting commerce.
- VI. Until Plaintiffs dismantle their cartel, trust or combination, and cease facilitating

*Continued on page 19...*

unfair methods of competition, they should be required to adopt an additional rule or regulation to be added to their present regulations under Title 35, Part II, Mississippi Code of Regulations, providing for reasonable and practicable means whereby any of the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi, may be promptly reimbursed for their reasonable expenses incurred going to venues outside of Mississippi in order to procure a reasonable and continuing supply of quality wines to enhance the peace, prosperity, happiness and good cheer of their family, relations and friends. The Court should order that these rules

be adopted in accordance with notice, comment and other requirements of Miss. Code Ann. § 25-43.3.101, *et seq.*, as amended.

VII. Internet sales of quality wines should be allowed to continue as with other products, subject to such sales taxes as may lawfully be levied consistent with the Constitution and Laws of the United States.

VIII. At all times hereafter, BACCHUS is assured that, upon the cracking of each new bottle of quality wine, the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi will each raise a glass and join in a toast to the values of Western Civilization, one of which will always

be that payment of lawfully levied taxes is the price we pay for our enjoyment of life in the Western World.

WHEREFORE, BACCHUS, Plaintiff In Intervention herein, respectfully requests the Court will grant such relief as may be equitable and proper in the premises, and upon the finality thereof, join him and the thousands of good law abiding, cheerful taxpaying citizens and quality wine lovers of Mississippi, in a toast to the values of Western Civilization.

Respectfully submitted,  
BACCHUS aka DIONYSUS  
Rome and Athens and the rest of the Western World,  
Including Mississippi, U.S.A. 🍷

## 26th Annual GOLF OUTING

March 26, 2018 · Country Club of Jackson

Swing into spring with CABA's 26th Annual Golf Tournament. Proudly benefitting the Mississippi Volunteer Lawyers Project (MVLN), a nonprofit dedicated to providing high-quality pro bono legal services in Mississippi, the four-man-scramble tournament will be held on Monday, March 26th at the scenic Country Club of Jackson, now a regular stop on the PGA Tour. This year's tournament is shaping up to be one of the best yet, with new hole activities to accompany the great food, beverages, prizes, and professional camaraderie that are staples of this event. Lunch will be provided at noon, with a shotgun start at 1:00 p.m. Cost is \$175 per golfer.

**Thanks to our generous sponsors, CABA donated \$6,500 to MVLN following last year's tournament!** This year, sponsorship opportunities are still available for your firm or organization, ranging from a \$200 Hole sponsorship and a \$650 Birdie sponsorship (includes two golfer registrations) to a \$1,000 Eagle sponsorship (includes three golfer registrations) and a \$1,500 Luncheon, Beverage, or Prize sponsorship (includes four golfer registrations).

To sponsor the tournament or register your foursome, please contact [Ashley.Stubbs@butlersnow.com](mailto:Ashley.Stubbs@butlersnow.com). The golf team registration form is available at: <http://caba.ms/assets/downloads/2018-golf-registration.pdf>.

Both sponsorship and golfer-registration checks should be made payable to CABA and mailed to Butler Snow, Attn: Ashley Stubbs, P.O. Box 6010, Ridgeland, MS 39157.

We look forward to seeing you on the course.

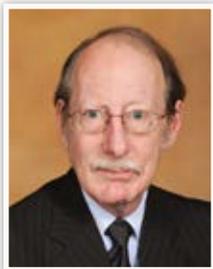


# » On Computing

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## Spring Apps to Consider...



By Joel Howell

With thanks to Kim Komando, the internet, and a few of the usual suspects, here are a few websites you may not have heard of but should know.

[JustWatch.com](http://JustWatch.com), which can be accessed via computer or as an Android app from Google, lets you easily find out where to watch your favorite movies & TV shows in the United States. Choose your favorite streaming providers and see what's new, what provider a show is on, and whether it's free or there is a fee. Filter by genre and release year to find the perfect movie to stream.

One of the most overlooked vulnerabilities is your router. Hackers can break into this device as easily as any other, a process called "DNS hijacking," and most victims wouldn't think to check whether it's secure.

**F-Secure Router Checker** ([www.f-secure.com](http://www.f-secure.com)) offers a free service that's specially designed to scan your router for break-ins. You may be surprised how easy and fast this diagnostic is; just click the "Check Your Router" icon, and you'll receive a near-instantaneous report.

**Hemingway Editor** ([www.hemingwayapp.com](http://www.hemingwayapp.com)) is designed to mimic his minimalist prose. Copy and paste a few paragraphs into the site's text box, and the editor will outline problematic parts such as long sentences, obscure words, and confusing passages. The app highlights lengthy, complex sentences and common errors; if you see a yellow sentence, shorten or split it. If you see a red highlight, your sentence is so dense and complicated that your readers will get lost trying to follow its meandering, splitting logic—try editing this sentence to remove the red. You can utilize a shorter word in place of a purple one. Mouse over them for hints.

**Grammarly** ([Grammarly.com](http://Grammarly.com)) is billed as the world's best grammar and spell checker. It's free and can even be added to Firefox. You can paste a document and have it checked at the Grammarly site. The app and browser extension works across programs and platforms, pointing out your split infinitives in emails, word processors, websites, or on social media.

**IFTTT** ([iftt.com](http://iftt.com)) is a free way to get all your apps and devices talking to each other. Not everything on the internet plays nice, so this app is on a mission to build a more connected world. IFTTT is

short for "if this then that," and is designed to help different devices and services talk to each other. These scripts (called "recipes" by IFTTT) can make your gadgets do things as in a chain of events. Want your smart lights to blink three times when you are tagged in a photo on Facebook? How about getting a notification on your phone when your favorite artist tweets about tickets to a concert? IFTTT can automate web-based tasks, and you can set up "triggers" and "applets" to set certain behaviors in motion.

Many people struggle to convert a Word document into a PDF. Or they have a WAV file that they need to condense into an MP3. What about a PNG that you want in JPG form, an XLS to CSV, or EPUB to MOBI? [Freefileconvert.com](http://Freefileconvert.com) is designed to handle all sorts of file format conversions, from one type to another type and back again. Simply upload your file, decide the output format, click "Convert," and the website will do the rest. This is a real godsend if you work with lots of different media

If you haven't achieved the Zen-like "zero inbox" status, there is a site that can help. If you apply **Clean Email** (<https://clean.email>) to your inbox, you will get a detailed report, with sophisticated analysis. You learn about the senders, your response rate, and which emails can be safely eliminated. Clean Email is free for the first thousand emails, after which it has a monthly subscription fee. You can also use it across multiple accounts.

Finally, one site discussed here before is worth repeating. You would think, after all these decades, it would be easier to print pages off the internet. But printers and websites have never been on good terms, and it can be difficult to get a clean printout of just what's relevant.

**Print Friendly** ([www.printfriendly.com](http://www.printfriendly.com)) takes the headache out of this process: Just paste a URL into the field and hit "Preview." Print Friendly trims away a lot of the extraneous information and gives you the meat of the page, and you can review your document as a PDF before hitting "Print." The service works better for some websites than for others, but it's shockingly effective, especially for software that's free. ➔



Questions or comments?

Drop me an email: [jwh3@mindspring.com](mailto:jwh3@mindspring.com)

# *An Evening* HONORING the **JUDICIARY** *Banquet*

*The Capital Area Bar Association and the Jackson Young Lawyers Association will hold their annual Evening Honoring the Judiciary on Thursday, May 17, 2018. The event will again be held at the Country Club of Jackson. Join us for a reception at 6:00 p.m., followed by dinner at 7:00 p.m.*

This year's keynote speaker will be the **Honorable Bernice B. Donald** of the United States Court of Appeals for the Sixth Circuit. Judge Donald is a native of DeSoto County, Mississippi. She earned her undergraduate degree at the University of Memphis, and her law degree from the University of Memphis's Cecil C. Humphreys School of Law. Unlike many lawyers whose professional careers focus on a single area of the law, Judge Donald's career has included areas as diverse as civil rights, criminal law, and bankruptcy law. She began in private practice, then worked for Memphis Area Legal Services and the Shelby County Public Defender's Office before being elected, at age 30, to her first judicial position on Tennessee's General Sessions Criminal Court. She was the first female African-American judge in Tennessee.

Judge Donald then served as a United States Bankruptcy Judge from 1988-1995. In 1995, she was nominated by President Bill Clinton to become a United States District Judge for the Western District of Tennessee. She was confirmed the same year, and served as a district judge for 15 years, before being nominated for the Sixth Circuit by President Barack Obama in 2010. In nominating Judge Donald for the Sixth Circuit, President Obama noted her outstanding commitment to public service. She was confirmed to the Sixth Circuit seat in 2011, by a vote of 96 to two.

Among many other significant achievements, Judge Donald has been president of the American Bar Foundation, secretary of the American Bar Association, has chaired the ABA Commission on Opportunities for Minorities in the Profession, and has worked throughout her career to promote access to justice, civil rights, and inclusion. In 2014, she was awarded the John H. Pickering Award of Achievement by the American Bar Association, given to recognize dedication to the cause of equal justice for all and the highest standards of ethics and professionalism in the law.



Please join CABA and JYL at the Country Club of Jackson on May 17, for this annual celebration to honor our state and federal judiciary, as well as the recipients of the organizations' annual outstanding service, pro bono and professionalism awards. We are looking forward to an evening of fellowship, to the opportunity to recognize and thank our judges, and especially to hearing Judge Donald's insights. Please [visit our website](#) to sponsor the event or purchase tickets.

# THE POWER OF MENTORS AND SPONSORS

By Tiffany Graves



I have been out of law school for eleven years. I met my husband in law school at the University of Virginia School of Law. He is from Jackson, Mississippi, and rather than make him stay in Virginia, my home state, I followed him back to Mississippi after we graduated. Prior to moving to Mississippi, I had only stepped foot in the state once, for my now brother-in-law's wedding.

As much as I loved my husband, I was incredibly nervous about moving to Mississippi. Like everyone who is not from the state, the things I had heard about Mississippi gave me great pause, especially as an African-American woman. I worried that I might not find the support in Mississippi that I had in Virginia—those mentors who cheered me on as I became the first to graduate from a four-year college in my family and, later, the first to graduate from law school. I did not want to enter into an environment where the color of my skin would restrict the opportunities with which I would be presented.

I knew how invaluable mentors and sponsors had been for me before moving to the Magnolia State and I knew that I would have to be very intentional about finding similar supports in my new home.

It has been more than a decade since I moved to Mississippi, and I can happily

report that I have found the support I knew I would need to help me navigate professional and personal decisions. I have had the pleasure of working at some of the biggest law firms in the state as well as with legal nonprofit programs dedicated to serving the state's underserved populations. I can point to at least one person—either a mentor or a sponsor—in each career setting who helped pave the way for my entry into a particular position, board or other professional engagement. The guidance I have received from mentors and sponsors throughout my legal career has had an immense impact on where I am today. Mentors and sponsors serve different purposes, but their end goal is the same: to support you in achieving your goals.

Mentors provide guidance and advice, but they do not necessarily act as a coach or advocate like a sponsor. Those wanting career guidance and advice typically seek out mentors and, at times, mentors are assigned to professionals new to a particular industry or organization. In the legal context, for example, most law

firms will pair a new associate attorney with a more senior associate or partner to help her navigate law firm practice.



Tiffany Graves recently presented on this topic as part of a panel at the ABA TECHSHOW on March 8, 2018 in Chicago. The panel, Mentoring Women and People of Color in Legal Tech, also included Dan Lear (Avvo), Judy Perry Martinez (Simon, Peragine, Smith & Redfearn), Irene Mo (ABA Center for Innovation), and Chas Rampenthal (LegalZoom).



I have sought out mentors and been sought out to be a mentor. It is difficult and, in my opinion, not advisable to ask someone you do not know to be your mentor. Mentorship needs to be about connection, chemistry and trust. I believe the mentorship relationship may be doomed from the beginning if the two people involved lack some level of connection, even if that connection only includes having attended the same college or professional school, being in the same sorority or fraternity, etc.

You will not always know who your

*Continued on page 23...*

sponsors are and, frankly, that is what makes them special, and their advocacy, powerful. Sponsors advocate for you in the workplace when you need to be more visible. They speak for you in situations where your voice may



be muted by your inexperience or simply by a lack of awareness of your contributions to the team. Like it or not, your legacy in a company is closely-tied to your perceived success. If you are actively working to build

relationships and prove your value-add to an organization, in time, people will notice, and they will begin to advocate for you, and you will reap the rewards of that advocacy.

I have turned to mentors for guidance as I have contemplated career changes, considered accepting positions on boards, and thought about running for office in professional associations. Their advice has been invaluable and, at times, prevented me from making decisions that I would have most certainly regretted. Sponsors—some of whom were revealed, and some of whom were not—have helped me obtain promotions, get elected to statewide positions, and get appointed to boards whose missions closely-aligned with my core values. While I may have been able to achieve some of those things on my own, I will never discount the power of having people who believed in me and, in the case of my sponsors, having people who actively fought for me to advance.

I am currently mentoring two young

attorneys and one law student. They approached me about developing a mentorship relationship and I agreed to do whatever I could to support them in their professional and personal growth. I have also quietly and not-so-quietly sponsored colleagues in the past who were, fortunately, able to benefit from my advocacy. I will continue to mentor and sponsor to “pay it forward” and because I believe women, in particular, need other women of influence as their champions. This is especially true for women of color who do not always have familial and other connections to people who can advocate for them.

Mentors and sponsors can be essential to helping you find your voice, believe in your potential, and open the doors that might just lead to your next big career move.

*Special thanks to the ABA Law Student Division, who first published Tiffany’s article [here](#).* ➔

MARCH 16

CABA  
**FLASH  
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Closing the #Divide:  
How Young Lawyers Can Transcend Generational  
Differences As They Transform the Practice of Law

Shown below are photos from the event





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