CABA
Capital Area Bar Association

NOVEMBER 2025

President's Column

By Melissa S. Scott

I recently returned from a trip to Hong Kong where I met individuals from 15 other countries devoted to strengthening and improving our profession. We discussed emerging issues in the practice of law and resources to support the lawyers in our jurisdictions all over the world. When working with this group, I'm always amazed at how the issues facing our profession are universal and how much we can learn from the different approaches that have developed. Each panelist would typically introduce themselves with a quick rundown of how lawyers are licensed in their jurisdiction and the standards that govern their conduct. My favorites introduction is always to hear our counterparts in Canada discuss when they first started practicing—they begin with the phrase, "I was called to the bar in XX year." The practice of law is indeed a higher calling. And that comes with responsibilities. We are entrusted with the matters of others, to see that justice is done, uphold the rule of law, and serve our clients and our communities. CABA provides its members with multiple opportunities to do just that.

I hope you will join us at the CABA Christmas party on December 9th at Little Effie in the District at Eastover. We will again partner with the Marine Corps Reserve's Toys for Tots to collect toys and spread a little cheer to children and families less fortunate than ourselves. So, grab a toy, drop by on your way home from work, and share some holiday joy with your colleagues.

Also be on the lookout for other opportunities to serve our greater community through CABA with pro-bono clinics, our popular law-related education essay contest for middle schoolers, or by playing golf at our annual tournament benefiting MVLP. To get involved, please reach out!

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February 17
CABA Membership Meeting
Noon • River Hills

March 16
CABA Golf Tournament
Jackson Country Club

WORDS–WITH A LATIN FLAVOR

By Jim Rosenblatt

In the practice of law one encounters Latin words and phrases with some frequency. There are some who take the position that we should not use Latin phrases, for such phrases may be a mystery for the person not versed in the law. That may be the case if one is writing or speaking with ordinary folks. However, I take the position that in the legal community the use of familiar Latin phrases succinctly communicates the thought or concept involved. The irony is that the Latin phrase often communicates a thought more clearly than does the literal English translation.

Allow me to share some of my favorite Latin words and phrases—as well as those suggested by my colleagues—that instantly and clearly communicate a thought, concept, or idea.

caveat emptor—what an appropriate phrase to share with one who buys a used car without a warranty. Rather than go into a long winded explanation as to why a buyer needs to be careful and wary in the purchase of goods or services, simply utter this useful phrase.

habeas corpus—we all know this as a "get out of jail" card, but it is not free. Normally the "corpus" is wearing a colored suit and has limited freedom of movement.

pro hac vice—or sometimes abbreviated as "*pro hoc*" lets you appear in a court even though you are not admitted in that jurisdiction, but you may want to associate local counsel. Better ensure you file properly and don't exceed the number of allowed appearances. This is far better than having to take another bar exam.

res ipsa loquitor—allows one to say that I don't have to say more as the point is self-evident. The church equivalent of this phrase is saying "Amen." This is an easy way to infer negligence.

ex parte—better not talk to the judge without the other party being a part of the conversation unless you are adept at "ear wigging."

pro bono—the type of legal service you provide for which you don't get paid (and didn't intend to be paid).

de novo—you had better write a longer brief because the appellate court will be looking at everything—law and facts.

mens rea—you can't commit a crime unless you were thinking about committing a crime.

stare decisis—an ancient legal concept used in days long ago when the decision of an earlier court controlled the outcome of a current case (unless the earlier case was "wrongly decided").

res judicata—keeps you from having to litigate a matter that has already been decided—or, there is no need to plow that field again.

pro se—a judge's favorite type of litigant where the judge has to advise the *pro se* party as well as rule in the case. *Pro se* litigants have been greatly encouraged given the access to volumes of legal information available on the internet, and they are expert at taking copies of earlier pleadings, whiting out the names, and inserting their own. When opposing a *pro se* litigant the attorney will be at a disadvantage.

Let me know if you have a favorite Latin phrase that I can include in a subsequent article. (Rosenbla@mc.edu). In the meantime, *sevare fidem*.

EVENT RECAP

CABA Membership Meeting *August 19th*

At our August membership meeting, a member of the Mississippi Bar's Lawyers and Judges Assistance Committee gave an update on what the Bar is doing to foster positive change in the well-being of our professional community.

Federal Rules Update:

Privilege Logs and "AI Evidence"

By Deborah Challener

Discuss Privilege Logs Early

Recent amendments to the Federal Rules of Civil Procedure will take effect on December 1, 2025. Of note, Rule 26(f)(3)(D) has been amended to direct the parties to address in their discovery plan how they will comply with the requirement in Rule 26(b)(5)(A) that they must provide a privilege log if they withhold materials on the grounds of privilege or work product. The amended Rule provides: A discovery plan must state the parties' views and proposals on any issues about claims of privilege or of protection as trial-preparations materials, *including the timing and method for complying with Rule 26(b)(5)(A)…*" Amended Rule 26(f)(3)(D).

A "key purpose" of the amendment is to require discussion of privilege logs at the outset of litigation. The committee note indicates that the amendment should minimize problems that occur when a party's objections to compliance with Rule 26(b)(5)(A) emerge only toward the close of the discovery period. In other words, the amendment is intended to prevent late disputes about withheld documents. Rule 16(b) has also been amended to provide that the court may address the timing and method of the parties' compliance with Rule 26(b)(5)(A) in its scheduling order.

Also of note, new Rule 16.1 provides a framework for the initial management of multidistrict litigation (MDL) proceedings and will take effect after several years of work by the MDL rules subcommittee.

Proposed "AI Evidence" Rule

This past June, the Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee) released new Rule of Evidence 707 for public comment. The purpose of proposed Rule 707 is to regulate "machine-generated evidence" that is unaccompanied by human expert testimony. The proposed Rule

CABA Membership Meeting

October 21st

Speaker: Fred Slabach — Dean of the University of Mississippi School of Law

October's lunch meeting at River Hills featured Dean Slabach's presentation on "The Rule of Law, the Independence of the Judiciary, and their Role in our Democracy." Dean Slabach discussed the components of authoritarianism and how their use by leaders in other countries such as Turkey and India have led to a reduction of individual rights and freedoms in those countries. He explained the critical role that lawyers play in upholding the rule of law and preserving our individual and collective liberties.

To view more photos of this CABA Membership Meeting, please visit caba.ms.

EVENT RECAP

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provides: "When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 [governing the admissibility of expert testimony] if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of Rule 702(a)-(d). This rule does not apply to the output of simple scientific instruments."

The committee note to proposed Rule 707 explains that machine-generated evidence can involve the use of a computer-based process or system to make predictions or draw inferences from existing data, but there can be reliability concerns just like there can be reliability concerns about expert witnesses. These concerns can involve the use of a process for purposes that were not intended, analytical error or incompleteness, and inaccuracy or bias built into the underlying data or formulas, etc.

Proposed Rule 707 provides that if machine output is offered without a human expert to accompany it, and where the output would be treated as expert testimony if it came from a human expert, its admissibility is subject to the requirements of Rule 702(a)-(d). The committee note indicates that a Rule 707 analysis will usually involve, among other things, considering (1) whether the inputs into the process are sufficient for purposes of ensuring the validity of the resulting output, and (2) whether the process has been validated in circumstances sufficiently similar to the case at hand.

The comment period for proposed Rule 707 is open through February 16, 2026. For more information on submitting comments, click here: Proposed Amendments Published for Public Comment. You can also find more information on amendments to Federal Rules of Civil Procedure 16 and 26 and information about amendments to the Federal Rules of Appellate Procedure and the Bankruptcy Rules click here: Pending Rules and Forms Amendments.

CABA Fall SOCIAL

EVENT PHOTOS below!

This event was held on October 2, 2025 at Belhaven Town Center celebrating the new MS Bar Admittees.

Fall SOCIAL EVENT PHOTOS CONTINUED...

Death is Different

(At Least for the Feds)

By Terryl Massey

In the three glorious years since retirement, I've been asked on several occasions whether I miss working. Nope, when it was time to go, I went. Some unlucky souls go further and ask whether I had a legal specialty. "Death Penalty." The reaction is like something out of *Alice's Restaurant*: "What are you in for, kid? Littering. And they all moved away from me on the Group W bench."[1] I have some great war stories, but no one wants to hear them. Typically, the other person immediately realizes that he or she bad needs to have their drink refreshed.

Use of the death penalty is in the news these days, and, for your next cocktail party, you might want to know something strangely educational about it. State and federal death penalty prosecutions are pretty similar… until they're not. The primary difference is centralized control over the prosecution by the Department of Justice. Death penalty law in both jurisdictions gets tweaked from time to time, but remains largely the same from one year to the next. In the federal system, however, a change in administration from one party to another, and the concomitant change in leadership of DOJ, often results in a more or less zealous pursuit of the ultimate punishment. For example, early in the Biden administration, DOJ declared a moratorium on the imposition of the death penalty in the federal system. Three and a half years later, on January 15, 2025, Attorney General Merrick Garland announced that the Department of Justice (DOJ) was rescinding the federal government's single-drug pentobarbital lethal injection protocol.

Almost immediately thereafter, on January 20, 2025, President Donald Trump signed more than two dozen Executive Orders, including a call to "restore" the death penalty. It stated, "It is the policy of the United States to ensure that the laws that authorize capital punishment are respected and faithfully implemented, and to counteract the politicians and judges who subvert the law by obstructing and preventing the execution of capital sentences." The Order instructed the U.S. Attorney General to "pursue the death penalty for all crimes of a severity demanding its use," including the killing of a law enforcement officer or "a capital crime committed by an illegal alien."

Trump also encouraged state attorneys general to bring state charges for capital crimes. He called on the Attorney General to "take all necessary and lawful action" to ensure that states with capital punishment have sufficient access to the drugs needed for lethal injection executions. Finally, the Order directed the Attorney General to seek to overrule any established Supreme Court precedent that "limit[s] the authority of state and federal governments to impose capital punishment." Following up on that directive, on February 5 of this year, shortly after she was confirmed, Attorney General Pam Bondi issued an order compelling U.S. Attorneys in the various districts to indict cases that met the criteria as capital.

Federal death penalty prosecutions are substantially fewer than those in state court. Federal courts primarily see state prosecutions in the context of petitions for habeas relief. The scope of review is limited by statute, and it is generally constrained by the state court record. Federal death penalty prosecutions, on the other hand, start from scratch. They last longer and cost more. To the average person — the average lawyer even — federal death penalty law is obscure, largely because it is so seldom used. I was the Southern District's Death Penalty Staff Attorney for fifteen years; I worked on exactly two cases. As a result, substantially fewer inmates under federal custody have been executed.

In December, 2024, there were only forty inmates facing capital punishment in the federal system. President Biden commuted the sentences of thirty-seven, so there are currently only three — Robert Bowers, Dylann Root, and Dzhokhar Tsarnaev.[2] There has been a substantial gap between executions; for example, after Victor Figuer was executed in 1963, it was not until June, 2001, that Timothy McVeigh and Juan Garza met the same fate. There was another execution in 2003, but then a gap until July, 2020. While never officially acknowledged by the United States Government, some believe that the last gap resulted from 9/11 and the European Union countries' reluctance to extradite terrorists to this country, where they faced the possibility of execution.

The statute that sets out the crimes for which execution can be the appropriate punishment in the federal system is much more restrictive than state statutes. 18 USC §3591–99. The ordinary, garden-variety murder (if there is such a thing) doesn't qualify. Broadly speaking, capital crimes for federal purposes fall into these general categories: killing a federal officer, serious drug enterprises, and terrorist acts.

Even when a federal case can be made, there's no guarantee that the feds will prosecute a murder that fits their criteria; sometimes, they defer to the state. For example, the 2012 mass shooting in a movie theatre in Aurora, Colorado, resulted in the death of two active-duty service members. Those murders could have been prosecuted as a capital case under federal law, but, in light of the fact that the

1. Apologies to Arlo Guthrie.

2. There are another four prisoners currently under a sentence of death under the Code of Military Justice. For more details on how that works, you have to ask my son, Major Ira.

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local prosecutor would be handling the other murders, and because that district attorney had experience in prosecuting death-eligible murder cases, it made more sense to defer to the State.[3] In other cases, there are duplicate indictments.[4]

The pretrial process for federal death penalty cases is markedly different from the states'. Under state or federal law, an indigent person indicted for a capital offense is entitled to two qualified appointed attorneys. Unless replaced, those attorneys are tasked with representing the defendant through trial, appeal, post-conviction proceedings and applications for clemency. The attorneys are usually appointed shortly after indictment. The federal rate for capital representation is $223.00 per hour; for non-capital cases, it is $175.00.

To decide whether to seek the death penalty, state district attorneys have substantial discretion. In the federal system, however, the decision-making process is more complex. The decision to indict a crime as death-eligible is a collaboration between the local U.S. Attorney and the Department of Justice, with DOJ having the last word. The local U.S. Attorney can charge a defendant with a capital crime, but the decision to seek the death penalty must be reviewed by DOJ. After that initial review, a later conference determines whether DOJ believes that the evidence supporting the punishment is enough to persuade a jury to render a judgment that the defendant should be executed.

DOJ makes the final decision on punishment only after presentations from both sides. To impose the death penalty, both state and federal law require an assessment of aggravating and mitigating factors, resulting in a finding that the aggravating circumstances outweigh the mitigating ones. Aggravating factors include premeditation and whether the murder was "especially heinous, cruel, or depraved." Mitigating circumstances include the defendant's background and whether he acted under severe emotional disturbance.

This review means that a great deal of investigation has to be done at a preliminary stage of the case. Attorneys for both sides begin preparing for their DOJ presentations early on. Typically, defense counsel will ask the court to also appoint an investigator and a mitigation expert. These costs are front-loaded and high; thus, most courts require defense counsel to submit a budget at the beginning of the case.

If DOJ decides to withdraw its request for capital consideration after this process, the Administrative Office of the U.S. Courts encourages judges to reduce the number of attorneys from two to one, and to reduce the remaining lawyer's hourly rate from $223 to $175. In practice, this is not always done. The AO's guidelines also require that, at the conclusion of the case, the cost of the defense be made part of the record. That is not always done either.

Assuming that the defendant is found guilty, and the death penalty is imposed, the Bureau of Prisons will send the prisoner to one of two BOP facilities: one for the men and the other for the few women on federal death row. Male prisoners are incarcerated in the Special Confinement Unit (SCU) at the United States Penitentiary (USP) in Terre Haute, Indiana. Female prisoners are housed at the Federal Medical Center (FMC) Carswell in Fort Worth, Texas. (In a few instances, the BOP has placed prisoners in other facilities, such as ADX Florence in Colorado, but this is rare.)[5]

If all appeals and petitions for postconviction relief fail, the law provides that the prisoner shall be executed in the same manner used by the state where the crime occurred. If that state prohibits use of the death penalty, then BOP has discretion to pick the method belonging to another state.[6] The current method of execution for federal prisoners is by lethal injection.

This is what I left for retirement. Although still fascinated by shows like *CSI* and *Forensic Files*, I can honestly say that I never want to see another autopsy photo. I can also live without staying late at the office on execution day, until the prisoner is pronounced dead. Maybe I'm the only Law Geek who finds this subject interesting. Consider this though: you now have a topic of conversation almost guaranteed to get rid of any pesky party guest who is between you and the *hors d'oeuvres*! Tell them you have photos on your phone, and they're gone for sure.

3. The defendant was ultimately sentenced to life without parole, after the jury could not agree on sentencing.
4. In the case involving the murder of a mother in Louisiana, the kidnapping of her children to Mississippi, and the murder of one of the little girls, Daniel Callihan hit the trifecta and was indicted in both states and in federal court. He will apparently be given life without parole by all three courts.
5. The prisoners whose sentences were commuted by President Biden have been transferred to this facility, which is considered a maximum-security facility. Military death row is at the U.S. Disciplinary Barracks at Fort Leavenworth.
6. For example, Dzhokhar Tsarnaev was tried in Massachusetts.

LARRY HOUCHINS: *The Bar Loses a Legend*

By Spencer Ritchie

The Mississippi Bar lost a legendary stalwart with the recent passing of Lemuel Lawrence "Larry" Houchins, Jr. Larry, who passed away on October 26, 2025, in Jackson, was Executive Director of the Mississippi Bar for 37 years until his retirement in 2017. He was 72.

Larry grew up in Vicksburg, Mississippi and graduated from Ole Miss in 1975. After graduation, he served for several years as the Executive Director of the Mississippi Trial Lawyers Association before becoming the Executive Director of the Mississippi Bar in 1980.

> *"Larry will be sorely missed. But he left an amazing legacy and wonderful memories, and for that we should all be grateful."*

During his multi-decade tenure at the helm of the Mississippi Bar, Larry led the organization through a multitude of challenges, times of turbulence, and radical changes in the way lawyers operate and serve their clients. Despite this, and with the size of the Bar always growing, Larry always seemed a step ahead, boosting member services in areas such as computerized legal research, trainings at seminars, publications, career networks and attorney assistance programs, just to name a few.

CABA member Steve Rosenblatt noted about Larry: "Larry became Executive Director of the Bar when he was just 27 years old. Even then, he was wise and mature beyond his years. These were traits he needed in working with different Bar Presidents and leaders, lawyers, and judges with a wide range of perspectives, personalities, and temperaments. Larry was always a stable, steadying influence who knew how to 'stay the course' to achieve the desired objectives. And, in every area of his work, Larry was the consummate model of professionalism."

Past Mississippi Bar President Cham Trotter once said, "I remember the general consensus among Past Presidents was that you prayed Larry would not retire during your term of office because some pour soul was going to be Bar President [without Larry]." That "pour soul," when Larry retired in 2017, was W. Briggs Hopson, III of Vicksburg. When reached upon Larry's passing, Hopson observed: "Larry Houchins was a true gentleman. His professionalism and calming influence served our Bar well. Above all, I remember his warmth — that genuine smile and friendly chuckle which made him so endearing."

On a personal level, Larry was a longtime friend to my wife's family, their being of similar ages and community involvement in Jackson as the Houchins. I am a native Texan and married into the Magnolia State. After graduating from Ole Miss law school and knowing very few in the Mississippi Bar, Larry treated me as if I had been in the state

my whole life. Young Mississippi lawyers too many to count received the same treatment from Larry, positively shaping my and their careers for decades to come.

As Briggs Hopson shared, "Larry will be sorely missed. But he left an amazing legacy and wonderful memories, and for that we should all be grateful." Amen to that.

Larry is survived by his wife Pamela Houchins, son Palmer Houchins and daughter-in-law Cathryn, grandsons Ren and Giles Houchins of Atlanta, sister Nancy Williams (Robert) of Leawood, KS, sister-in-law Penny Long (Randy) of Corinth, brother-in-law Pat Palmer (Nancy) of Corinth, and numerous loving nieces, nephews, great-nieces, and great-nephews. He was preceded in death by his parents, Lem and Louise Houchins, and his son, Peyton Houchins.

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