

THE MISSISSIPPI Lawyer

VOL. LVIV

SUMMER

2013

NO. 4



MISSISSIPPI BAR FOUNDATION

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SENATORIAL VACANCIES - ELECTIONS - Miss. Code Ann. § 23-15-855 states that if a vacancy occurs in the office of a United States Senator from Mississippi by death, resignation or otherwise, the Governor shall, within ten (10) days from the time the proclamation is issued, issue his proclamation for an election to be held in the state to elect a Senator to fill such unexpired term as may remain, provided the unexpired term is more than twelve (12) months.

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THE MISSISSIPPI Lawyer

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The Mississippi Bar

LAWYER CITIZENSHIP AWARD RECIPIENTS



Richard Courtney



Tiffany Graves



John Harral



Michael Ratliff



David Sparks



Laurie Williams

RICHARD A. COURTNEY

Jackson, Mississippi

Richard Courtney is drawing from personal experience to give hope to people with disabilities and their families. Following the frustrations of navigating the complex social system to secure services for his wheelchair-bound daughter with cerebral palsy, he has devoted much of his professional career and personal time to educating disabled persons and their caregivers.

“Getting out and helping people understand what they can do—I really enjoy that,” Courtney said, adding that his nearly 30-years of experience navigating public benefits for his daughter has provided him with a wealth of first-hand knowledge. “I want to give them the information they need to be empowered to make better decisions.”

Courtney’s work with special needs planning naturally led to elder law where he tries to help both the elderly and their caregivers preserve independence, protect family relationships and locate financial resources. He speaks to groups regularly about the best ways to secure a future for the disabled and elderly.

Over the course of his career, Courtney has obtained thousands of hours of continuing legal education in areas pertaining to elder and special needs law. He has also taken leadership roles in the National Academy of Elder Law Attorneys and the Special Needs Alliance as well as countless other organizations devoted to helping the disabled and elderly—Mustard Seed, Cerebral Palsy Foundation, Alzheimer’s Association of Mississippi and the Advisory Board of Hospice Ministries to name a few.

In May 2009, Courtney was awarded the 15th Annual Theresa Award by the New York-based Theresa Foundation. “I was completely gratified to receive such an honor,” he said. “It was a total shock.”

Looking ahead, Courtney hopes to do more writing as he believes it is the best avenue to reach more people. He has already published the free-of-charge *Essential Planning Guide for Families Dealing with Dementia*, and also distributes a monthly newsletter. “I can’t talk to enough people, but I can write and publish information,” he said.



At the Alzheimer’s Association, Richard Courtney receives the Lawyer Citizenship Award from Mississippi Bar Commissioner Laura Glaze.

TIFFANY M. GRAVES

Jackson, Mississippi

Tiffany Graves accepted the position as general counsel/executive director of the Mississippi Volunteer Lawyers Project (MLVP) one year ago. Described as a powerhouse of energy and ideas all wrapped up in a bundle of sweetness, smiles and compassion, her passion for helping others is clearly evident to those around her.

Graves developed a desire to “give back” before law school following a three-year stint as an academic counselor with a Virginia-based Upward Bound program. In that capacity, she helped high school students from low-income and single-parent homes better position themselves for future opportunities. Inspired by the potential to help others, she then chose courses and extra-curricular activities in law school that would help her become an effective public interest lawyer and advocate for the poor.

“The hardest part of my job is saying no, especially since I know that MVLP is often the last stop for those without financial resources,” she noted. “Still, the organization is able to help a lot of people, and the support I receive from attorneys throughout the state encourages me every day.”

Graves volunteers extensively outside her work with MVLP, focusing her efforts on children. Serving on the Auxiliary Board of Mississippi Children’s Home Services for several years, Graves said that her interactions with children facing challenging situations have been some of her most memorable. In addition, she serves on the Board of Directors of the Women’s Fund of Mississippi, an organization dedicated to improving the lives of women and girls by promoting social change and economic self-sufficiency.

“I hope to continue in this work in some way for the rest of my legal career,” Graves added. “I will also find new ways to become involved in community service efforts that impact the lives of children, especially those from broken homes and those suffering from mental and physical disabilities.”



At the Mississippi Children’s Home, Tiffany Graves, pictured center, receives the Lawyer Citizenship Award from The Mississippi Bar Executive Director Larry Houchins. Also present is Tammy Amis, Chief of Staff at Mississippi Children’s Home Services, pictured left.

JOHN M. HARRAL

Gulfport, Mississippi

For John Harral, the words of Winston Churchill sum up his philosophy in life: “You make a living by what you get; you make a life by what you give.” Following decades of public service to Gulfport public schools and the local community, the Gulfport Rotary Club recently recognized Harral’s commitment to this philosophy by honoring him with the prestigious Founder’s Day Award this past March.

“My greatest satisfaction comes from supporting public education,” he said. “The future of Mississippi and, indeed, the entire country, rests on strengthening and improving our system of public education.”

One of the first volunteers to serve as a mentor in Gulfport public schools in the early 1990s, Harral has also brought his love of history to classrooms by appearing in costume for living history lessons across the country. Students have enjoyed an enriched educational experience from his appearances as James Madison, Christopher Columbus, Alexander Hamilton and Abraham Lincoln to name a few.

In 1990, Harral founded the Gulfport Excellence foundation to support public education. Since that time, the organization has awarded some 100 grants for projects that include gardens to study ecology, remedial math and reading programs and computer software and hardware.

Along with his many notable contributions to education, Harral has been actively involved in projects to improve all aspects of life in Harrison County communities by founding such programs as Christmas in April, a project dedicated to making homes more livable for the handicapped, elderly and poor. He has also provided active leadership for revitalization and planning in downtown Gulfport over the past two decades.

“I’ve been blessed to be a member of one of the greatest professions of the world,” he said, noting that the bedrock philosophy of the legal profession is to help those who need help. “I apply that philosophy to my professional life and to my personal life and am rewarded in both for doing so, as are so many, many members of the Mississippi Bar.”



Past Bar President Hugh Keating, pictured left, presents the Lawyer Citizenship Award to John Harral, pictured right, at Gulfport High School.

MICHAEL V. RATLIFF

Hattiesburg, Mississippi

As far back as Mike Ratliff can remember, he has lived a lifestyle of community service. It's part of the heritage that his parents built for him through their active involvement in such groups as Kiwanis and the Boy Scouts. And the outcome, according to those who have witnessed Ratliff in action over the years, is the fashioning of an individual with true character and integrity.

Affectionately described as the "ultimate do-gooder" by colleagues and friends, Ratliff noted that service is just part of his makeup. "I've always enjoyed being involved in activities separate and apart from my real job," he said. "I enjoy working with other people and being involved in projects that will accomplish something that's not just about me."

From work with the Hattiesburg Young Lawyers, Rotary Club and Chamber of Commerce to meeting critical needs of people in the aftermath of Katrina, Ratliff is always at the forefront of service. A member of the Southern-most church affiliated with the Cooperative Baptist Fellowship (CBF) in Mississippi, Ratliff noted that their ministry was able to serve as a launching pad for many Katrina relief efforts and also led to active involvement with R3SM (Recover, Rebuild, Restore Southeast Mississippi), a program of the United Way.

Ratliff has particularly enjoyed his many years working on the Steering Committee of the Leaders for a New Century program of the Hattiesburg Area Development Partnership. "That's been a very rewarding experience for me," he emphasized. "I have appreciated the opportunity to network with people in our community who have a heart for service and watch them become community leaders."

A partner with Johnson and Ratliff law firm since 2000, Ratliff says that he plans to continue practicing law and building a legacy of service. "I hope for Hattiesburg to be a better as a result of the places and projects I've put my energy," he said.



Michael Ratliff, pictured left, receives the Lawyer Citizenship Award at the Lake Terrace Convention Center in Hattiesburg from Bar Commissioner for the 12th Circuit Court District, Chad Shook, pictured right.

DAVID R. SPARKS

Tupelo, Mississippi

The administration of justice is a very serious matter for attorney David Sparks. Always generous with his time and talents as it relates to community service and advocacy for those in need, Sparks recently demonstrated his commitment to the field of law in a significant way when he took on a complicated legal case involving the estate of a deceased woman at no charge.

According to nominator Sandi Morris, "From the first meeting, there was no doubt that David was a people's advocate and a seeker of justice. In the face of adversity, he was always upbeat; he was encouraging; he never appeared frustrated; and his determination was obvious."

Asked to be the executrix of the estate prior to the woman's death in 1997, Morris finally met with Sparks in 2003 after six years of exhausting all options available to her. From that moment until July 2012, Sparks never gave up his mission to bring a satisfactory end to the case even in the face of unusual obstacles that often led to dead ends. His commitment resulted in the deceased woman's wishes being fulfilled when her estate was finally handed over to her remaining family members.

"The happy ending to the story and the rendering of justice in this case were because of David's determination and unending work," Morris wrote in his nomination.

Sparks' long-term commitment to giving back has also been demonstrated through the active role he has taken in the Tupelo community. A long-time member of the Medical Ethics Committee for the North Mississippi Medical Center, Sparks is also the past president of the Lee County Bar Association, founding board member of Faith Haven Home for Children, a long-time Kiwanis Club member and has been active in leadership roles with the All Saints Episcopal Church.



Mississippi Bar President Guy Mitchell, pictured right, presents the Lawyer Citizenship Award to David Sparks, pictured left, at the All Saints Episcopal Church in Tupelo.

LAURIE R. WILLIAMS

Ridgeland, Mississippi

Pay it forward. That's the foundational creed backing the energy and commitment of Laurie Williams in her efforts to make a difference. From work with the Mississippi Girlchoir and Girl Scouts to helping young entrepreneurs succeed through the local chamber of commerce, Williams is building a legacy for future generations.

"Being a business woman myself, I think it is important to help mentor others along," she said, adding that she is following in the footsteps of her community-minded parents. "I was so fortunate to have great mentors, and it is a tribute to them by volunteering my time to help others succeed."

An active volunteer with Mississippi State University, her alma mater, Williams has planned, produced and raised money to educate high school juniors and their parents on how to apply for education scholarships as well as identify potential careers after earning a degree. She has also raised scholarship money for diverse girls to participate in the Mississippi Girlchoir, a tuition-based honor choir. Pointing to her passion for helping young girls, Williams noted that she believes that "girls who get involved in extracurricular activities early on become great leaders and are more focused."

Through her work with the Madison the City Chamber of Commerce, Williams' contributions most recently helped pave the way for the establishment of a small business incubator to help young entrepreneurs succeed in business. Her tireless efforts to impact her community have been recognized by community leaders numerous times over the past decade through such accolades as the 2009 Dynamic Woman of Mississippi by the Madison the City Chamber of Commerce and her selection as one of Mississippi's Top 50 Business Women by the *Mississippi Business Journal* in 2007.

"I am always open for opportunities to help young people be the best they can be," Williams said. "It is really fulfilling to see what these young people accomplish after high school and college."



Presenting the Lawyer Citizenship Award to Laurie R. Williams at the Mississippi Girl Scouts office is the Past Bar President Lem Adams.

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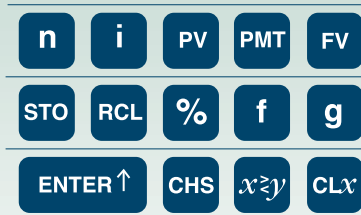
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Mississippi Bar Foundation C



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John and Lee Corlew of Jackson

celebrates 50 Year Anniversary



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Cynthia Wilson and Judge Larry Wilson of Pascagoula



Judge Kathy Jackson of Pascagoula, Lydia Quarles of Starkville, Briggs Smith of Batesville, Dot Smith of Batesville, and Pete Perry of Jackson



Jim Greenlee of Oxford and Barb and Ned Currie of Jackson



Penny and Mack Varner of Vicksburg and Secretary of State Delbert and Lynn Hoseman of Jackson

MBF 50th Anniversary Celebration



Sharon Kittrell of Columbia, Judge Gene Fair of Hattiesburg, Stella Fair of Hattiesburg, and Hal Kittrell of Columbia



Missy Bridgforth, Turner Bridgeforth, Barry Bridgeforth, and Callie Bridgeforth, all from Yazoo City



Leyser Hayes of Jackson and Henry Laird of Gulfport



Floyd Melton, III, Lisa Melton, Floyd Melton Jr., and Elizabeth Melton, all from Greenwood



Ken Rector and Sara Jane and Gene Parker, all from Vicksburg



Kirk and Hilda Povall, Kelli Cotton, Mike Carr, and Michael Carr, all from Cleveland



Chief Justice William Waller and Charlotte Waller of Jackson

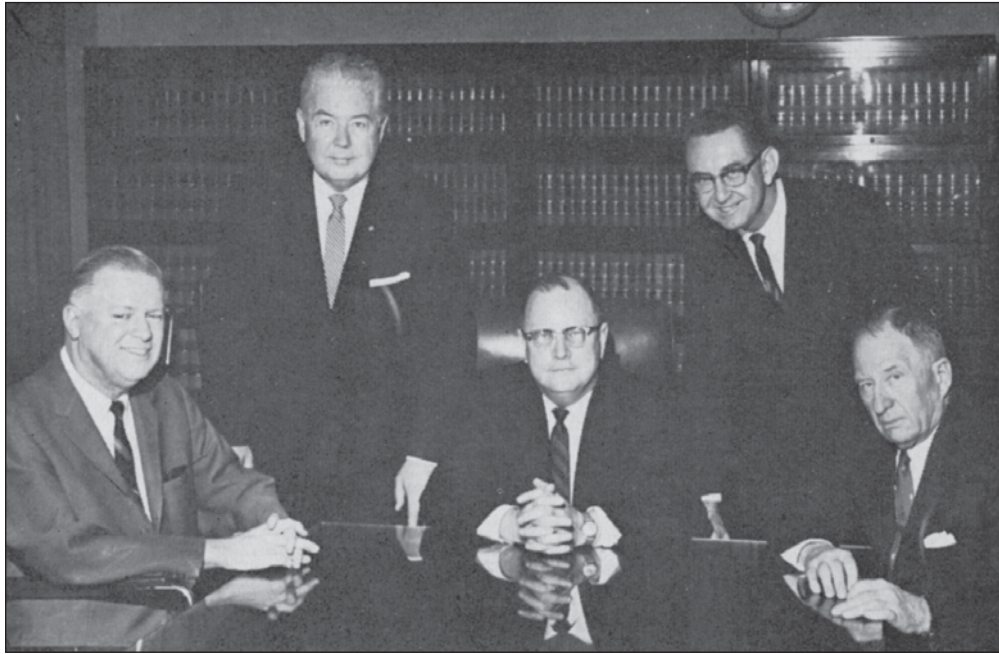


Gary and Lyndall Snyder of Olive Branch and Randy Wall of Jackson



Cal and Caroline Mayo of Oxford

CELEBRATING THE 50TH ANNIVERSARY OF THE MISSISSIPPI BAR FOUNDATION



First trustees of the Mississippi Bar Foundation were elected in February 1963. They are left to right: Judge William N. Ethridge, Jr.; Hugh N. Clayton; Sidney Carlton; J. K. Dossett, and W. S. Henley, who served as the first president of the Mississippi Bar Foundation.

The Mississippi Bar Foundation was organized in 1963 after The Mississippi Bar President C. Sidney Carlton of Greenville recognized the need for an organization that would be representative of the Bench and Bar and able to improve the administration of justice.

A six-man study committee chaired by N. W. Overstreet, Jr. carefully reviewed the experiences and operations of twelve legal foundations throughout the country. The committee recommended unanimously to the Board of Commissioners of the Bar that a non-profit corporation be established to direct its research skills and efforts toward supplying essential information and ideas for the solution of current legal issues in the public interest and to improve the administration of justice. The recommendations of the committee were approved by the Board of Commissioners at its meeting on December 6, 1962.

In a 1963 Mississippi Law Journal article, Justice W. N. Ethridge described the Fellows of the Foundation as “a fraternal group of distinguished members of the profession, who have as a common bond their desire to fulfill their responsibilities to the law and to the profession by participating in and supporting the activities of the Foundation.”

Since its founding in 1963 the Foundation accomplishments have been many including grants from the Fellows to assist in funding of the Statewide Mock Trial Competition; Katrina relief; the Wills for Heroes program, law school scholarships and various Bar

forums, conferences, studies and publications. The Foundation also funded the publication of a history of the Mississippi Bar and the Mississippi Supreme Court.

In February 1988 the Foundation celebrated its twenty-fifth anniversary with the dedication of the Mississippi Bar Center. This year the Bar Center celebrates its 25th anniversary. Since opening in 1988 the Bar Center has been the headquarters of The Mississippi Bar and the Foundation. It has been the site of many bar related meetings and receptions and is used weekly by lawyers for depositions, mediations and client meetings.

The Bar Foundation administers Mississippi's Interest on Lawyers Trust Accounts program. The IOLTA program was created as a voluntary program in 1984 by order of the Mississippi Supreme Court in response to a petition by the Bar. The Court's order allows lawyers to convert their trust accounts to interest bearing accounts. The interest earned on the accounts is sent by financial institutions to the Bar Foundation and then awarded to law-related public service programs and to programs to improve the administration of justice. Since its inception the IOLTA program has awarded over \$12,500,000 in grants in Mississippi.

Thanks to the vision of a few Bar leaders the last 50 years have seen the Foundation grow from a simple recommendation of a study committee to an active organization of the profession's best serving the public and profession in Mississippi.





Mississippi Bar Foundation Statement of Purposes

Throughout its history Mississippi has been blessed with an exceptionally talented and committed community of lawyers. The Mississippi Bar Foundation exists to channel the resources and talents of a select group of Mississippi's lawyers to effect meaningful change in the following areas:

- The Improvement of the Administration of Justice in Mississippi.
- The Advancement of the Science of Jurisprudence.
- The Improvement of Relations Between Members of the Bar, the Judiciary and the Public.
- The Preservation of the American Constitutional Form of Government.

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1964-1965	* N. W. Overstreet	Jackson	1990-1991	Paul M. Newton	Gulfport
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1969-1970	* Frank Everett	Vicksburg	1996-1997	Donnie D. Riley	Gulfport
1970-1971	* Guy W. Mitchell Jr.	Tupelo	1997-1998	Landman Teller, Jr.	Vicksburg
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1974-1975	* Harry Hoffman	Hazlehurst	2001-2002	Harold D. Miller, Jr.	Jackson
1975-1976	* Fred M. Bush, Jr.	Tupelo	2002-2003	E. Brooke Ferris, III	Laurel
1976-1977	* Thomas R. Ethridge	Oxford	2003-2004	Richard G. Noble	Indianola
1977-1978	Frank D. Montague, Jr.	Hattiesburg	2004-2005	Robert L. Gibbs	Jackson
1978-1979	Phineas Stevens	Jackson	2005-2006	H. Rodger Wilder	Gulfport
1979-1980	* Lester F. Sumners	New Albany	2006-2007	Nina S. Tollison	Oxford
1980-1981	* Roy D. Campbell, Jr.	Greenville	2007-2008	H. Hunter Twiford, III	Jackson
1981-1982	* Ernest Graves	Laurel	2008-2009	Colette Oldmixon	Poplarville
1982-1983	* Robert Patterson	Aberdeen	2009-2010	Harold H. Mitchell, Jr.	Greenville
1983-1984	* George P. Hewes, III	Jackson	2010-2011	John M. McCullouch	Ridgeland
1984-1985	* Eaton A. Lang, Jr.	Gulfport	2011-2012	Karen K. Sawyer	Gulfport
1985-1986	Dewitt T. Hicks, Jr.	Columbus	2012-2013	Ronald L. Roberts	Columbus
1986-1987	Pat H. Scanlon	Jackson		*Deceased	
1987-1988	Sherman L. Muths, Jr.	Gulfport			

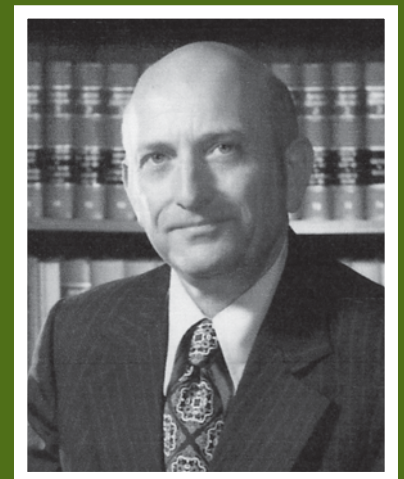


1977-1978 Frank D. Montague, Jr., *Hattiesburg*

Frank Montague credits his association with an exceptional group of trustees as the catalyst leading to a unique privilege and opportunity he experienced in his career. That privilege was the opportunity to become one of the three founding trustees of the A.B.A National Conference of Bar Foundations.

Montague stated that during his tenure as president, "I had the privilege of associating with the following knowledgeable, dedicated professionals: Roy Campbell, Judge Mike Carr, Ernest Graves, Harry Hoffman, Lomax Lamb, Lauch Magruder, Joseph Meadows, N. W. Overstreet, Jr., H.M. Ray, Lester Sumners, E.C. Ward and Erskine Wells."

Highlights of Foundation activity during Montague's presidency included providing support to help underwrite a historical account of the Mississippi Bar. Contributions were also made to support the efforts of a Judicial Qualifications Commission as well as the development of a research article that profiled the average Mississippi lawyer.





1978-1979 Phineas Stevens, *Asheville, NC*

As the Foundation's oldest living president to date (age 95), Phineas Stevens' career and life embodied the kind of legacy needed to promote and foster the Foundation's mission for future generations. Specifically, the Bar Foundation seeks to effect meaningful change that will improve the administration of justice, advance the science of jurisprudence, improve relations within the legal community and public and preserve the American Constitution.

"Phinny was a visionary who looked into the future to anticipate where the legal profession was going and should be going," said attorney Steve Rosenblatt, partner and colleague to Stevens, adding that *Quo vadis* was his watchword. "Throughout his legal career, Phinny was selfless in giving his time and abilities for the benefit of the legal profession and the justice system. He exemplified and regularly encouraged others to maintain the highest standard of integrity and modeled 'professionalism' for younger and older lawyers alike before that word was commonplace."



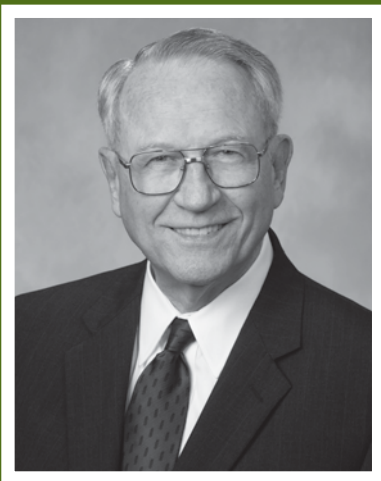
1985-1986 Dewitt T. Hicks, Jr., *Columbus*

The tenure of Dewitt Hicks witnessed the introduction of the IOLTA (Interest on Lawyers Trust Accounts) program, allowing lawyers to convert their trust accounts to interest bearing entities. The interest earned could then be sent to the Foundation for disbursement to public service programs that promote improved administration of justice.

"We had a very good response from attorneys across the state," Hicks noted, pointing out that the program was voluntary following its initial introduction, and substantially more than the majority of firms chose to participate. "IOLTA was a dramatic change to the way the Foundation was funded."

The Foundation also headed up a capital drive for the planned Mississippi Bar Center, an endeavor that received an equally impressive response, according to Hicks. The ground-breaking ceremony for the center was held later that year.

Hicks applauded the work of the Foundation during his year as president, emphasizing that its members represent those dedicated to the highest ethical and professional standards in the legal field. "I don't know of any Foundation member who disappointed us," he emphasized.



1986-1987 Patrick H. Scanlon, *Jackson*

The Foundation's \$1.5 million Building Development Campaign continued under Patrick (Pat) Scanlon's presidency as construction of the new Mississippi Bar Center continued. In a question and answer article provided to constituents, Scanlon said, "The level of pledges has been greater than expected. We asked members of the Board of Commissioners of the Bar Association, the Board of Trustees of the Bar Foundation and campaign leaders to consider a pledge of \$2,000 over a five-year period. We averaged more than \$1,700 per person from these groups."

Scanlon called on all firms in the state to support the efforts of the Foundation to bring the reality of the new Bar Center to fruition. He led the charge to bring statewide money into the project which would ultimately prove successful and provide a home for the vibrant, purposeful legal system in the state.

1987-1988 **Sherman L. Muths, Jr., Gulfport**

A dedication of the newly-constructed Mississippi Bar Center marked the high-point of Sherman Muth's presidency. He recalled the satisfaction of seeing so many people's efforts come to fruition at the ceremony, which was followed by a dinner at the Ramada Inn Coliseum showcasing ABA President Robert MacCrate as speaker.

"During the year, we spent a good deal of time participating in the furnishing of the new building as we attempted to use as much work by Mississippi artists as possible," he said. "I remember several visits to the Joe Moran Studios in Biloxi to obtain prints of his best works."

Also of substantial importance was the negotiation and execution of an expense sharing agreement of the new Bar Center with the Mississippi Bar Association (MBA). Muths recalled that following great debate and discussion several years earlier, the Board of Commissioners of the MBA unanimously put forward a recommendation to proceed with construction of the Bar Center through the MS Bar Foundation.

"During this year, we believe we accomplished the goals of the Foundation in a blending of the bench and bar in an organization designed to improve and facilitate the administration of justice," Muths noted.

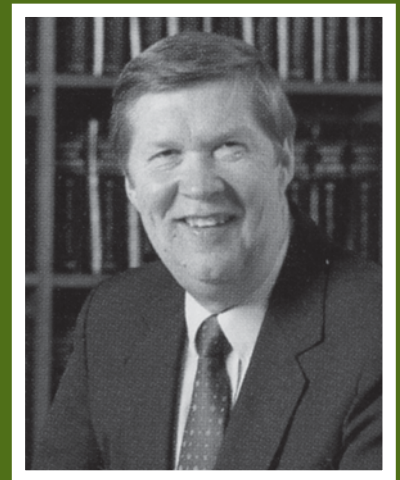


1988-1989 **George P. Cossar, Jr., Charleston**

Since its dedication the previous year, the Mississippi Bar Center had seen more than 6,000 people grace its doors and had played host to 345 functions. The Foundation also awarded more than \$423,000 in grants during the 1988/89 Foundation year under the presidency of George Cossar.

In a letter to constituents that year, Cossar wrote, "as a direct result of these grants, many Mississippians who would otherwise be unable to afford legal services are now served through the Mississippi Pro Bono Project and Legal Services offices throughout the state. The law-related education efforts of the Bar have been enhanced, and many studies to improve the administration of justice have been funded by IOLTA grants."

Some of the grant highlights from the year included the hosting of "The Oxford Conference: The Future of the Legal Profession in Mississippi" at the University of Mississippi Center for Continuing Education, as well as distribution of more than 250 copies of the Bar's Code of Professional Responsibility, Ethics Opinions and the Rules of Discipline to law students free of charge. A video was also produced to provide education regarding the many public services provided by lawyers throughout the state.

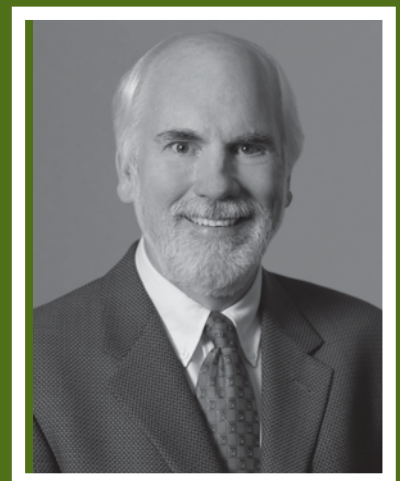


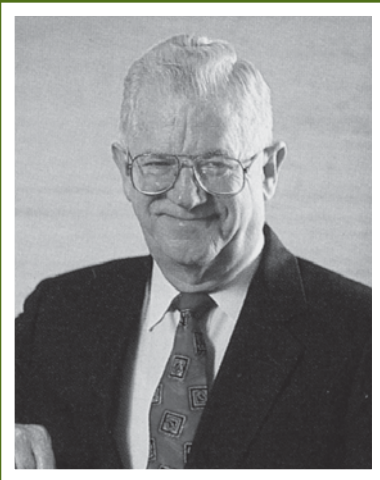
1989-1990 **Luther S. Ott, Jackson**

While it had always been an honor to become a Fellow of the Foundation, it was during Luther Ott's term that special attention was given to the need for more formal processes. He recalled being asked to become Foundation President following his active involvement and role as Chairman of the Building Development Committee for the new Mississippi Bar Center. As he was not officially a Fellow at the time, the Board pressed forward to put together a more exclusive definition of what it meant to achieve this designation.

"We tried to make becoming a Fellow a great honor, and that's what it became," Ott noted. "There was a lot of energy around Bar Foundation Fellows at that time."

As part of this energy, the Foundation Board also started its own newsletter and came up with a formal process for inducting Fellows. "We were essentially looking for ideas to breathe new life into the Foundation," Ott recalled. "We were able to take something that wasn't really understood and make it into a significant honor."



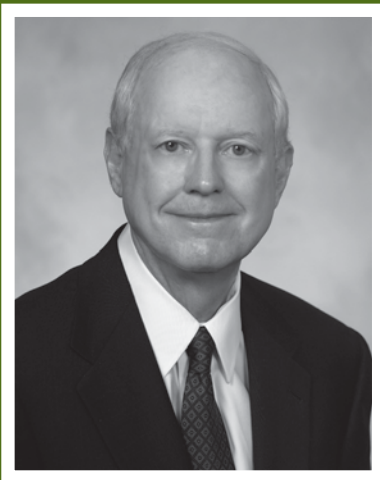


1990-1991 Paul M. Newton, *Gulfport*

Expansion of the IOLTA program continued during the presidency of Paul Newton bringing total grants awarded to a record-breaking \$300,000, and the cumulative total to more than \$1 million. Newton credits the success of the program to increased participation by lawyers across the state and favorable interest rates.

Newton recalled his time with the Foundation fondly, pointing to the many friends established through his association with trustees and other leaders of the Mississippi Bar. "Trips from Gulfport to Jackson for monthly meetings became truly delightful occasions for my wife (Sara) and I," he said.

He specifically pointed to the opportunity to work with Foundation Executive Director Larry Houchins and IOLTA Coordinator Angie Cook as highlights of his year as president.



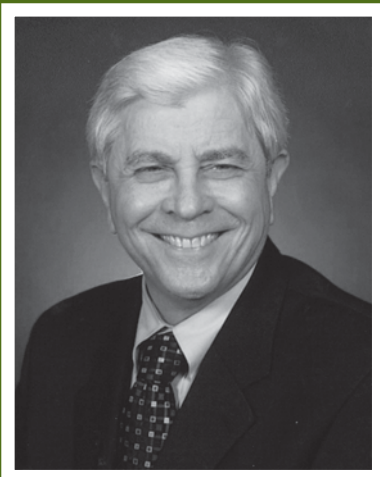
1992-1993 P. Nick Harkins, III, *Jackson*

Under President Nick Harkins, the Foundation continued to expand upon its mission and provide grants through the IOLTA program to support legal aid programs, law-related education, provision of scholarships and the administration of justice. Specifically, the program reached grant totals of more than \$1.5 million that year since its inception and remained in sound financial condition.

In a letter to constituents, Harkins said, "your Trustees continue to accept seriously their responsibility of holding in trust the future as well as the present of the Foundation. They have been faithful custodians of its integrity, of its standing and reputation built by the founders and those who have labored over the years."

On the state level, Foundation eyes were watching the progress of an amendment under review by the Mississippi Supreme Court which would allow IOLTA to become an opt-out program. If the amendment passed, revenues generated through the program had the potential to greatly increase.

The year of Harkins' presidency also witnessed the largest turn-out to date for the annual meeting and induction ceremony. The event was held in Biloxi at the Broadwater Beach Resort.



1993-1994 William S. Mullins III, *Laurel*

A key Mississippi Supreme Court decision in 1993 would have a dramatic impact on the Foundation, more than doubling the number of IOLTA bank accounts providing interest payments to the organization. The approval of a petition to have IOLTA accounts go from voluntary to opt-out meant that interest payments were paid directly to the Foundation unless an attorney chose to be excluded from the program.

"While that was not in effect for a full year, we saw in the first half of 1994 the number of accounts included grow from about 200 in FY 1993 to about 450," recalled William Mullins, president of the Foundation during this milestone year. "This projected that the Foundation's main funding source would more than double."

While that decision was critical to the future growth of the Foundation, Mullins noted that the best accomplishment of the Foundation that year was the establishment of the Lawyers Emergency Assistance Fund. "That proved to be something was needed by some members of the profession," he emphasized, adding that being part of the Foundation has been important to his career because it ensures legal services are provided to the poor to improve the administration of justice in Mississippi.

1995-1996 **Mark D. Herbert, Jackson**

Mark Hebert served as president during a time of reorganization characterized by major actions to improve the way IOLTA funds were received, administered and disbursed. "It was at times grueling and at times controversial, but we got it done thanks to the very hard work of a lot of dedicated people," he said.

These actions resulted in the creation of a "new" Foundation, according to Hebert, with an operation and set of goals that far exceeded what early founders had originally envisioned. "I am very proud of all that we accomplished that year and all that the Foundation has accomplished since," he said. "Every year when I attend the Annual Meeting and hear of all of the incredible things the Foundation is doing, I am extremely proud to be both a member and one of its past leaders."

Hebert recalled that working with such a diverse group of lawyers towards a common goal was one of the most rewarding experiences of his year as president. "You had justices of the Supreme Court working with the heads of Legal Services to advance access to justice by the least blessed in our society. It was truly amazing!"

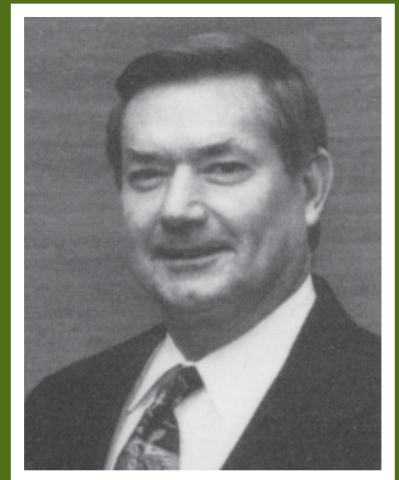


1996-1997 **Donnie D. Riley, Gulfport**

When Donnie Riley became Foundation President in 1996, the organization had reached 1,460 members, and total grants awarded since the IOLTA program was approved by the Mississippi Supreme Court added up to more than \$2.5 million. His presidential year witnessed grants of \$335,000 distributed for the administration of justice.

Because most accomplishments of any Foundation Board occur over more than one term of presidency, Riley was quick to point out that the highlights of his year were achieved by the dedication of members over cumulative years.

"The achievements of the Foundation have been many and have benefited the Bar and the citizens of our state in a multitude of ways," said Riley. "The accomplishments were made by the coordinate efforts of the Board, the members of Mississippi Bar Association as a whole and the dedicated support of Larry Houchins and his staff."

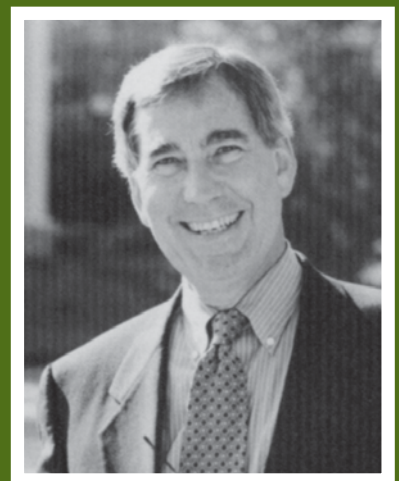


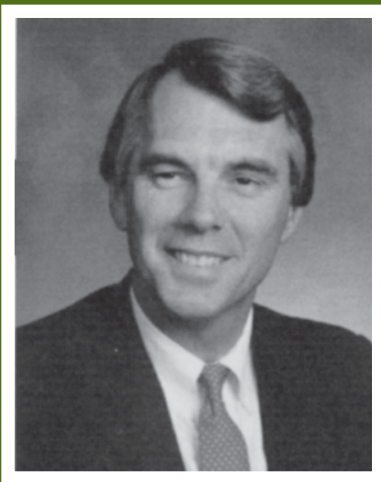
1997-1998 **Landman Teller, Jr., Vicksburg**

Defining true professionalism in the field of law became the signature of Foundation activity during the presidency of Landy Teller. Initial discussions paved the way for the creation of the Professionalism Award that is now presented annually to those who demonstrate true leadership in promoting the professional emphasis of legal practice.

"As time passes, law has become more of a business than a profession, and it is important that the Foundation still emphasize the significance of those who remain true professionals," he said.

Teller noted that his best memories from the year came from the camaraderie experienced in working with the Mississippi Bar Association and other members of the Foundation trustees. "I had the privilege of working with Larry Houchins who must be the most outstanding Executive Director of any state bar association," he said. "The Foundation provides a rewarding experience for those of us that have been lucky enough to be selected to participate, and that has provided me a deep sense of personal responsibility."





1998-1999 William M. Dalehite, Jr., *Jackson*

“A sense of purpose” is how William (Bill) Dalehite characterizes his time with the Foundation Board and the year he served as president. Noting that Foundation work is taken very seriously by those who are honored to serve, he emphasized that “it was truly one of the highlights of my legal career.”

The 1998-99 Foundation year witnessed the distribution of \$370,000 in IOLTA grants with approximately 60% of the funds dispersed in the legal aid category. Under the approval of the Board, \$10,000 from the funds of the Foundation Fellows was presented to the Administrative Office of the Courts for the State of Mississippi. Funds were used to purchase 21 TV/VCRs for circuit court districts throughout the state and were used to provide juror education and meet other courtroom needs.

Like many of his predecessors, Dalehite identified the opportunity to work with Foundation Executive Director Larry Houchins and IOLTA Coordinator Angie Cook as a privilege. “I’ve never known two people more devoted to their jobs,” he said.



1999-2000 Robert C. Galloway, *Gulfport*

Under President Robert Galloway, the IOLTA program continued to expand. In fact, the cumulative total of grants disbursed between 1998 and 2000 represented a 23% increase over any two years in the history of the program. More than \$450,000 in grants was awarded that year alone.

In a message to constituents that year, Galloway wrote, “the IOLTA program’s success is due, at its roots, to the substantial participation by lawyers and law firms...recent increases in available IOLTA funds result from both the increased number of IOLTA accounts and the increased amount of money flowing through those trust account in these good economic times.”

During the year, the Foundation continued the effort to distribute monitors and VCRs to circuit courts throughout the state. Substantial renovations were also begun on the Mississippi Bar Center to address water damage that had occurred to the building over its 13-year life.



2000-2001 Judge Sharion Aycock, *Aberdeen*

For Sharion Aycock, there have been many firsts. As the first woman to be nominated and confirmed as United States district court judge from the state of Mississippi, she was also the first woman to serve as president of the Mississippi Bar Foundation.

Aycock recalled that her cumulative time serving with both the Foundation and the Board of Bar Commissioners was a period of “fantastic awareness” for her. “Through that whole experience, I felt so much more like a taker than a giver,” she noted, pointing out that she had the opportunity to mingle with and learn from some of the best lawyers in the state. “With the Foundation, I came to realize that it was a select, cream-of-the-crop group of lawyers.”

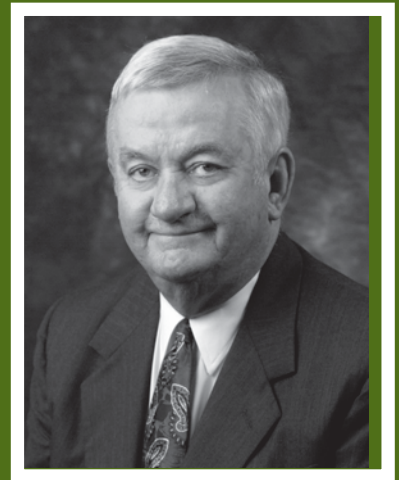
Along with many other quality programs and initiatives, the Foundation supported the Mississippi Bar’s efforts to establish an oral history program during the year, a video initiative to preserve the recollections of senior members regarding their careers, significant issues and anecdotal stories. The Foundation also supported the Kid’s Chance Scholarships, a program created by the Bar’s Administrative Law and Worker’s Compensation Section.

2001-2002 **Harold D. Miller, Jr., Ridgeland**

A significant debate concerning IOLTA accounts waged on the national scene during the tenure of Harold Miller that could significantly impact the reach of the Foundation. The resolution, which made it mandatory for interest generated from trust accounts to fund the IOLTA program, set the tone for the Foundation work going forward.

A member of the Foundation for 30 to 40 years, Miller noted that the organization “is the best example I know of lawyers getting together to do something good.”

Hired by Phineas Stevens—the Foundation’s oldest living president to date—when he was 24-years-old, Miller emphasized that he was impressed by the work of the organization early on before he ever became president. It’s an honor to be part of it,” he said, pointing out that the money a single attorney could provide may not go far, but collectively, it makes a great impact. “It’s just another proof that groups of people working together can accomplish more than individuals.”



2002-2003 **E. Brooke Ferris, III, Memphis, TN**

Foundation President Brooke Ferris noted that he will always be grateful to his partners for sponsoring his nomination for Fellowship. “To have served as President of an organization where the purpose is to improve the administration of justice and provide services to the poor and needy was an honor of a lifetime,” he said.

During his tenure, the Foundation worked hard to strengthen the IOLTA program and continue to provide grants and other financial assistance to law schools in Mississippi. “We deemed it an ongoing responsibility to improve the public’s understanding of the legal system, both in Mississippi and beyond,” he recalled.

Ferris’ best memories from his time with the Foundation were associated with the annual induction ceremonies, where he had the opportunity to witness the introduction of new Fellows and hear of their professional accomplishments and involvement in their home communities. “It was always an inspiration,” he said. “Those were truly great days, not only when I was President, but every year.”

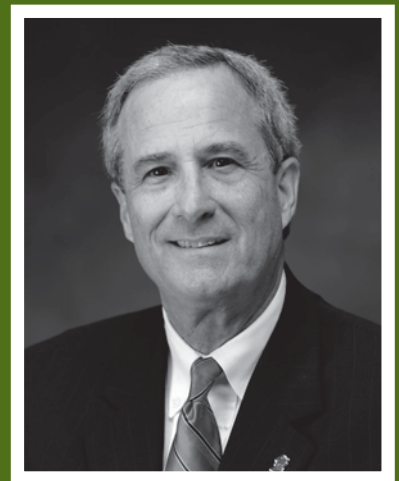


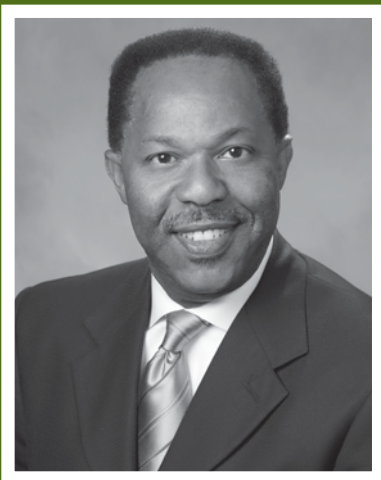
2003-2004 **Richard G. Noble, Indianola**

Aside from the critical task of reviewing and distributing funds to foster the administration of justice, the Foundation Board made a bold decision in 2003 to change the location of the annual awards dinner. President Richard Noble noted that the dinner had been struggling with attendance, and it was determined that a more central location—Jackson—would improve the outlook.

“The first year, it was very successful,” he recalled. “Since then, they’ve had the awards dinner in Jackson every year.”

Noble recalls his time with the Foundation fondly, pointing to the friendships he made during that time, most of which have been maintained through the years. “I got to know people that I normally would not have had the opportunity to interact with,” he said. “It’s an outstanding group of lawyers who are chosen as Fellows—a truly special group of people.”





2004-2005 Robert L. Gibbs, *Jackson*

In tandem with his predecessor, Robert Gibbs also pointed to the Foundation's decision to move the annual meeting to Jackson as a critical step. Held at the Old Capitol Inn each year, Gibbs noted that annual meetings represent a special time for Foundation members and inductees, and he "has not missed one since."

Looking back on his presidency, Gibbs recalled the serious nature of the charge given to the Foundation and the responsibility that underscores the process of distributing available funds and selecting new Fellows. "There are always great lawyers throughout the state who don't get a lot of recognition," he emphasized. "Becoming a Fellow provides a way to honor some of their contributions."

Gibbs said that the opportunity to be selected as a Fellow and Foundation President was a true highlight in his career, and he reinforced the mission of the organization to be a distinct group of legal professionals promoting the administration of justice and the highest ethical standards in the field.



2005-2006 H. Rodger Wilder, *Gulfport*

In some respects, it was the worst of things, and in some respects, it was the best of things," said Rodger Wilder in regards to his year as Foundation President. A year marred by the devastation of Hurricane Katrina, Wilder recalled that his best memories were of the extreme outpouring of kindness and generosity from fellow lawyers around the state and nation.

"They responded in some incredible ways to help lawyers who had suffered great losses," Wilder emphasized. "That help came in the form of money, equipment and office supplies, and most helpfully, a helping hand."

Because the majority of legal practices along the Gulf Coast were completely destroyed, the challenge was two-fold—lawyers had lost the ability to represent their clients, and lawyers had lost the ability to earn an income. In many cases, they had also lost their homes and offices.

Wilder recalled that one day, the Foundation received a tractor trailer loaded with office furniture from another state. "Most of us didn't have that nice of furniture before the storm," he said. "That kind of generosity and the aid the Foundation gives year to year is what the Foundation means to me."



2006-2007 Nina Stubblefield Tollison, *Oxford*

Foundation work continued to be dominated by Katrina relief efforts as Nina Stubblefield Tollison commenced her presidency in 2006. Her tenure was marked by continued analysis of those in need of help, the level of help needed and the best course of action.

"The Foundation was the financial conduit in getting aid out there," she emphasized, pointing out that more than \$280,000 was received by the organization for the Katrina Relief Fund. "These distributions continued throughout my year and could not have been more humbling for me to witness." The availability of the Lawyer's Emergency Relief Fund also proved to be invaluable, according to Tollison.

In addition to the remarkable Katrina relief effort, Tollison noted that she was gratified that the Foundation was able to award more than \$1 million in IOLTA grants to organizations and projects promoting the administration of justice. "It is an honor to be one of the fifteen lawyers selected each year as a Fellow of the Foundation," she said, adding that as she moved from trustee to president, she gained a clearer understanding of the Foundation's impact. "I became more proud of the Foundation and more honored than ever to be a part of it."

2007-2008 **H. Hunter Twiford, III, *Jackson***

The year that Hunter Twiford served as Foundation President will go on record as the highest funding year from the IOLTA program, with approximately \$3 million in grants awarded through the program. “Just by sheer luck of the draw, that was the height of the markets and interest rates being up,” he emphasized. “The fun part was that it had been building up for several years. We were at the absolute peak of all the funds.”

With the excess of funding came a heightened responsibility on the part of the Foundation Board to ensure that they were being good stewards of the money. “We decided to set up policies to treat the grant application process more professionally, ensuring applicants would be interviewed, and a system of accountability would be put into place,” Twiford said. “We were treating it as a business more so than we had previously.”

Twiford noted that the Foundation is by and large a cooperative effort with a lot of good people involved. “Nothing happens in a vacuum,” he said.



2008-2009 **Colette Oldmixon, *Poplarville***

A complete overhaul of the IOLTA grant application and funding process continued into the tenure of Colette Oldmixon. Along with a restructuring effort that provided better oversight of the IOLTA grant proposal and disbursement process, the Foundation took action to set up a reserve fund as well as a Loan Repayment Assistance Program (LRAP).

“There was a need to take a look at whether what we had in place was sufficient for what was coming down the pike,” Oldmixon emphasized, adding that her best memories of the year were associated with the Board taking ownership of the need for better processes and the foresight it had to better prepare for the future.

Oldmixon said that she believes the work of the Foundation helps keep a sense of honor and integrity alive in the legal community. “I do what I do because it’s the right thing to do,” she noted.



2009-2010 **Harold H. Mitchell, Jr., *Greenville***

Harold Mitchell recalled that the year he served as Foundation President was the last one to see significant funding from the IOLTA program. The economic downturn that followed would soon begin to impact the Foundation’s ability to provide grants on a broad basis to support needed legal services.

“I had it pretty good,” Mitchell noted. “It was not as good as the years before, but we were still able to retain some money during the year. Those reserves were drawn on starting the next year.”

Mitchell commended the groundwork laid by his predecessors to fine-tune the grant vetting process, emphasizing that the work provided a strong foundation for ensuring limited funds were distributed well. “We were trying new processes to more accurately assess grant applications,” he recalled, adding that he learned a lot about the organizations providing services and the extent of the need that exists.

The highlight of Mitchell’s participation with the Foundation has been the opportunity to work with so many exceptional lawyers from across the state. “The quality of Mississippi lawyers is just phenomenal,” he asserted.





2010-2011 **John M. McCullough, Ridgeland**

Most lawyers have a baseline understanding through the experience of daily practice that a need exists for assistance with the administration of justice. In the case of John McCullough, it was his time with the Foundation that ultimately provided a more profound realization of the magnitude of that need.

Acquiring a more keen perception that so many people may not be able to access legal services without assistance created a new passion and excitement within McCullough to help meet that need—a signature of his presidential year. “That in turn drove me to get involved in the Mississippi Volunteer Lawyers Program, and now I am Vice Chair of that board,” he noted. “That’s something that excites as well as scares me.”

McCullough emphasized that the highlight of his year as president was welcoming outstanding lawyers from around the state into an organization dedicated to helping provide legal assistance to those who might otherwise not be able to afford it.



2011-2012 **Karen K. Sawyer, Gulfport**

When the economy took a turn south, so did transaction work for attorneys as well as interest rates supporting IOLTA accounts. Karen Sawyer took the presidential helm during a timeframe that was characterized by significantly decreased monies available through the IOLTA program.

“We were challenged with trying to maximize the overall impact we could provide,” she noted, pointing out that the Foundation didn’t want to turn to fundraising as that would result in direct competition with the very entities the organization was trying to support. The answer for Sawyer was to jump in the trenches.

“I had to get my feet wet by actually working in a pro-bono clinic,” she emphasized. “For me, it was quite eye opening. To the people you end up helping, there would have been no other avenue to legal services.”

Sawyer noted that she was honored to have had the opportunity to become a Fellow and eventually, President, of the Foundation. She also applauded the work of Angie Cook, characterizing her as the backbone of the organization.



2012-2013 **Ronald L. Roberts, Columbus**

Serving as Foundation President reinforced what Ronald Roberts already knew—Mississippi lawyers, and particularly those involved in the Foundation, are committed to improving the administration of justice.

“Members of the Foundation put in many hours in committee work and otherwise, evaluating budgets and requests,” he emphasized, noting that fund distribution has been more challenging in recent years due to diminishing IOLTA monies in the wake of the economic downturn. “It was and will continue to be an honor and privilege to play some small part in continuing the work that started 50 years ago. We certainly stand on the shoulders of those who came and served before.”

Roberts has appreciated the opportunity the Foundation has provided him to meet and develop new friendships with lawyers all over the state. A private-practice attorney from Columbus, Roberts pointed out that members of the Foundation are selected from every state region to ensure regional diversity and representation. “I’ve met lawyers I would have never met and have friends now that I would not have had,” he said.



NOTICE FOR APPOINTMENT OF MAGISTRATE JUDGE

Due to the planned retirement of Magistrate Judge John M. Roper on July 31, 2014, the United States District Court for the Southern District of Mississippi is receiving applications for the position of Magistrate Judge assigned in the District's Southern Division in Gulfport, Mississippi, appointment to be effective on August 1, 2014.

The duties of the position are demanding and wide-ranging. The magistrate judge conducts most preliminary proceedings in criminal cases; conducts trials and dispositions of misdemeanor cases; conducts various pretrial matters and evidentiary proceedings on delegation from a district judge; and conducts trials of civil cases upon consent of the litigants. The basic authority of a United States magistrate judge is specified in 28 U.S.C. §636.

To be qualified for appointment an applicant must

- (1) Be, and have been for at least five years, a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least 5 years (with some substitutes authorized);
- (2) Be competent to perform all duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;

- (3) Be less than seventy years old; and
- (4) Not be related to a judge of the district court.

A merit selection panel composed of attorneys and other members of the community will review all applicants and recommend to the district judges in confidence the five persons it considers best qualified. The court will make the appointment following an FBI full-field investigation and an IRS tax check of the applicant selected by the court for appointment. An affirmative effort will be made to give due consideration to all qualified applicants without regard to race, color, age (40 and over), gender, religion, national origin or disability. The current annual salary of the position is \$160,080. The term of office is eight years from the effective date of August 1, 2014.

Application forms and additional information on the magistrate judge position in this court may be obtained from the Clerk of the district. The application form is also available on the court's Internet website at www.mssd.uscourts.gov. Applications must be submitted only by applicants personally and **must be received by October 25, 2013**.

All applications will be kept confidential, unless the applicant consents to disclosure, and all applications will be examined only by members of the merit selection panel and the judges of the district court. The panel's deliberations will remain confidential.

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Life After Learmonth

Introduction

On February 27, 2013 the United States Court of Appeals for the Fifth Circuit rendered its opinion in the case styled *Lisa Learmonth v. Sears Roebuck and Company*, Case No. 09-60651.

The only issue on appeal was the application of the statutory cap on noneconomic damages which had been applied by the United States District Court of the Southern District of Mississippi reducing the portion of the award for non-economic damages to \$1 million. This is the cap on non-economic damages pursuant to Miss. Code Ann. § 11-1-60(2)(b). The issue has not yet been ruled on by the Mississippi Supreme Court and the Fifth Circuit ruling is not binding in state courts. However, it is a well written and well reasoned opinion analyzing the various issues which the Mississippi Supreme Court will likely address at some point.

Since *Learmonth*, United States District Judge Carlton Reeves has entered an order dated June 13, 2013, in *Clemons v. United States of American and State of Mississippi*, Cause No. 4:10-CV-209-CWR-FKB. The *Clemons* case dealt with subsection 2(a) of Miss. Code Ann. § 11-1-60, the non-economic damages cap in medical negligence cases. Judge Reeves did not appear to actually be in favor of the cap. However, his well reasoned order citing the case law and, of course, the *Learmonth* decision led to his conclusion that the plaintiff's constitutional challenges to the cap should be denied. We will now look at the history, the arguments made for and against the constitutionality of the non-economic damage caps of the *Learmonth* and *Clemons* decisions and life after *Learmonth*.

I. Background

In 2004, the Mississippi legislature enacted Miss. Code Ann. § 11-1-60, Supp. 2012. Section 11-1-60(2)(b) places a cap of \$1 million on non-economic damages. The legislature passed the tort

reform legislation in an effort to address the increasingly large verdicts. Prior to 1995, there were no verdicts greater than \$9 million in Mississippi courts.¹ Between 1995 and 2001, twenty-four verdicts in Mississippi exceeded \$9 million, and at least seven of those awards were for \$100 million or more.² In *O'Keefe v. Loewen Group, Inc.*, a Hinds County jury awarded a verdict of \$500 million arising from a \$4 million contract dispute.³ These verdicts were representative of the legal climate that drove the legislature to take action and pass legislation placing caps on non-economic damages. Nonetheless, the constitutionality of the statutory caps have been challenged.

II. Challenges to Constitutionality

A. The Mississippi Supreme Court and the constitutionality of the caps

The statutory caps have been challenged with arguments that the limitation on recoverable damages violates the Mississippi Constitution. The Mississippi Supreme Court has yet to rule on the constitutionality of the caps even though cases addressing the issue have been considered by the Court. In *Double Quick, Inc. v. Lymas*⁴, the court addressed the application of the caps. Mr. Lymas challenged the caps on constitutional grounds. Subsequently, the Attorney General filed a brief and argued that the statute was constitutional. Several amici curiae briefs were filed and it appeared the court would finally address the issue. However, the court never addressed it because the case was reversed and rendered for a failure to prove proximate cause. The court was also presented with the constitutional issue in *Intown Lessee Assocs. v. Howard*⁵. In

By Roy A. Smith, Jr.

Intown Lessee, two plaintiffs were awarded \$2 million general jury verdicts. The verdict form did not require the damages award to be separated by economic and noneconomic. Thus, the court ruled that the parties waived the application of the statute because they did not object to the jury instruction or the verdict form during trial. The court added that it would not “engage in speculation or conjecture and it would be nothing more than supposition for us to try to guess what amount the jury awarded in economic damages and what amount it awarded in non-economic damages.”⁶

1. *Sears, Roebuck & Co. v. Learmonth*

The Mississippi Supreme Court has been able to decide cases without addressing the constitutional issue. *Sears v. Learmonth* was no different. *Learmonth* was filed in federal court under diversity jurisdiction. The jury found Sears liable for Learmonth’s injuries and awarded \$4 million in compensatory damages. Learmonth challenged the constitutionality of the noneconomic caps and argued that it violated Mississippi’s right to a jury and separation of powers provisions in the constitution. The Fifth Circuit certified the constitutional question to the Mississippi Supreme Court.

The constitutional question was never answered by the Mississippi Supreme Court in *Learmonth*. On August 23, 2012, using similar reasoning from *Intown Lessee*, the court did not address the issue because the jury issued a general verdict without separating economic and non-economic damages. Even though the parties in *Learmonth* stipulated to the amounts, the court considered it speculative.⁷ Following the decision of the Mississippi Supreme Court, the Fifth Circuit asked the parties to re-brief the constitutional issues and permitted *amici* to do the same.⁸ The 5th Circuit concluded in *Learmonth* that the 11-1-60(2)(b) did not violate the Mississippi Constitutional provisions of (1) jury trial guarantee and (2) separation of powers.

III. Arguments Made for Unconstitutionality

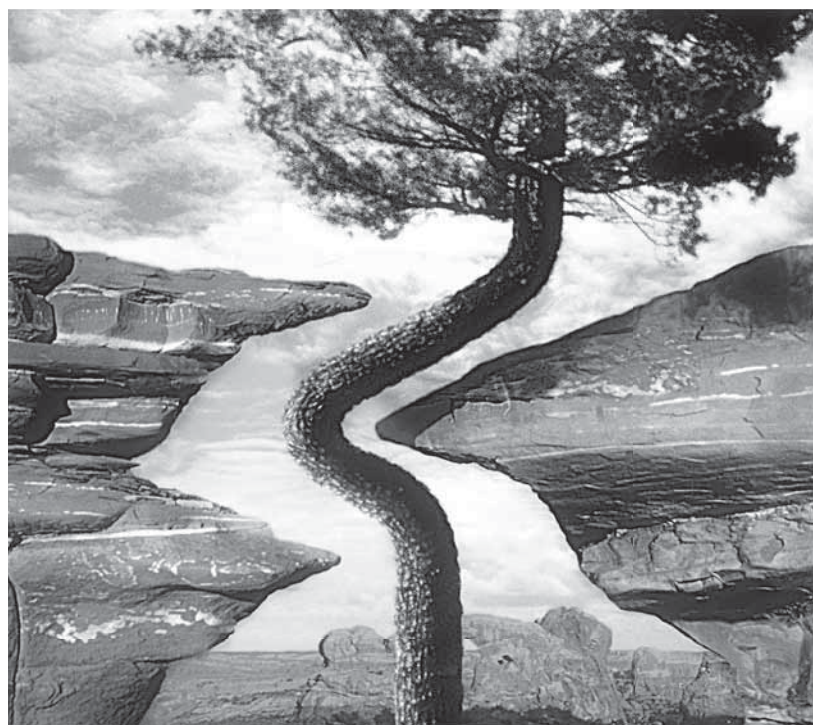
Generally, Mississippi Courts allow the Mississippi constitutional provisions to prevail when there is a possible conflict

with a statute.⁹ Still, the Mississippi Supreme Court has stated, “statutes are clothed with a heavy presumption of validity, and the burden is on the party challenging the constitutionality of the statute to carry his case beyond a reasonable doubt.”¹⁰ Further, a statute will be ruled against “only where the legislation under review be found in palpable conflict with some plain provision of the . . . constitution.”¹¹ The Mississippi Constitution is to be construed in light of the common law.¹²

A. Jury Trial Guarantee

Miss. Const. art. III § 31 states, “The right of trial by jury shall remain inviolate. . . .” Learmonth argued to the Fifth Circuit that § 11-1-60(2)(b) violates the Mississippi Constitution’s right to a jury by imposing caps on non-economic damages. Learmonth contended that the caps violate two rights encompassed by the right to a jury: (1) the right to have a jury alone find the proper compensatory damages amount, and (2) the right to have that factual finding converted, undisturbed,

Continued on next page



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into a legally binding judgment of equal value.¹³ Applying Mississippi law, the court distinguished between a “verdict” or “award” (a purely fact find with respect to compensatory damages) and a “judgment” (an act whereby the law that applies to the facts at bar is given effect).¹⁴ In the commentary to Mississippi Rule of Civil Procedure 54, the Advisory committee states, “The terms ‘decision’ and ‘judgment’ are not synonymous under these rules. The decision consists of the courts’s findings of fact and conclusions of law; the rendition of a judgment is the pronouncement of that decision and the act that gives legal effect.” Therefore, the court determined that the application of the statute is to impose a legal limitation on a judgment. Under the statute, judges are not to inform the jury of the caps to ensure that the jury’s decision is uninfluenced. The jury retains its fact finding role and the judge’s role is to apply the law to the factual findings. The judge reducing the award to the available legal remedy under the statute is consistent with the Mississippi Constitution and jury guarantee.

Further, the court noted that the

Mississippi Supreme Court has historically recognized the legislature’s authority to alter legal remedies.¹⁵ The Mississippi Supreme Court has upheld worker’s compensation limitations and contributory negligence being replaced with comparative negligence.¹⁶ Therefore, the court determined that Learmonth’s argument that the jury’s award should be legally binding without regard to the statutory caps is not supported by common law.

B. Separation of Powers

Learmonth also argued to the Fifth Circuit that the caps violate the Mississippi Constitution’s Separation of Powers Clauses in Miss. Const. art. I §§ 1, 2. Learmonth contended that the statute: (1) conflicts with remittitur (a judicial procedure), and (2) is facially invalid as a legislatively promulgated procedural rule.¹⁷

A remittitur is a purely judicial process “by which a court reduces or proposes to reduce damages awarded in a jury verdict.”¹⁸ It is used in circumstances where “the evidence does not support the jury’s general damages award.”¹⁹ However, a statutory damages cap sets a uniform limit to particular categories of damages without regard to the presence of or lack of evidentiary support. The court determined that a remittitur applies when there is a question regarding the jury’s factual findings and does not appear anywhere in the statute. The caps do not alter the ability of the court to suggest a remittitur nor does it serve as a legislative remittitur. As the court noted, the caps are a statutory limit on a legal remedy and nothing more. The judge could still issue a remittitur despite the caps.

Learmonth argued that the caps were facially invalid because only the judiciary has the power to create procedural rules, that the legislature cannot interfere with compensatory damages, and that the legislature has reached beyond its legislative powers. The court determined that the statute does not create a rule, but provides the application of substantive law. The Mississippi Supreme Court has defined procedure as “the mode of proceeding by which a legal right is enforced, as distinguished from the substantive law which gives or defines the rights, and which by means of the proceedings, the court is to administer; the machinery, as distinguished from its product.”²⁰ The statute is

an application of substantive law and is not a procedural rule.

Judge King wrote in the *Learmonth* opinion, “To accept that the constitutional separation of powers prohibits the legislature from limiting a legal remedy would be to prohibit the legislature from enacting practically any change to substantive law.” Learmonth argued that if the legislature can limit the damages to \$1 million, it could place the cap at \$1. The court noted that the Mississippi Constitution’s due process or remedies clauses would impose restraints on the legislature’s authority to cap compensatory damages, and that this particular argument was outside the separation of powers analysis.

C. Access to courts

Article 3, § 24 of the Mississippi Constitution provides that the Courts of Mississippi “shall be open” and that every person “shall have remedy by due course of law.” Some have argued that the caps violate the right of access to the court and remedies clauses because it prohibits a litigant from fully recovering without offering an alternative remedy. The Mississippi Supreme Court has stated that the open courts provision “does not create an unlimited right of access to courts.”²¹ Also, the provision has not been interpreted as “guaranteeing limitless or absolute recovery for an injury.”²² The statute only limits the amount of a litigant’s remedy; it does not deny it, nor does it hinder access to the courts or the right to a remedy.

D. Takings Clause

Some argue that the caps deprive plaintiffs of property interest without compensation. The “takings” clause derives from Article 3, § 17 of the Mississippi Constitution and the Fifth Amendment of the United States Constitution. The provision provides that private property shall not be taken except upon due compensation. The Mississippi Supreme Court addressed the “takings” argument in *Wells v/ Panola County Board of Education*, and stated it was “creative, but not persuasive.”²³ In *Wells*, it was argued that the limit on recovery for school bus injuries violated the takings provisions. However, the court noted that the “takings” jurisprudence typically concerned real property owners and that since the court had “never construed the takings

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clause to apply to a cause of action or right to sue,” Wells’ argument was without merit.²⁴ Therefore, under *Wells*, the takings argument fails because it does not concern real property.

E. Equal Protection Clause

It has been argued that Miss. Ann. Code. 11-1-60 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, by creating two classes of tort victims, those who recover fully and those who do not. The preliminary concern with this argument is that Mississippi does not have an equal protection clause in its constitution. Further, the statute does not limit the plaintiff’s ability to recover all of her economic damages. When considering an equal protection issue, the Mississippi Supreme Court has recognized that “laws will not be invalidated under the due process or equal protection clauses unless they are manifestly arbitrary or unreasonable for the classifications”.²⁵

“The Equal Protection clause commands that no person shall be denied equal protection of the law by any state.”²⁶ Further, “the equal protection guarantee applies to all government actions which classify individuals for different benefits or burdens under the law”.²⁷ In *Clemons v. U.S.*, the plaintiff challenged the constitutionality of the Mississippi statute on caps for medical malpractice.²⁸ Clemons argued that strict scrutiny should apply because she was not afforded a jury trial. However, the claim was brought under the Federal Tort Claims Act, which does not provide for jury trials.²⁹ Strict scrutiny applies when there is interference with a fundamental right of a suspect class.³⁰ However, the Mississippi Supreme Court has ruled that parties injured by government tortfeasors, or by any tortfeasors, are not a suspect class.³¹

The Honorable Judge Carlton Reeves wrote the opinion in *Clemons* and ruled that rational basis review applied, and legislation will not be overturned unless it is unrelated to the achievement of legitimate

legislative purposes.³² Judge Reeves concluded that the Mississippi Supreme Court would likely hold that an effort to reduce medical malpractice insurance premiums is a legitimate legislative purpose and that the limitation on noneconomic damages to \$500,000 was rationally related to achieving that goal.³³ Considering the overwhelming evidence of its effect on business, predictability, and consistency, as well as and the extensive million-dollar verdicts in Mississippi, Judge Reeves found the Mississippi Supreme Court would likely rule that the cap on all civil actions at \$1 million furthers a legitimate purpose as well.³⁴

F. Waiver

The statutory cap on noneconomic damages applies as a matter of law and does not require that any facts be proven at trial. However, in *Clemons v. U.S.*, the plaintiff argued that the defense did not raise the statutory cap as an affirmative defense. In the Fifth Circuit, a state law

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limiting the recovery of non-economic damages in a medical negligence case is considered to be an affirmative defense under Federal Rule of Civil Procedure 8(c).³⁵ Further, because a party waives an affirmative defense if it fails to plead it in its first responsive pleading, the argument is that the statutory cap has been waived if not pleaded. Therefore, in *Clemons*, the plaintiff argued that because the defendant failed to invoke § 11-1-60 in its answer when it knew it was facing a \$5 million demand, it should result in a waiver of the statute's benefits.³⁶ In Judge Reeves' opinion, he cited *Lucas v. State*, in which the defendant raised the cap issue at trial and the Fifth Circuit agreed that it was sufficient and did not prejudice the plaintiff.³⁷ The statutory cap was included in the pre-trial order and because of that Judge Reeves stated it was preserved.³⁸

G. Special Legislation

The statutory caps limit the award of non-economic damages for medical malpractice and any other civil actions. Some argue that the extra benefit to health care providers violates the Mississippi constitution's prohibition on "special legislation" because they are favored over other defendants, and litigants are limited to half of what other civil actions can receive for noneconomic damages. Sections 87 and 90 of the Mississippi Constitution provide the basis for the special legislation argument. The provisions are meant to ensure laws will not be passed that only benefit particular persons. The Mississippi Supreme Court, when considering Section

87, has repeatedly held that it only applies where there has been a local or private law enacted for the benefit of private individuals or corporations.³⁹ However, the medical malpractice law applies generally to all medical health care providers an entire industry-and not a particular hospital or doctor. "A law is classified as general when it operates uniformly on all members of a class of persons, places or things requiring legislation particular to that class." Therefore, the law would have to be more narrow to be unconstitutional. For example, in *Oxford v. Asset Partners*, the court struck down part of a law that excluded the City of Oxford and only that city from the general laws of Mississippi.⁴⁰

IV. After Learmonth

The 5th Circuit ruling in *Learmonth* upholding the Mississippi statute placing caps on non-economic damages is not binding in state courts. It is, however, persuasive. Still, until the Mississippi Supreme Court affirmatively rules on the statute, the question remains open. United States District Court Judge Carlton Reeves stated in *Clemons v. U.S.* that the Mississippi Supreme Court would likely conclude that the statute is constitutional.⁴¹

State court judges in Mississippi are beginning to make rulings on the constitutionality of the statute because the judges are without clear word from the Mississippi Supreme Court. Two Mississippi state circuit court judges have declared the statutory caps unconstitutional. In *Carter v. Interstate Realty Management* and *Tanner v. Eagle Oil*, the

juries rendered verdicts in excess of the caps. The judges ruled that the \$7.5 million verdict in *Carter* and the \$27 million verdict in *Tanner* could not be reduced because it violated the Mississippi Constitution. The court in *Carter* ruled that the statutory caps violated provisions of the constitution, including the right to a jury trial, remedy, and separation of powers clauses. The *Tanner* court chose not to reduce the verdict based on separation of powers and due process clause violations. It is important to note that both verdicts were special and not general, which provided the reasoning for the Mississippi Supreme Court to previously not rule on the issue. Both verdicts have been appealed, and the Mississippi Supreme Court may have to address the constitutionality arguments. Judge Eddie Bowen in Jasper County noted in *Tanner* that because the Mississippi Supreme Court declined to answer the question, he issued the order without guidance or precedent.⁴² With more pressure and cases involving the issue, the Mississippi Supreme Court may be forced to rule on it soon. With the well reasoned opinions in *Learmonth* and *Clemons*, the Mississippi Supreme Court has clear guidance and persuasive precedent, supported by the law, to uphold the constitutionality of the caps on non-economic damages.

Learmonth did not address all arguments which could have been made. *Clemons* touches on some of them. David Maron wrote an article for the Mississippi College Law review, Volume 32, Issue 1, 2013 titled "Statutory Damages Caps:



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Analysis of the Scope of the Right to Jury Trial and the Constitutionality of Mississippi Statutory Caps on Noneconomic Damages.” I recommend a detailed reading of Mr. Maron’s article. He addresses what I have addressed herein, but also describes other arguments which can be made. These arguments include a fundamental right to full recovery, due process, open courts and the remedy clause. Mr. Maron provides the basis for the other grounds. In each instance he concludes that these other arguments are considerations but ultimately should not be sufficient basis for the Mississippi Supreme Court to find 11-1-60(2)(b) unconstitutional. I believe that the statute in all likelihood will be upheld. ■


***This paper was prepared by Roy A. Smith, Jr. of Daniel Coker Horton & Bell, P.A. Special thanks to law clerk, Marcus Williams, for his hard work researching the issues and arguments, and assistance in writing this paper.

¹ Mark A. Silverman, *Now Open for Business: The Transformation of Mississippi’s Legal Climate*, 24 Miss. C. L. Rev. 393, 400
² *Id.*
³ *Id.* at 401
⁴ *Double Quick, Inc. v. Lymas*, 50 So.3d 292 (Miss. 2010)
⁵ *Intown Lessee Assocs. v. Howard*, 67 So.3d 711 (Miss. 2011)
⁶ *Intown* at 724
⁷ 95 So.3d 633, 639 (Miss. 2012)
⁸ *Learmonth v. Sears, Roebuck & Co.*, No. 09-60651 (5th Cir. 2013)
⁹ *Bd. of Trs. of State Insts. of Higher Learning v. Ray*, 809 So.2d 627, 636 (Miss. 2002)
¹⁰ *James v. State*, 731 So.2d 1135, 1136 (Miss. 1999).
¹¹ *Hood v. State*, 17 So.3d 548, 551 (Miss. 2009).
¹² *See Robinson v. State*, 108 So. 903, 904 (Miss. 1926).
¹³ *Learmonth II* at 11.
¹⁴ *Id.* at 12, *See Learmonth*, 95 So.3d at 639
¹⁵ *Id.* at 14.
¹⁶ *See Walters v. Blackledge*, 71 So 2d 433, 444-445 (Miss. 1954), *Natchez & Southern Railroad Co. v. Crawford*, 55 So. 596, 599-600
¹⁷ *Id.* at 20
¹⁸ Black’s Law Dictionary 1290 (7th ed. 199).
¹⁹ *Hetzel v. Prince Williams County*, 523 U.S. 208, 211 (1998)
²⁰ *Jones v. City of Ridgeland*, 48 So.3d 530, 537 (Miss. 2010)(en banc)
²¹ *Wells v. Panola County Bd. of Educ.*, 645 So. 2d 883, 890 (Miss. 1994) (*quoting Turrentine v. Brookhaven, Miss. School Dist.*, 794 F.Supp.620, 626 (S.D. Miss. 1992))
²² *Id.* at 892
²³ *Id.* at 895

²⁴ *Id.* at 895
²⁵ *Miss. Bd. of Nursing v. Belk*, 481 So.2d 826, 830 (Miss. 1985)
²⁶ *Ford Motor Co. v. Tex. Dep’t of Transp.*, 264 F.3d 493, 510 (5th Cir. 2001)
²⁷ *Id.*
²⁸ *Clemons v. U.S.*, Cause No. 4:10-CV-209-CWR-FKB (S. D. Miss. 2013)
²⁹ *Id.* at 12, *See* 28 U.S.C. § 2402
³⁰ *Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F. 3d 185, 211 (5t hCir. 2012)
³¹ *Wells*, 645 So.2d at 896
³² *Clemons*, at 12 (*quoting NRA*, 700 F.3d at 212)
³³ *Id.* at 15
³⁴ *Id.* at 1
³⁵ *Id.* at 4., *See Simon v. United States*, 891 F.2d 1154, 1156-157 (5th Cir. 1990)
³⁶ *Id.* at 6
³⁷ *Id.* at 8
³⁸ *Id.*
³⁹ *Brandon v. City of Hattiesburg*, 493 So.2d 324, 326 (Miss. 1986).
⁴⁰ *Id.* at 10., *See Oxford Asset Partners v. City of Oxford*, 970 So.2d 116, 119
⁴¹ *Clemons*, at 1
⁴² *Tanner v. Eagle Oil & Gas Co.*, Civ. Action No. 111-0013 (Jasper Cnty. Cir. Ct. Oct. 23, 2012)

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2013-2014 President-Elect Nominees

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Roy D. Campbell, III
Jackson

Roy D. Campbell, III was born and grew up in Greenville, graduated from Greenville High School in 1968, from The University of Mississippi School of Law in 1975. During law school he was a member of Phi Delta Phi legal fraternity and was Appellate Division Chairman of the Moot Court Board.

Following graduation from law school, Roy married Nancy Larrison and began practicing law with Campbell Delong. During that time Roy served on active duty as a lieutenant in the Military Intelligence branch of the United States Army, followed by two years in the Army Reserves.

When their three children went off to school Nancy entered medical school and Roy and Nancy moved from Greenville to Nashville. Roy joined the Nashville office of Leitner, Williams, Dooley & Napolitan, PLLC. After Nancy completed her medical residency training she and Roy moved to Jackson. Roy joined the Jackson office of Bradley Arant Boult Cummings LLP in 2003 where he focuses his practice on commercial litigation and product liability.

Roy is a Fellow of the American College of Trial Lawyers and serves on the ACTL's State Committee. He is an Associate of the American Board of Trial Advocates and serves on the Executive Committee of ABOTA's Mississippi Chapter.

In The Mississippi Bar he has held a number of positions, including chair of Summer School for Lawyers, chair of the Bench-Bar Liaison Committee, chair of the Ethics and Professionalism Committee, and director of the Young Lawyers Division. He is a Fellow and former Trustee of the Mississippi Bar Foundation. The Mississippi Bar awarded him its Distinguished Service Award in 2005.

He is a past president of the Capital Area Bar Association and a recipient of its Outstanding Service Award. He served on the Board of Governors for the 5th Circuit Bar Association and as member of the Charles Clark Chapter of the Americans Inn of Court. In addition to volunteering as an attorney with the Mississippi Volunteer Lawyers Project he co-chaired the MVLP's 2010 Capital Campaign. He is a facilitator in the James O. Dukes Law School Professionalism Program. He is a member of the International Association of Defense Counsel, the Defense Research Institute and the MS Defense Lawyers Association. He served as chairman of the Board of Trustees of the Mississippi Museum of Art from 2010 to 2012 and is currently on that Board's Executive Committee and on the Board of the Mississippi Museum of Art Foundation, Inc. Roy is a member of St. Andrew's Episcopal Cathedral and an active volunteer at Stewpot and Mississippi First.

He has been married to Nancy Larrison Campbell, an internal medicine physician, for 38 years. They are the parents of three daughters: Larrison (Courtenay) of Los Angeles; Martha of New York City; and Liz of New York City.

He has been married to Nancy Larrison Campbell, an internal medicine physician, for 38 years. They are the parents of three daughters: Larrison (Courtenay) of Los Angeles; Martha of New York City; and Liz of New York City.



Stephen W. Rosenblatt
Ridgeland

Steve Rosenblatt grew up in Fort Adams, Mississippi, graduated from Woodville Attendance Center in 1966 and from Vanderbilt University in 1970. After serving two years in the United States Army, Steve attended the University of Mississippi School of Law, where he received his law degree, *with honors*, in 1975. During law school, Steve served as Editor-in-Chief of the *Mississippi Law Journal* and was selected to membership in Omicron Delta Kappa.

Steve has practiced with the Butler Snow law firm his entire legal career.

Steve served as Chair of the firm for eight years before returning to full-time law practice in 2006. Steve's practice is focused in the areas of bankruptcy and financial restructuring, and he has been certified as a Business Bankruptcy Specialist by the American Board of Certification.

As an active member of the Mississippi Bar, Steve currently serves as President of the Mississippi Bar Foundation and as Director on the Board of the Mississippi Volunteer Lawyers Project. He regularly participates in the annual James O. Dukes Professionalism Program. Steve has served as a member of the Board of Bar Commissioners, Chair of the Bar Section Study Committee and Chair of the CLE Study Committee. Steve is a past President of the Young Lawyers Division of the Bar, the Fellows of the Young Lawyers Division of the Mississippi Bar and the Jackson Young Lawyers Association.

Steve is also active in practice-related organizations, such as the Mississippi Bankruptcy Conference, of which he was a founding member and a past President. Steve is also a member of the American Bankruptcy Institute (ABI), the Association of Insolvency and Restructuring Advisors (AIRA) and the Turnaround Management Association (TMA). He served as the Chair of the Steering Committee on Local Bankruptcy Rules and was a Barrister in the Charles Clark Inn of Court.

Steve recently was inducted as a Fellow into the American College of Bankruptcy. He also is a Fellow in the Mississippi Bar Foundation, a Life Fellow in the American Bar Foundation, and a sustaining member of the Lamar Order.

Outside of his law practice, Steve is active at First Presbyterian Church of Jackson, where he serves as an Elder. Steve is also a past-Chair of the Board of Trustees of Jackson Preparatory School and is a former President of the Jackson Vanderbilt Club. Steve also has been involved in the ministry of Mission Mississippi.

Steve is married to the former Betsy Gernert of Cleveland, Mississippi, and they have three grown daughters: Katherine Weaver (William) of Waco, Texas; Emily Tober (Alistair) of Manhattan Beach, California; and Nancy Wilson (Seth) of Nashville, Tennessee. Steve and Betsy are especially fond of their three grandchildren, Cynthia, Ellen, and Robert Weaver.

Trial Publicity, Whiskey and 51 years of Well Aged Ethics Opinions: The Review, Withdrawal and Amendment of the Bar's 236 Formal Ethics Opinions

By Adam Kilgore

General Counsel for The Mississippi Bar

The Ethics Committee and the Office of General Counsel for The Mississippi Bar began a detailed review of the existing published ethics opinions in 2006. This project was born out of the need to insure that every attorney in Mississippi had access to a body of ethics opinions that he or she could rely on when faced with an ethical dilemma.

While the ethics opinions as they existed had value, their worth was somewhat undermined by subsequent rules changes, later ethics opinions and decisions issued by the Supreme Court of Mississippi and, even in a few instances, the United States Supreme Court. In essence, there were too many ethics opinions that if published, would have received negative treatment because they had been superceded in one way or another. And others that warranted a signal of caution.

An example of an ethics opinion that had lost all value is Ethics Opinion 41. Ethics Opinion 41 stated that if a newspaper said something complimentary about you, you were obligated to contact the newspaper and discourage it from stating such niceties in the future. Rule 3.6 of the Mississippi Rules of Professional Conduct entitled "Trial Publicity" now governs this situation and an analysis under the current rule renders a very different result. (Rule 3.6, MRPC, outlines what is acceptable in extrajudicial statements and thankfully does not contain a requirement that flattering news articles be prevented or deterred).

Other ethics opinions were still legally sound but needed amendment because they cited a rule no longer in effect. Ethics Opinion 22, also known as the "whiskey opinion" (not to be confused with Soggy Sweat's colorful speech to the legislature in 1952) holds that an attorney should not try to curry favor with judicial officers by giving them bottles of whiskey and paying for their entertainment. Such attempts to improperly influence a judge are still prohibited, as stated in Rule 3.5, MRPC. As a result, the Opinion was amended to simply remove the reference to the old rule and replace it with the current one.

Conducting an intensive and detailed review of 236 ethics opinions was much more cumbersome than anticipated. While a handful of ethics opinions had been withdrawn by the Board of Bar Commissioners in the mid-1980's in response to the Code of Professional Responsibility being replaced by the Mississippi Rules of Professional Conduct, the Ethics Committee was faced with starting from the beginning and reviewing ethics opinions dating as far back as 1962. At the risk of belaboring the point, reviewing approximately fifty "conflict of interest" ethics opinions to insure that they were still relevant and then proposing any needed changes was more daunting than any Ethics Committee member could have imagined. Simply changing one ethics opinion often had a domino effect and impacted thirty more. The early days of the project saw several instances of starts and re-starts until experience taught us to dissect the ethics opinions from various angles.

Each ethics opinion was reviewed multiple times to determine if it was consistent with the Rules of Professional Conduct, case law, statute and any prior or subsequent ethics opinion that had been issued. Every ethics opinion was thoroughly vetted, with particular focus being given to the 136 ethics opinions that were issued by the Bar prior to the adoption of the Mississippi Rules of Professional Conduct in 1987. While the basic tenets of ethics were contained in previous sets of rules, including the Code of Professional Responsibility, there were also significant changes that came with the advent of the Mississippi Rules of Professional Conduct. Where the Code of Professional Responsibility suggested "should" or "should not," the Rules of Professional Conduct often now state "shall" or "shall not" in regards to an attorney's ethical obligation in a given situation. This difference in language oftentimes results in a very different analysis and result.

On April 6, 2013, the Board of Bar Commissioners for The Mississippi Bar

approved the withdrawal of 83 opinions and the amendment of 90 opinions, leaving 63 unchanged. The complete body of Opinions is now available for you to view at www.msbar.org under the "Ethics and Discipline" tab on the Bar's upgraded website. As before, there is also a feature whereby one can type in a word or rule number to search all the opinions. In addition, there is an improved topic index. Before, if one was researching a conflict of interest issue he or she would be faced with the possibility of reading as many as fifty ethics opinions on the topic. Now an attorney can see the opinions broken down into categories of conflicts, either by Rule (1.7 for conflicts with current clients or 1.9 for former clients) or by subject (entity as client, government attorneys, judges, paralegals, multiple representation, and real estate transactions).

Care was also given to combine ethics opinions where possible to create one opinion on one subject instead of having multiple opinions that were issued at various times on the same subject. For example, Ethics Opinion 15 addresses other "business activities" for attorneys. Previously, there were seven other ethics opinions addressing the very same issue, each focusing on different professions, ranging from medical practice, real estate, insurance sales and landman work. That analysis is now wrapped up in one clean ethics opinion that adequately addresses the issue.

It is the Bar's hope that the finished product will give attorneys more confidence when considering complex ethical issues. If you are faced with an ethical dilemma, you are encouraged to review the Mississippi Rules of Professional Conduct. In addition, you now have up to date ethics opinions on various topics to review as an aid to your analysis. Should you have additional questions after conducting your own research on an ethics issue, you may also contact the Office of General Counsel for guidance on the rules and opinions that may apply so that you may make an informed decision.

Continued on next page

Withdrawn Opinions:

Opinions Superseded by the Rules of Professional Conduct:

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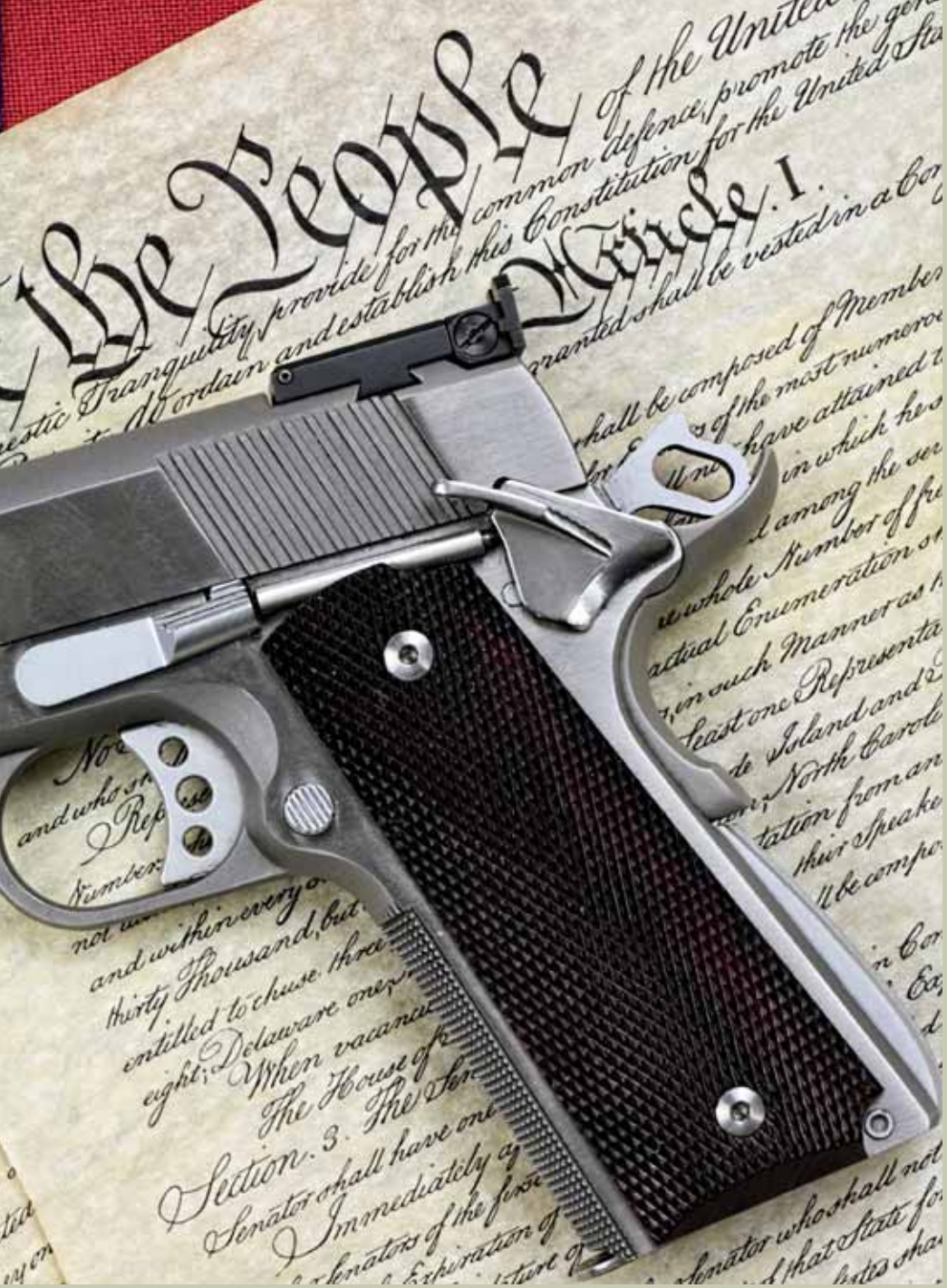
CONSTITUTIONAL PROVISIONS

“**A** well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” *Second Amendment to the Constitution of the United States.*

“The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons.” *Mississippi Constitution of 1890, Article 3, Section 12.*

A BRIEF HISTORY OF THE RIGHT TO KEEP AND BEAR ARMS

The Second Amendment to the Constitution of the United States was written in 1789 and ratified by the States in 1791 as part of the Bill of Rights. The Bill of Rights recognizes, but not creates, unalienable rights bestowed upon all people by the Creator, as stated in the



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Declaration of Independence.² Unalienable rights cannot be taken away, surrendered, or infringed but the courts have found that certain “reasonable” restrictions may still be imposed.

The rights recognized in the Second Amendment are explicitly protected in the constitutions of the majority of the States in our Union,³ and most states have a rather robust history of their own surrounding the right. For example, the original Mississippi Constitution of 1817, in Article I, titled the “Declaration of Rights,” provided: “That the general, great and essential principles of liberty and free government may be recognized and established, We Declare: . . . Section

23. Every citizen has a right to bear arms in defence of himself and the State.”

The Second Amendment recognizes an individual right to self-defense against criminal and oppressive ruler alike; the right to arms is not restricted only to those in the militia.⁴ That the Founders feared the propensities of government to usurp personal freedom and just as strongly believed the citizen must retain sufficient arms to constrain the government is undeniable. It is against this backdrop that the Second Amendment must be understood and interpreted. Simply put, the Second Amendment is not directed toward hunt-



By M. Reed Martz¹

Continued on next page

ing or sport - it is aimed squarely at preserving life and liberty from those persons and governments who would take them. The Second Amendment protects those arms sufficient for the purpose, i.e. "military type weapons."⁵

Our country's founders borrowed liberally from the English Bill of Rights which was drafted in response to the usurpatious conduct of King James II whose violations included the registration and confiscation of arms.⁶ Principal among these English rights was each citizen's "right of having and using guns for self-preservation and defense."⁷ In our country's early history the need for arms was impressed upon the colonists by King George III's efforts beginning in 1773 to seize the people's arms. In fact, it was the intended confiscation of arms which led to Paul Revere's midnight ride and "the shot heard 'round the world'" which started the American Revolution.⁸

We must not think this to be a situation lost to history. The restriction of arms was used to carry out the racist agendas of state and local governments following the Civil War.⁹ Embracing one of the principal objectives of the Ku Klux Klan, certain southern States even went so far as to pass laws (so-called "Black Codes") restricting arms only to white citizens and otherwise taking coordinated efforts to disarm blacks as a means to prevent their ability defend themselves.¹⁰ Sen. Henry Wilson (R., Mass.) is quoted as saying, "In Mississippi rebel State forces, men who were in the rebel armies, are traversing the State, visiting the freedmen, disarming them, perpetrating murders and outrages on them...."¹¹ In response the Fourteenth Amendment was added to the Constitution to ensure that States could not deny minorities the right to arms enshrined in the Second Amendment.¹² Even more recently we see that gun control laws were passed to quell the threat of civil rights groups such as the Black Panther Party for Self-Defense.¹³

MISSISSIPPI'S "NEW" OPEN CARRY LAW

Since 1890 Mississippi's Constitution has permitted the "legislature to regulate or forbid carrying concealed weapons."¹⁴ While the Constitution says nothing about so-called open (unconcealed) carry, case

law provided that the language of "concealed in whole or in part" was taken literally.¹⁵ This gave rise to dicta in a concurring opinion in the 1992 case of *In re: L.M., S.T. & D.S. v. State*, 600 So.2d 967, 971 (Miss. 1992) (Noble, concurring) in which it was said:

I discovered that carrying a concealed weapon in whole or in part even meant that a revolver carried in a holster on a man's hip was a partially concealed weapon, riding a horse with a saddle holster and revolver under a person's leg violated the statute; and that covering a weapon with feet, hands, or clothing meant that the weapon was concealed under the interpretation of the statute. Conceivably, carrying a revolver suspended from the neck by a leather thong could be partially concealing it.

Noble's quote developed sufficient trepidation over whether Mississippi allowed open carry that those erring on the side of caution recommended open carriers obtain a concealed carry license so that in the event a holster was considered concealment the license would insulate against a criminal charge.¹⁶ This situation persisted for a number of years until the Attorney General's office on June 14, 2012, issued an advisory opinion that the concealed carry statute required the "weapons be carried totally concealed."¹⁷

In response the 2013 Legislature, in House Bill 2, amended several statutory sections to remove the concealed "in part" language and expressly provide in § 97-37-1(4):

For the purposes of this section, "concealed" means hidden or obscured from common observation and shall not include any weapon listed in subsection (1) of this section, including, but not limited to, a loaded or unloaded pistol carried upon the person in a sheath, belt holster or shoulder holster that is wholly or partially visible, or carried upon the person in a scabbard or case for carrying the weapon that is wholly or partially visible.

Just hours before House Bill 2 was to go into effect the Hinds County District Attorney and others petitioned the Hinds County Circuit Court to enjoin the law. On July 12, 2013, the Circuit Court entered an injunction which found the law is "is unconstitutionally vague and shall not take effect until such time as the Mississippi Legislature reviews, amends or clarifies House Bill 2 to accomplish its intended purpose."¹⁸ Following an expedited briefing schedule the Mississippi Supreme Court, in an 9-0 decision dated August 29, 2013, issued a three page order finding that the Circuit Court "erred as a matter of law when" it determined "House Bill 2 to be vague and, therefore, unconstitutional."¹⁹

Thus, effective July 1, 2013, it is legal for a person not otherwise prohibited from owning or carrying a deadly weapon to openly carry such a weapon without a permit. While the Attorney General and Governor as well as a significant portion of the Legislature agreed that open carry had always been permissible²⁰ the statutory change removed any doubt on the issue. With the exception of educational property²¹ there are no express statutory limitations on where a firearm can be openly carried. An Attorney General opinion from June 2013 addresses this issue in greater detail.²² In summary, the opinion states that: open carry does not require a permit; open carry on educational property is prohibited; law enforcement is free to approach a citizen to ask for identification but cannot require production of information without grounds to submit the person to detainment; open carry applies equally to long guns such as shotguns and rifle as it does to handguns; private property owners can prohibit the carry of firearms and perhaps submit an open carrier to charges of trespass; and public property owners (such as courthouses and other public buildings) can under certain situations prohibit the open carry of firearms.

In light of the recent open carry changes and the Attorney General's admonition, law enforcement is encouraged to exercise caution in stopping to interview and/or disarm open carriers without some evidence that they have actually committed a crime or present a danger because "where a state permits

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individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention. Permitting such a justification would eviscerate Fourth Amendment protections for lawfully armed individuals in those states.”²³

MISSISSIPPI CONCEALED CARRY

Mississippi is a “shall issue” state, meaning that an applicant who meets all statutory criteria must be issued a license to carry a concealed pistol or revolver or stun gun.²⁴

The 2012 Legislature unanimously passed House Bill 506 to amend Miss. CODE ANN. § 97-37-7 to provide that concealed carry licensees who voluntarily complete “an instructional course in the safe handling and use of firearms” by a certified instructor “shall also be authorized to carry weapons in courthouses except in courtrooms during a judicial proceeding, and any location listed in subsection (13) of Section 45-9-101, except any place of nuisance as defined in Section 95-3-1, any police, sheriff or highway patrol station or any detention facility, prison or jail.” In effect this law created a “regular” concealed carry license available without completion of a training course, and a “training endorsement” license (also known as “enhanced license”) subject to fewer restrictions. The language of the law even restricts the ability of public bodies to make public property under their control off limits.²⁵

The following chart lists and compares the places a license holder is *prohibited* from carrying a concealed pistol or revolver:

THE NEW ERA OF SECOND AMENDMENT LAW – SEMINAL CASES

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

Heller was the first Supreme Court case to address the Second Amendment head-on.²⁶ *Heller* came to the Court from the District of Columbia which had a ban on handguns and required any gun in the home to be rendered inoperable. The Court addressed, among other things, whether the Second Amendment protects

Continued on next page

“Regular” license	Training Endorsement license
Any place of nuisance (§ 95-3-1: place where lewdness, assignation or prostitution is conducted; where alcohol is unlawfully used)	Any place of nuisance (§ 95-3-1: place where lewdness, assignation or prostitution is conducted; where alcohol is unlawfully used)
Any police, sheriff or highway patrol station	Any police, sheriff or highway patrol station
Any detention facility, prison or jail;	Any detention facility, prison or jail
Any courthouse	
Any courtroom unless permitted by judge	Courtrooms during a judicial proceeding
Any polling place	
Any meeting place of the governing body of any governmental entity	
Any meeting of the Legislature or a committee thereof	
Any school, college or professional athletic event not related to firearms	
Any portion of an establishment, licensed to dispense alcoholic beverages for consumption on the premises, that is primarily devoted to dispensing alcoholic beverages	
Any portion of an establishment in which beer or light wine is consumed on the premises, that is primarily devoted to such purpose	
Any elementary or secondary school facility; any junior college, community college, college or university facility unless for the purpose of participating in any authorized firearms-related activity;	Educational property
Inside the passenger terminal of any airport, except that no person shall be prohibited from carrying any legal firearm into the terminal if the firearm is encased for shipment, for purposes of checking such firearm as baggage to be lawfully transported on any aircraft	
Any church or other place of worship	
Any place where the carrying of firearms is prohibited by federal law	(not prohibited under state law but remains prohibited under federal law)
Any place in the discretion of the person or entity exercising control over the physical location of such place by the placing of a written notice clearly readable at a distance of not less than ten (10) feet that the “carrying of a pistol or revolver is prohibited.”	
A parade or demonstration for which a permit is required to carry a stun gun, concealed pistol or revolver.	

an individual right to possess arms for reasons disconnected with any service in the militia. Justice Scalia, writing for the Court held:

- The Second Amendment is not a “collective” right of the militia but instead an individual “right of the people.”²⁷
- “[T]he inherent right of self-defense has been central to the Second Amendment right.”²⁸
- The term “keep” means to “have weapons” and to “keep arms” “was simply a common way of referring to possessing arms, for militiamen and *everyone else*.”²⁹ The term “bear” means to “carry” and the phrase “bear arms” means to do carry with a particular purpose, namely confrontation.³⁰
- The right to keep and bear arms, like all other rights, is not unlimited.³¹
- *United States v. Miller* stands for the proposition that the Second Amendment right “extends only to certain types of weapons.” Namely it “does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes”³² and requires a weapon to be “in common use at the time” and not “dangerous [or] unusual” to be protected.³³ The Court rejected “the argument, bor-

dering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment.”³⁴

- Regulatory measures pertaining to “possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms” are presumptively lawful.³⁵
- The scope of Second Amendment rights is not determined by a judicial interest-balancing test.³⁶
- A total ban on handguns, an entire class of arms “overwhelmingly chosen by American society for [the] lawful purpose” of self-defense is unconstitutional.³⁷
- The requirement that guns in the home be rendered inoperable impermissibly interfered with the exercise of the right to self-defense.³⁸

What *Heller* did not do:

- Decide whether the Second Amendment applies to the States.
- Decide whether Second Amendment claims are subject to intermediate or strict scrutiny.
- Set forth bright line rules for what gun control measures are constitutionally permissible.
- Decide whether a licensing requirement is permissible.³⁹

McDonald v. Chicago, 561 U.S. 3025 (2010)

A few years after *Heller* the Court took up the Second Amendment again in *McDonald*. This time the Court, through Justice Alito,⁴³ addressed whether the Second Amendment applies to the States by operation of the Fourteen Amendment. Chicago maintained its handgun prohibition was enforceable because the Second Amendment did not apply to the States. The Court:

- Held “the Second Amendment right is fully applicable to the States” under the substitutive Due Process clause of the Fourteenth Amendment.⁴⁴
- Rejected the argument that Second

Amendment was a second-class right to be treated differently from other fundamental rights.⁴⁵

As an aside of interest, the Court spent a good deal of time discussing Mississippi’s history of disarming freed blacks as part of a campaign of harassment, murder, and other deprivations of civil rights as proof that the Fourteenth Amendment was intended to apply to state action.⁴⁶

WHERE THE RUBBER MEETS THE ROAD; EXEMPLAR CASES

Moore et al v. Madigan et al, 12-1269 and 12-1788 (7th Cir. 2012); petition for rehearing *en banc* denied February 22, 2013.

- Struck down Illinois’s ban on all carry of guns and gave the Illinois legislature 180 days “to craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment as interpreted in this opinion, on the carrying of guns in public.”⁴⁷
- This case held that the right to keep and bear arms extends beyond one’s home. Judge Posner explained that while the right of self-defense might be most acute in one’s home, see *Heller*, the right of confrontation extends outside the home. Protecting the right only at home “creates an arbitrary difference” as “the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside.”⁴⁸
- Acknowledged that under *Heller* and *McDonald* “a state may be able to require ‘open carry’—that is, require persons who carry a gun in public to carry it in plain view rather than concealed.”⁴⁹
- Held that “Illinois had to provide us with more than merely a rational basis for believing that its uniquely sweeping ban is justified by an increase in public safety.”⁵⁰
- As of July 9, 2013, Illinois became the fiftieth state to provide concealed carry licensing of some sort.⁵¹

Kachalsky v. Cacace, 701 F.3d 81 (2nd Cir. 2012)

- Plaintiffs sued the state of New York challenging as a Second Amendment violation New York's requirement that they prove "proper cause" to obtain a permit to carry a handgun for self-defense. In essence, the plaintiff's challenged New York's "may issue" permitting scheme as unconstitutional.
- Employing what is effectively "rational-basis review," the Second Circuit "deferred to the political branches by finding that assessing 'the risks and benefits of handgun possession' and creating licensing schemes are 'precisely the type of discretionary judgment[s] that officials in the legislative and executive branches of state government regularly make.'"⁵²
- The plaintiffs' petition for writ for certiorari to the United States Supreme Court was denied April 15, 2013.

United States v. Masciandaro, 638 F.3d 458, 475 (4th Cir. 2011)

- In this case Masciandaro was charged with a parking violation in a federal park. The arresting officer asked if Masciandaro had any weapons in the car, to which Masciandaro truthfully replied that he had a loaded semiautomatic in

the same bag containing his requested identification. Masciandaro was charged with "carrying or possessing a loaded weapon in a motor vehicle" in a national park. Masciandaro defended on the Second Amendment, among other grounds, arguing he had a right to possess a handgun for self-defense.

- The Supreme Court in *Heller* did not address whether the Second Amendment applies beyond the home. Refusing to take up where the Supreme Court left off, the Fourth Circuit "held that a challenged federal gun regulation would survive intermediate scrutiny even if it implicated Second Amendment rights, so the court did not need to decide the Second Amendment question."⁵³
- The Court's opinion is divided into several parts. Writing only for himself, "Judge Niemeyer concluded, it would be proper for the court to hold that the regulation did implicate the Second Amendment since Masciandaro had asserted a valid self-defense interest. The Second Amendment, in other words, 'extends in some form to wherever [self-defense] needs occur.'"⁵⁴

Woollard v. Gallagher, 12-1437 (4th Cir. 2013) (f/k/a *Woollard v. Sheridan* (Maryland Civil Case L-10-2068)).

- A Maryland case which alleges the

State's refusal to issue a concealed carry permit on the basis that Woollard "ha[d] not demonstrated a good and substantial reason to wear, carry or transport a handgun as a reasonable precaution against apprehended danger in the State of Maryland" was unconstitutional. Similar to *Kachalsky*, this is a challenge to "may issue" permitting.

- The District Court ruled in favor of Woollard, finding the law requiring "good and substantial reason" was overly broad.
- The Fourth Circuit, however, on March 21, 2013, unanimously reversed the District Court by finding "while the 'good cause' requirement does indeed infringe upon Woollard's Second Amendment rights, the requirement nevertheless passes intermediate scrutiny (the standard previously determined applicable in *Masciandaro* and *Chester*, heard by the same Circuit), by holding that Maryland's desire to reduce handgun violence is a 'substantial government interest', and that the 'good cause' requirement is 'reasonably fitted' to this interest in several ways, primarily by reducing the number of guns on the street, which the Court agreed with the Appellants provides several secondary effects that significantly reduce handgun violence and increase the

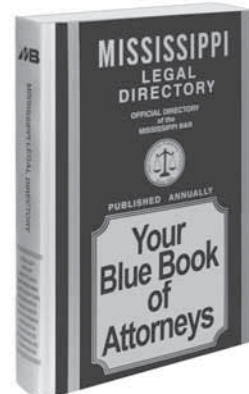
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ability of the police to distinguish criminals from law-abiding citizens.”⁵⁵

Ezell v. City of Chicago, 651 F.3d 684 (7th Cir. 2011)

- In this case the Plaintiffs sued Chicago for passing laws which required gun owners to have at least one hour of gun training but prohibited all non-governmental gun ranges from operating in the city.
- Finding the City’s ordinance unconstitutional the Court applied a stricter form of intermediate scrutiny, close to strict scrutiny.⁵⁶
 - The Court said that Second Amendment claims should analyzed under a two step approach which first asks if the activity is constitutionally protected, and if so, the level of scrutiny “will depend on how close the law comes to the core of the Second Amendment right and the severity of the law’s burden on the right.”⁵⁷
 - The Court stated that *Heller* clearly required a “heightened standard of scrutiny” and expressly rejected rational basis review.⁵⁸ Declining an “undue burden” test similar to abortion cases, the Court eventually settled on First Amendment-type of tiered review which could be strict scrutiny (analogous to content based regulations or a burden on political speech) or “reasonable” regulation “justified without reference to the content” (analogous to time, place, manner restrictions).⁵⁹ The Court’s summary is as follows:
 - “Labels aside, we can distill this First Amendment doctrine and extrapolate a few general principles to the Second Amendment context. First, a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government’s means and its end. Second, laws restricting activity lying closer to the margins of the Second Amendment right, laws

that merely regulate rather than restrict, and modest burdens on the right may be more easily justified. How much more easily depends on the relative severity of the burden and its proximity to the core of the right.”⁶⁰

- In its decision the Court acknowledged that the right to keep and bear arms also logically extends to the right to practice with arms to maintain proficiency; “the core right wouldn’t mean much without the training and practice that make it effective.”⁶¹

Kwong v. Bloomberg, 12-1578 (2nd Cir.)

- Applying intermediate level scrutiny, the district court upheld a \$340 (minimum) firearm ownership permit fee, stating that there was no evidence to indicate anyone had been stopped from exercising their rights by the fee.
- This matter is currently working its way through an appeal before the Second Circuit.

Bonidy v. U.S. Postal Service, 2013 U.S. Dist. LEXIS 95435 (Dist. CO 2013)

- Holding that there is a right to openly carry firearms outside the home for a lawful purpose, subject to such restrictions as may be reasonably related to public safety, and invalidating a long standing United States Postal Service regulation regarding possession of firearms on postal service property

CONCLUDING THOUGHTS

The gun laws of our country are rapidly developing in light of the Supreme Court’s decisions in *Heller* and *McDonald*. It is an exciting time to be involved with the case law embodying and addressing the fundamental rights protected by the Second Amendment. As would be expected, the process has not been completely smooth and it seems likely the Supreme Court will once again be called upon to settle the circuit splits which are developing concerning, particularly, the level of scrutiny to be applied in Second Amendment cases.

Following the tragedy of Sandy Hook gun control took on an increased prominence in our nation’s political discourse. That debate seems to have quieted for a moment and thus offers us a chance to reflect on gun laws using facts and research rather than emotion. Given that the preponderance of research indicates that relaxing gun laws has, at worst, a neutral affect on crime rates (and by many indications actually reduces crime), the author submits that the burden of proof lies on those who would restrict the exercise of the right to justify the constitutionality of any additional gun laws.

For their parts the Mississippi Legislature “open carry” right contained in our Constitution can be freely exercised as originally intended.⁶² ■

1 Reed Martz grew up in Brandon, Mississippi. He graduated from the University of Mississippi with a bachelor of arts degree and from the University of Mississippi School of Law. He practices at Freeland Martz, PLLC. Reed is admitted to practice in Mississippi, Alabama, and Tennessee. He is on the panel counsel list for several pro-Second Amendment groups and shoots pistols and rifles for fun and sport whenever time allows. Reed is married to Dee De Martz with whom he has five children.

2 *District of Columbia v. Heller*, 554 U.S. 570, *19 (2008) (“the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it ‘shall not be infringed.’”)

3 See Professor Eugene Volokh, University of California Los Angeles School of Law, *State Constitutional Right to Keep and Bear Arms Provisions*, <http://www2.law.ucla.edu/volokh/beararms/statecon.htm> (last visited June 4, 2013).

4 See discussion of *District of Columbia v. Heller*, *infra*.

5 See discussion of *McDonald v. Chicago*, *infra*.

6 *Heller* at *25: “history showed that the way tyrants had eliminated a militia consisting of all the able-bodied men was not by banning the militia but simply by taking away the people’s arms, enabling a select militia or standing army to suppress political opponents. This is what had occurred in England that prompted codification of the right to have arms in the English Bill of Rights.”

7 Adam Winkler, *Gunfight* 102 (2011), citing William Blackstone, *Commentaries on the Laws of England and Malloch v. Eastley* (1744).

8 *Gunfight* at 105.

9 See *Gunfight* and *McDonald*, *supra*

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- 10 Clayton E. Cramer, *The Racist Roots of Gun Control*, <http://www.firearmsandliberty.com/cramer.racism.html> (last viewed March 23, 2013) (“Throughout much of American history, gun control was openly stated as a method for keeping blacks and Hispanics ‘in their place,’ and to quiet the racial fears of whites.”)
- 11 Stephen P. Halbrook, *The Fourteenth Amendment and the Right To Keep and Bear Arms: The Intent of the Framers* <http://www.guncite.com/journals/senhal14.html> (last visited March 23, 2013), citing Cong. Globe, 39th Cong., 1st Sess., pt. 1, 40 (Dec. 13, 1865).
- 12 Stephen P. Halbrook, *The Fourteenth Amendment and the Right To Keep and Bear Arms: The Intent of the Framers* <http://www.guncite.com/journals/senhal14.html> (last visited March 23, 2013). Halbrook cites the Black Codes as proof of the need for state level protections, quoting Rep. George W. Julian (R., Ind.) as saying, “Cunning legislative devices are being invented in most of the States to restore slavery in fact.”
- 13 Adam Winkler, “*The Secret History of Guns*,” <http://www.theatlantic.com/magazine/archive/2011/09/the-secret-history-of-guns/308608/> September 2011 (last viewed June 5, 2013); Edward Wyckoff Williams, “*Fear of a Black Gun Owner*,” Posted January 23, 2013, <http://www.theroot.com/views/fear-black-gun-owner> (last viewed March 23, 2013).
- 14 Mississippi Constitution of 1890, art. III, § 12.
- 15 *Clark v. City of Jackson*, 124 So. 807 (Miss. 1929) (concealed with defendant’s feet); *Daniels v. City of Gulfport*, 112 So. 686 (Miss. 1927) (pistol under arm but plainly apparent with use of officer’s flashlight).
- 16 For this reason, many termed Mississippi a “licensed open carry” state. <http://www.open-carry.org/ms.html> (last visited June 4, 2013). Basically, the argument was that a holstered, but visible, handgun cannot be both concealed and unconcealed simultaneously. If a holstered gun is partially concealed, then a concealed weapon license permits its carry in that condition. If, on the other hand, a holstered handgun is not concealed in whole or in part, then its carry is prohibited by § 97-37-1.
- 17 James Y. Dale, Special Asst. Atty. Gen., Letter to Chief Robert B. Russell, *Re: Concealed Weapons*, June 14, 2012.
- 18 *Order Granting Plaintiffs’ Motion for Injunctive Relief*, Hinds County Circuit Court cause 251-13-595CIV, dated July 12, 2013.
- 19 *Order* dated August 29, 2013, in *State of Mississippi v. Robert Shuler Smith et al.*, Case No. 2013-M-01220-SCT, available here: http://courts.ms.gov/Images/Orders/700_80585.pdf
- 20 See Supreme Court filings in *State of Mississippi v. Robert Shuler Smith et al.*, Case No. 2013-M-01220-SCT. The brief of the Attorney General stated on page 3, “The legislature’s authority expressed in Section 12 [of the Miss. Constitution] is limited to regulating ‘con-
- cealed weapons’ in contrast to weapons that are carried openly.” Responding to an argument, the AG wrote, “the Motion mistakenly claims that the right of citizens to carry non-concealed weapons is granted in House Bill 2. In fact, Section 12 of the Constitution grants citizens a right to carry non-concealed weapons.” *The State of Mississippi’s Combined Petition to Vacate a Restraining Order And Emergency Petition for Interlocutory Appeal* at page 8; internal citations omitted. The amicus brief of Gov. Phil Bryant stated on page 7 that “open carry remains lawful because—in addition to being constitutionally protected—*there is quite simply no provision of Mississippi law that purports to prohibit it.*” (Emphasis in original.) The amicus curiae brief filed on behalf of fifty-seven Representative and twenty-four Senators stated, “Missing from art. III, § 12, however, is the authority to regulate or forbid the open or unconcealed carrying of weapons.” Page 6.
- 21 Miss. Code Ann. § 97-37-17.
- 22 Mike Lanford, Deputy Attorney General, Letter to Sheriff Brad Lance, *Re: House Bill 2*, June 13, 2013, available at http://www.freeland-martz.com/mississippi-gun-laws-and-other-weapons-attachments/13.06.13_AG_opinion_on_OC_official_.pdf
- 23 *United States of America v. Nathaniel Black*, 3:10-cr-00206-MOC-1 (4th Cir. 02/26/2013). <http://www.ca4.uscourts.gov/opinions/Published/115084.p.pdf>. See also *St. John v. Alamogordo Public Safety*, U. S. District Court of New Mexico, No. 08-994 BB/LAM and *St. John v. McColley*, 653 F. Supp. 2d 1155, 1161 (D.N.M. 2009) (following summary judgment in favor of citizen, \$21,000 settlement for briefly detaining and searching moviegoer who was open carrying without any reason to believe a crime had been committed).
- 24 Miss. Code Ann. § 45-9-101(2) (“The Department of Public Safety shall issue a license if the applicant: . . .”) (emphasis added). By contrast, ten states are “may” issue, meaning that issuance of a license is at least partially discretionary with the issuing agency. http://en.wikipedia.org/wiki/Concealed_carry_in_the_United_States#May-Issue (last visited August 21, 2010). Alaska, Arizona, Wyoming, Arkansas, portions of Idaho, portions of Montana, New Mexico, and Vermont require no license at all. http://en.wikipedia.org/wiki/Constitutional_Carry (last visited May 27, 2013).
- 25 Miss. Code Ann. § 97-37-7(2). See also House Bill 506, Op. Att’y Gen. (08/31/2011) (opining that county board of supervisors cannot invoke criminal penalties by posting written notice that county board of supervisors prohibits carrying of concealed pistol on county property such as county courthouse).
- 26 Miss. Code Ann. § 45-9-101(13). Noticeably absent from this list is public parks. This restriction was removed in 2010 to accommodate a new federal regulation allowing licensees to carry in federal/national parks if allowed by the state in which the park is located.
- 27 Miss. Code Ann. § 97-37-7(2).
- 28 Miss. Code Ann. § 97-37-17(2) states that it is a felony for anyone to carry, open or concealed, a firearm on educational property. See footnote 25 for a list of what constitutes educational property. Miss. Code Ann. § 45-9-101(13) includes in its list of prohibited places “any school, college or professional athletic event not related to firearms; . . . [and] any elementary or secondary school facility; any junior college, community college, college or university facility unless for the purpose of participating in any authorized firearms-related activity”. Miss. Code Ann. § 97-37-7(2) states that, with a few exceptions, a person with the endorsement may carry weapons in “any location listed in subsection (13) of Section 45-9-101”. Thus, § 97-37-7(2) expressly authorizes a person to carry to a school athletic event and/or a school facility. This is in direct contrast to Miss. Code Ann. § 97-37-17(2) which makes the same behavior felonious. There is no authoritative answer as to whether school carry is allowed. However, the Mississippi Attorney General’s office is of the opinion that so-called campus carry is permitted. See *Firearms and Permits on Campus*, Op. Att’y Gen. (01/05/2012) (opining that Miss. Code Ann. § 97-37-17 is not enforceable against an endorsement holder, that universities may not prevent carry by the posting of signage, and that universities may not require endorsement holders to check in with campus police

Continued on next page



MEDIATION ARBITRATION

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- upon arrival on school grounds); Errol Castens, *AG: Guns now legal on college campuses*, Northeast Mississippi Daily Journal, July 30, 2011, at A1. The author has been told that numerous university chiefs of police also believe campus carry is allowed. There being no controlling answer, the reader is advised to proceed at his own risk. The Gun-Free School Zones Act (18 U.S.C. § 922(q)) is inapplicable because sub-section (q)(B)(ii) exempts persons with a Mississippi concealed carry license; persons with licenses from other states are prohibited from carrying school property (see http://upload.wikimedia.org/wikipedia/commons/7/74/Batfe2002letter_gfsza1995_ccw.pdf)
- 29 *Heller*, 554 U.S. at *63. Until *Heller*, *United States v. Miller*, 307 U.S. 174 (1939) was the closest the Court came to addressing the issue. *Miller* held that the Second Amendment did not “guarantee[] the right to keep and bear” a firearm that had no “reasonable relationship to the preservation or efficiency of a well regulated militia.” *Id.* at 178. *Heller* stated that *Miller* was limited to its facts, primarily that *Miller*’s use of a sawed off shotgun in a bank robbery had no “reasonable relationship to the preservation or efficiency of a well regulated militia,” and thus the Second Amendment offered no harbor to the illegal possession charge.
- 30 *Heller* at *5, 19.
- 31 *Id.* at *56. See also *McDonald*, 561 U.S. at *25 (“Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is ‘the central component’ of the Second Amendment right.”)
- 32 *Id.* at *9 (emphasis in original).
- 33 *Id.* at *10.
- 34 *Id.* at *54.
- 35 *Id.* at *53.
- 36 *Id.* at *55.
- 37 *Id.* at *8.
- 38 *Id.* at *54-55, FN 26. See also *McDonald* at *40.
- 39 *Heller* at *62-63. See also *McDonald* at *44.
- 40 *Id.* at *58.
- 41 *Id.* at *58.
- 42 *Id.* at *59.
- 43 JUSTICE ALITO announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II-A, II-B, II-D, III-A, and III-B, in which THE CHIEF JUSTICE, JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE THOMAS join, and an opinion with respect to Parts II-C, IV, and V, in which THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY join.
- 44 *McDonald* at *2, 44.
- 45 *McDonald* at *34-36, 41 (“The relationship between the Bill of Rights’ guarantees and the States must be governed by a single, neutral principle.”)
- 46 *McDonald* at *23-25.
- 47 *Moore* at *21.
- 48 *Moore* at *8, 20.
- 49 *Moore* at *10.
- 50 *Moore* at *20.
- 51 On July 9, 2013, Public Act 98-63, the Firearm Concealed Carry Act, became law. See 430 ILCS 66, available at <http://www.ilga.gov/legislation/publicacts/98/PDF/098-0063.pdf>
- 52 Ilya Shapiro, *Kachalsky v. Cacace*, <http://www.cato.org/publications/legal-briefs/kachalsky-v-cacace> (last visited May 27, 2013).
- 53 CONSTITUTIONAL LAW — SECOND AMENDMENT — FOURTH CIRCUIT UPHOLDS FEDERAL FIREARMS REGULATION. — *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011), cert. denied, No. 10-11212, 2011 WL 2516854 (U.S. Nov. 28, 2011). http://www.harvardlawreview.org/media/pdf/vo1125_united_states_v_masciandaro.pdf (last visited May 27, 2013).
- 54 *Id.* at 845.
- 55 *Woollard v. Sheridan*, http://en.wikipedia.org/wiki/Woollard_v._Sheridan (last visited May 27, 2013).
- 56 David Kopel, *Ezell’s doctrinal rules for the Second Amendment*, <http://www.volokh.com/2011/07/08/ezell/> (last visited May 27, 2013):
- So “we can distill this First Amendment doctrine and extrapolate a few general principles to the Second Amendment context. First, a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government’s means and its end.” This amounts to what the court calls “not quite ‘strict scrutiny.’” Or it could be called strict scrutiny light. A “an extremely strongly” state interest, rather than a “compelling one”; and “a close fit” rather than “narrowly tailored.”
- 57 *Id.*, citing Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*, 56 UCLA L. REV. at 1454-72 (explaining the scope, burden, and danger-reduction justifications for firearm regulations post: *Heller*); Nelson Lund, *The Second Amendment, Heller, and Originalist Jurisprudence*, 56 UCLA L. REV. 1343, 1372-75 (2009); Adam Winkler, *Heller’s Catch-22*, 56 UCLA L. REV. 1551, 1571-73 (2009); Lawrence B. Solum, *District of Columbia v. Heller and Originalism*, 103 NW. U. L. REV. 923, 979-80 (2009); Glenn H. Reynolds & Brannon P. Denning, *Heller’s Future in the Lower Courts*, 102 NW. U. L. REV. 2035, 2042-44 (2008).”
- 58 *Id.*, at 701.
- 59 *Id.*, at 706-707.
- 60 *Id.*, at 708.
- 61 *Ezell*, 651 F.3d at 704.

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108th Annual Meeting Highlights of the 2013 Bar Convention



Bar President Lem Adams, pictured left, presented the gavel to incoming president Guy Mitchell of Tupelo



Past Bar Presidents



Dick and Jerri Bennett of Jackson and Steve Rosenblatt of Ridgeland at the Farewell Brunch



Marshall Ramsey was the speaker of the YLD General Assembly, pictured with YLD President Rachel Pierce Waide of Tupelo



Lem Adams addressing the General Assembly



Annual Business Session



Young Lawyers Division Board Meeting



Many people attended the Annual Business Session to hear the State of the Judiciary Report



Newly inducted Fellows of the Young Lawyers- Lakeysha Greer Isaac of Jackson, Elizabeth Maron of Jackson, Trent Favre of Gulfport, Chris Latimer of Columbus and Dean Richard Gershon of Oxford



Price-Prather Luncheon- Kimberly Rosetti of Gulfport, Amanda Green Alexander of Jackson, Pelicia Hall of Jackson, and Karen Sawyer of Gulfport

Breakfasts and Luncheons



Price- Prather Luncheon- Parker Kline of Fulton and Tiffany Grove of Jackson



Price-Prather Luncheon- Farish Percy of Oxford, Roy Campbell of Jackson, and the featured speaker, author Julia Reed



Price-Prather Luncheon- Rachel Pierce Waide of Tupelo, YLD President; Julie Gresham of Biloxi, YLD President- Elect; and Jennie Pitts of Jackson, President-Elect Designee



Price- Prather Luncheon- Katherine Kerby of Columbus, Justice Ann Lamar of Senatobia, Chief Justice William Waller of Jackson, and Bobby Bailess of Vicksburg



Price-Prather Luncheon- Selene Maddox and Judge Jacqueline Mask, both of Tupelo



Price- Prather Luncheon- Julia Reed's book signing

Bingo



Bingo winners



Commissioner Brannon Southerland from Vicksburg and family

Exhibit Marketplace



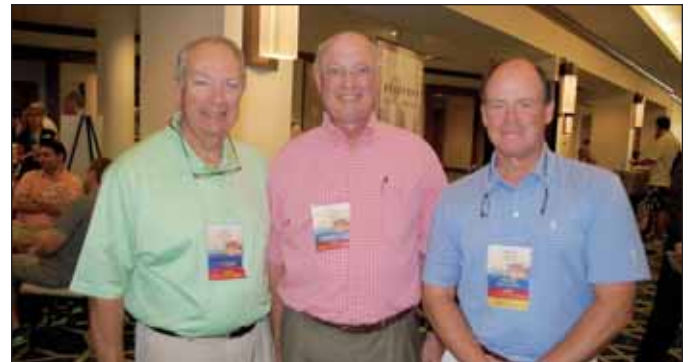
All attendees enjoy visiting with exhibitors in the Exhibit Marketplace



Mississippi State Personnel Board Executive Director Deanne Mosley, Secretary of State Delbert Hosemann, and State Treasurer Lynn Fitch



Hugh Keating of Gulfport, Pat Scanlon of Jackson, and Dean Jim Rosenblatt of Jackson



President Lem Adams of Brandon, President-Elect Guy Mitchell of Tupelo, and President-Elect Gene Harlow of Laurel

Ethics CLE



Judge Jimmy McClure of Sardis and Hall Bailey of Jackson



Jeff Styres of Jackson presented "Reel Ethics"



MS Bar General Counsel Adam Kilgore presented a CLE Session



The Chief Justice's Award was given by Chief Justice William Waller to Lee Westbrook and Arthur Johnston



Attending the Ethics Seminar



The theme for the Welcome Reception was "Under the Big Top"



Arthur Johnston of Madison and family



Carol Ann Bustin of Hattiesburg and family



Justice Ann Lamar and family

Welcome Reception



Susan and Jim Johnstone of Pontotoc



Scotty Welch of Jackson and family



Meade Mitchell and Wil Manuel, both of Jackson



Guy and Susan Mitchell of Tupelo with visiting Bar President from Louisiana



Everyone enjoyed the Welcome Reception



Frank Montague and Doug Montague, both of Hattiesburg



Gene Harlow of Laurel and family



“Under the Big Top” circus theme was a big hit

Welcome Reception



Judge John Emfinger of Brandon and family

Matt Eichelberger, Jim and Melinda Warren and Chip Glaze, all of Jackson



Heather McTeer-Toney & Dexter Toney of Greenville and Amanda Green Alexander of Jackson



Brooke Driskell of Oxford and son – tigers under the “Big Top”



Jane and Cham Trotter of Belzoni and family



Steve, Stacy, and Robert Sinqeufield of Madison



Collins and Margee Wohner of Jackson



Lauren and John Harless of Purvis and family



Business Law and Real Property Law Sections



Government Law Section

Section Meetings



Business Law and Real Property Law Sections



Prosecutors Section



Government Law Section



ADR Section



Prosecutors Section



Gaming Law Section



Gaming Law Section



Family Law Section



Family Law Section



Health Law Section



*Estates and Trusts and Taxation
Section Meetings*



Intellectual Property Law

Section Meetings



Appellate Practice Section



*Workers' Compensation and Labor & Employment Law Sections
Meeting*



Health Law Section



Appellate Practice Section



SONREEL Section



Workers' Compensation and Labor & Employment Law Sections Meeting

President's Reception



Angie, Molly, and Lanny Pace of Brandon and Seth and Kristen McCoy of Madison



Elizabeth and David Maron of Ridgeland and Collins Wohner of Jackson



York and Helen Craig of Ridgeland and Joy and Frank Phillips of Gulfport



Joe and Leslie Lee of Brandon



Marcie and Lem Adams of Brandon



Cheri Gatlin of Jackson and children



Everyone had a great time at the President's Reception



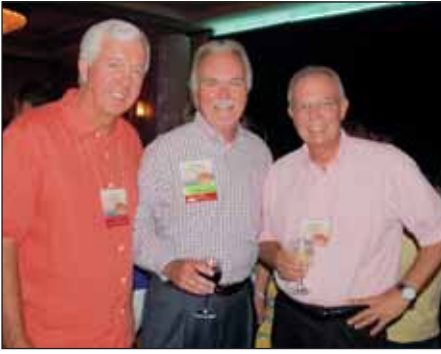
Jim and Ann Greenlee of Oxford and Jane and Cham Trotter of Belzoni



Jim and Susan Johnstone of Pontotoc and Donna and Hugh Keating of Gulfport



The President's Reception was held on the third night of the Annual Meeting



John McCullough, Richard Roberts and Bruce McKinley, all of Ridgeland



Mark Bounds, Bill and Susannah Brown, all of Madison



Sid and Kathy Davis of Mendenhall and Judge Gene Fair and Stella Fair of Hattiesburg



Kathy Ferris of Tupelo and Liza, Guy and Don Fruge' of Oxford

President's Reception



Patti and Johnny Gandy and Kim Kelly, all of Madison

Pepper and Angela Cossar of Jackson and Judge David Ishee of Gulfport



Jennifer Scott of Jackson and Gretchen Kimble of Jackson

Family Beach Bash

Children's Hoola Hoop Contest



Winners of the Crab Chase Contest



Chad Shook of Hattiesburg and family



Adult Limbo Contest – Dexter Toney of Oxford was the winner



Judge Jennifer Schloegel and Mark Schloegel of Gulfport and family

Children's "Build-a-Bear" Party



Lego Building Contest



2012-2013 Distinguished Service Award

Karen Sawyer
Gulfport



Karen Sawyer, pictured left, was awarded the 2012-2013 Distinguished Service Award. Presenting the award was MS Bar President Lem Adams.

2012-2013 Judicial Excellence Award

Judge Thomas Gardner, III
Tupelo



The Mississippi Bar awarded the 2012-2013 Judicial Excellence Award to Judge Thomas Gardner, III, pictured left. Presenting the award was Mississippi Bar President Lem Adams.

2012-2013 Lifetime Achievement Award

H.B. Mayes McGehee
Meadeville



Mayes McGehee's son, Hollis McGehee, pictured right, accepts The Mississippi Bar's 2013 Lifetime Achievement Award. Presenting the award was Mississippi Bar President Lem Adams.

Mayes McGehee was born in Franklin County, and received his higher education from Copiah- Lincoln Junior College, Bucknell University and Dartmouth College. He obtained his law degree from the University of Mississippi Law School. After receiving his JD, McGehee worked with his uncle, Congressman Dan McGehee at his firm in Meadeville, and soon after they became partners. He has continued to be a trial lawyer for fifty- six years.

He has served as the attorney for the Franklin County Board of Supervisors for thirty- eight years, an Officer in the Franklin County Chamber of Commerce, a Scout Master in Boy Scouts, a member of the Finance Committee of the Andrew Jackson Council of the Boy Scouts, and also as chairman of the Mississippi State Oil and Gas Board. Throughout his career, McGehee worked to secure local industry including the businesses of Shippers Carline and Roxie Stud Mill, along with many others. He has also assisted the community through the Franklin County Museum and Lion's Club. McGehee served as a member of the Mississippi State Senate from 1956 to 1960. He served in the Mississippi National Guard, where he was a lieutenant and served in both World War II and the Korean Conflict.

Governor William Winter appointed Mayes McGehee to serve on the Mississippi State Judicial Nominating Committee from 1982-1987. He served a term on the Board of State Bar Examiners. Mayes truly believes that the law is not a job, but rather a calling and a profession, that the administration of justice is the highest priority and is the essence and credibility of our system. He has continued to mentor and befriend a majority of younger lawyers in Franklin County whom he has previously employed, or come to know through various case works.

**2012-2013
Susie Blue Buchanan
Award presented by the
Women in the
Profession Committee**

Nina Stubblefield Tollison
Oxford



Nina Stubblefield Tollison of Oxford, center, received the 2013 Susie Blue Buchanan Award from the Women in the Profession Committee. Presenting the award is Committee Chair Jenny Tyler Baker, right, and Susie Blue Buchanan Sub-committee Chair Julie McLemore, left.

**2012-2013
Curtis E. Coker
Access to Justice Award
presented by MVLP**

Kendra Lowrey
Lumberton



The Curtis E. Coker Access to Justice Award was presented to Kendra Lowrey, pictured center. Presenting the award is Bar President Lem Adams, pictured left, with MVLP Executive Director, Tiffany Graves, pictured right.

**2012-2013
Outstanding Young Lawyer
Award presented by the
Young Lawyers Division**

Alison Baker
Gulfport



Alison Baker received the 2013 Outstanding Young Lawyer Award, pictured right. Presenting the award was Young Lawyers Division Immediate Past President Jennifer Hall of Jackson.

**2012-2013
50 Year
Anniversary Members**



50 Year Anniversary Members attending convention were Richard M. Edmonson of Jackson, Thomas L. Zebert of Pearl, and Joseph R. Meadows of Gulfport.

THE EDUCATION OF A LIFETIME by Robert Khayat

“Robert Khayat’s extraordinary life has had more rough patches than most observers would believe. In this engaging memoir, he provides an unflinching look at the challenges, the adversity, and the ups and downs of a career that ultimately transformed a great American university.”

—John Grisham

As a young boy growing up in a segregated Mississippi, Robert Khayat never could have imagined the strength and courage he would need, as chancellor of the University of Mississippi, to overcome his greatest adversary: tradition.

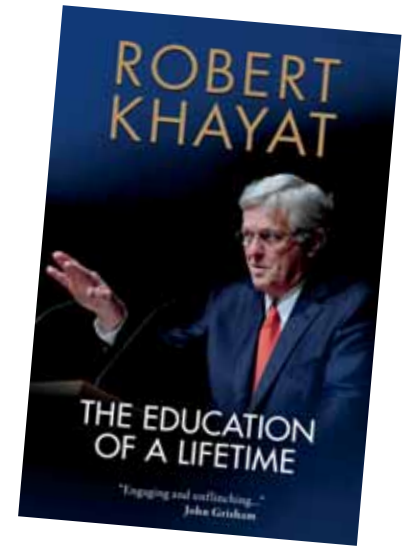
In his memoir, *The Education of a Lifetime* (Nautilus Publishing; September 10, 2013; \$24.95; ISBN: 978-1-936-946-17-4), Khayat writes about his childhood days in Moss Point, Mississippi, the state’s segregationist policies that prevented his SEC championship baseball team from playing in the College World Series, and the sadness of experiencing his father’s arrest and guilty plea. These seemingly disparate events worked to prepare him to battle the vestiges of racial strife that continued to haunt the university’s culture as he accepted the honor of becoming the university’s 15th chancellor.

In 1996, after a particularly dismal football season, Khayat went to the field house to visit the coaches. The mood was somber. He asked coach Tommy Tuberville why they were so depressed. Tuberville replied, “We can’t recruit against the Confederate flag.” Khayat then ordered an image review from the public relations firm Burson-Marsteller. The results were devastating but clear: among the symbols, songs, mascots and names, the flag was, by far, the most damaging. The university, according to the survey, had no public perception except to be seen

as a racist institution.

While he struggled to maintain balance during this chaotic period, he often thought of his father. “The similarities between the life of the father I loved and the history of the university I loved were not lost on me,” he writes. His father, who did remarkable things for Mississippi, was steeped in the old ways of doing business. His father’s inability to change with the times resulted in indictments and, ultimately, a conviction. A man who spent his life helping others ended on a devastating note. Khayat could not stand by and let his alma mater suffer the same fate. However, one major obstacle stood between his desire to move forward and the hurdles of old symbols — the First Amendment. Oxford’s most famous native son, William Faulkner, wrote in *Requiem for a Nun*, “The past is never dead. It’s not even past.” The past was Khayat’s new adversary, and it was going to stare him down every day of his chancellorship.

Ultimately, in a stroke of genius, the leadership team at the university found a solution to the flag: they banned sticks from all sporting events. The ban — which included sticks for flags, sticks for umbrellas, and sticks for corndogs — led to a complete shift in the atmosphere at the university’s sporting events. “Given the chance, and with a great team, I believed we could change this culture. Together, I was certain, we could become a great university again.”



By the time Khayat retired, the University of Mississippi had been awarded a chapter of Phi Beta Kappa; a nationally ranked honor’s college had been established; a groundbreaking institute for racial reconciliation was launched; a permanent leadership institute was built, and a top international studies program was created. Enrollment increased 70 percent, and the university’s budget grew from \$500 million to \$1.5 billion. And, in a crowning achievement, Ole Miss hosted the very first presidential debate where a minority candidate took the stage.

Khayat’s story gives readers a behind-the-scenes look at how a university moved from mediocrity to excellence. We relive, along with Khayat, the courting of an eccentric donor, as well as private conversations with a sitting U.S. President, governors, coaches and celebrities. We also see how a man worked to make amends for past mistakes. *The Education of a Lifetime* is a funny, touching and insightful memoir. And it is proof that one man — a man dedicated to respecting the dignity of every individual — can make lasting change.

2014 Calendar

published by The Mississippi Bar Young Lawyers Division

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William Lewis Bambach

William Lewis Bambach, 73, of Columbus, died July 26, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1983. He was a veteran of the United States Marines.

S. Smith Bonner

S. Smith Bonner, 85, of Jackson, died May 10, 2013. A graduate of Mississippi College School of Law, he was admitted to practice in 1967. He was a veteran pilot of the United States Air Force. Bonner practiced law in Jackson until 1985 when he retired.

Nova A. Carroll

Nova A. Carroll, 69, of Madison, died May 12, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1979. He served in the United States Air Force from 1962-1966. He began his legal career with the law firm of Stewart, Burks and Pace and became a partner in 1984, becoming Stewart, Burks, Pace and Carroll. He served one four year term as attorney for the city of Picayune, 1984-1988. In 1990, he became the prosecutor for the city of Poplarville, a position he held until 2007. In 1991, he became attorney for the Pearl River County Board of Supervisors, a position he held until 2007. He retired from private practice in 2006. Carroll was an active member in multiple Baptist churches serving as a deacon since 1985 and as a Sunday School teacher since 1979.

Billy Klingman Chapman

Billy Klingman Chapman, 87, of Houston, TX, died May 7, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1950. He was drafted into the United States Army on his 18th birthday and was assigned to the Signal Corps and trained as a radio operator. Chapman began a 30-year career as a civil servant with the federal government. He served in various departments before joining the Immigration and Naturalization Service in Cleveland, Ohio, as General Nationality Attorney for the Justice Department. In 1957, he was transferred to Houston. Chapman retired in 1980. In 1983, he served on the committee that organized a Lifelong Learning Program at the Houston Junior Forum Center for Older Adults. He was a 50-year member of St. Luke's United Methodist Church, where he was a member of the Harmony Class and a former member of the Administrative Board.

Edwin Tharp Cofer

Edwin Tharp Cofer, 66, of Grenada, died April 23, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1969. He practiced law in Grenada with Keeton, Cofer, and Embry, and later was General Counsel with

Sunburst Bank. He worked for the Office of the Attorney General of Mississippi and the University of Mississippi Medical Center until his retirement in 2006. Cofer was an active member of First United Methodist Church in Grenada and was an usher.

James H. Colmer

James H. Colmer, 89, of Pascagoula, died May 12, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1950. He served in the United States Navy during World War II, in the course of which he attained the rank of lieutenant junior grade. He served on a destroyer escort in the North Atlantic as the anti-submarine warfare officer and in the Pacific as the gunnery officer and executive officer. He practiced law for 50 years. While practicing law, he served as city attorney of Pascagoula; city attorney of Moss Point; president of the Jackson County Bar Association; member of the Jackson County and American Bar Associations; and member of the American College of Mortgage Attorneys. He also served as president of the Pascagoula Rotary Club, adjutant general of the Mississippi American Legion, member of the Pascagoula Library Board of Trustees, and advisory board member of the Magnolia Federal Savings and Loan Association.

Bobby Jones Garraway

Bobby Jones Garraway, 82, of Bassfield, died April 28, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1957. He was retired from practicing law, former City Attorney of Bassfield, and former Mayor of Lumberton for four consecutive terms. Garraway served in the United States Air Force 522nd Squadron 27th Fighter Wing during the Korean War. He was instrumental in developing the Longleaf Trace Trail and a member of L.L. Roberts United Methodist Church in Bassfield.

Gerald Calhoun Gex

Gerald Calhoun Gex, 77, of Bay St. Louis, died June 8, 2013. A graduate of Tulane University Law School, he was admitted to practice in 1959. Gex was a member of Our Lady of the Gulf Catholic Church. He was the attorney for the City of Bay St. Louis, Hancock County Port and Harbor Commission, Hancock County Board of Supervisors, Waveland City Judge and Chancery Court Family Master.

Frederick A. Hanna

Frederick A. Hanna, 72, of Ridgeland, died May 28, 2013. A graduate of Mississippi College School of Law, he was admitted to practice in 1976.

Continued on next page

IN MEMORIAM

William Robert Lamb

Judge William Robert Lamb, 82, of Oxford, died June 27, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1959. He served in the United States Army during the Korean War obtaining the rank of Captain. He was a Practicing Attorney in Oxford from 1959-75; Prosecuting Attorney in Lafayette County from 1960-68; Municipal Court Judge of the City of Oxford 1971-75; Circuit Court Judge, Third Circuit Court District of the State of Mississippi 1975-93; Senior Status Circuit Judge (Retired), serving at the direction of the Chief Justice of Mississippi on case assignments throughout the state 1993-2013. He was a member St. Peter's Episcopal Church (Member of the Vestry, 1980-83), Oxford Jaycees (Secretary, Vice-President, President, and Delegate to the National Convention), Troop 45 – Boy Scouts of America (Assistant Scoutmaster and Scoutmaster), Kiwanis Club of Oxford (Charter Member, Vice President and President), National Guard Association of Mississippi (Delegate to the National Convention), Post 55 – American Legion (Vice-commander and Commander), American Inns of Court, III (Charter Member), Lafayette-Oxford-University Fourth of July Citizens committee (Chairman and Public Service Awards Committee) and Mississippi Society of the Sons of the American Revolution. He was the recipient of the following awards and special honors: "Outstanding Young Man of the Year Award" (1964, by the Oxford Jaycees and Selection Committee); Appointed by the Chief Justice of Mississippi as special Commissioner of the Supreme Court of Mississippi in 1978 to assist in reducing case-load and Appointed by the Governor of Mississippi to the State Criminal Justice Committee, 1980-81.

Edward Posey Lobrano, Jr.

Edward Posey Lobrano, Jr., 72, of Brandon, died May 4, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1965. After practicing for over 40 years, he was retired. He was an instructor of constitutional law at Mississippi College School of Law and an attorney for the Jackson Police Officer's Union for many years. Lobrano was a member of the Centreville United Methodist Church.

Ronald Gene Marquardt

Ronald Gene Marquardt, 73, of Hattiesburg, died May 15, 2013. A graduate of Mississippi College School of Law, he was admitted to practice in 1982. In 1973, Marquardt joined the faculty of the University of Southern Mississippi, where he taught political science and constitutional law. He served as chairman of the Political Science Department, director of the Paralegal Studies Program, student legal advisor, and faculty representative to the NCAA. He retired in 2003. In 1961, Marquardt was commissioned as a second lieutenant in the United States Army, stationed at Ft. Lee, Virginia, followed by two years of service in the

National Guard. He was honorably discharged as a captain in 1965. He was a founding member and former president of the Racquet Club in Hattiesburg. Marquardt was a member of the USM Foundation.

Ann Walker Moore

Ann Walker Moore, 67, of Holly Springs, died May 25, 2013. A graduate of the University of Mississippi School of Law, she was admitted to practice in 1980. She was one of the founding members of the Humane Society.

Edwin H. Roberts, Jr.

Judge Edwin H. Roberts, Jr., 65, of Oxford, died July 1, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1972. He practiced in Lafayette County for 30 years and served as Lafayette County Prosecutor. After serving as a prosecutor, he was elected as Chancery Court Judge for the Eighteenth Chancery Court District of Mississippi in 2002, where he served until his death. He served thirty-two years in the Mississippi Army National Guard where he retired as a Two Star General. Roberts was the Co-Founder of the Lafayette County Education Endowment Program; a former Commissioner with the Mississippi Department of Wildlife, Fisheries & Parks Commission; a former director of the Tombigbee River Valley Water Management District; a former Senior Vice President, Director, and National Trustee with Ducks Unlimited; and Past President of the National Guard Association of Mississippi. He was an active member of First Baptist Church of Oxford.

Roby Lee Stegall

Roby Lee Stegall, 87, of Hattiesburg, died April 27, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1951. In 1944, he enlisted in United States Navy and served in the South Pacific during World War II for 21 months when he was honorably discharged. He set up his law practice in Forest and was owner of Stegall Furniture Company. Stegall was member of the Rotary Club, where he served as president; Ole Miss Alumni Association and member of Forest United Methodist Church, where he sang in the choir and was a Sunday School teacher.

Talmadge DeWitt Varnado, Jr.

Talmadge DeWitt Varnado, Jr., 70, of Perkinston, died May 24, 2013. A graduate of St. Mary's University School of Law, he was admitted to practice in 1983. He was a Life Member of the National Rifle Association; he attained the rank of Eagle Scout while a Boy Scout. He was a volunteer member of the Harrison County Sheriff Department's Search and Rescue Dive Team and a charter member of the "Mississippi Gulf Coast Men-Fish" Skin and Scuba Diving Club, in Gulfport.

CLE Calendar of Events

The following live programs have been approved by the Mississippi Commission on Continuing Legal Education. This list is not all-inclusive. For information regarding other programs, including teleconferences and online programs, contact Tracy Graves, CLE Administrator at (601)576-4622 or 1-800-441-8724, or check out our website, www.mssc.state.ms.us. Mississippi now approves **online programs** for CLE credit. For a list of approved courses, check the Calendar of Events on our website. For information on the approval process for these programs, please see Regulations 3.3 and 4.10 posted under the CLE Rules on our website or contact Tracy Graves at the numbers listed above.

OCTOBER

- 4 Law Alumni Constituent Society "Fifth Annual Elmo Lang Memorial CLE Seminar." 5.0 credits. Hattiesburg, MS, Trent Lott Center, University of Southern MS. Contact 228-861-0812.
- 11 UM CLE "Mastering Mediation Methods for 2013." 6.0 credits (includes ethics). Oxford, MS, The Depot. Contact 662-915-7283.
- 11 Mississippi State University "CLE for MSU Attorneys." 6.0 credits (includes ethics). Starkville, MS, Humphrey Coliseum, MSU. Contact 662-325-7860. Whit Waide.
- 21-25 Children's Advocacy Centers of MS "Child First Forensic Interview & Court Preparation Training," 18.0 credits. Oxford, MS. Contact 601-940-6183.
- 25 UM CLE "DUI Defenders CLE Seminar." 6.0 credits (includes ethics). Gulfport, MS, Courtyard by Marriott. Contact 662-915-7283.

NOVEMBER

- 1 MC School of Law "15th Annual Guardian Ad Litem Training." 6.0 credits (includes ethics). Jackson, MS, MC School of Law. Contact 601-925-7107, Tammy Upton.
- 1 Silent Messages Inc. "Evaluating Truthfulness." 6.0 credits. Jackson, MS, MS Bar Center. Contact 407-405-3417, Susan Constantine.
- 5 NBI "Advanced Eminent Domain & Valuation." 6.0 credits (includes ethics). Jackson, MS, Hilton Jackson. Contact 715-835-8525.
- 6 Lorman Business Center "Health Care Reform for the Employers: Now What?" 6.7 credits. Jackson, MS. Contact 715-833-3940.
- 8 UM CLE "Mid-South Conference on Estate Planning." 6.0 credits (includes ethics). Memphis, TN, Doubletree on Sanderlin. Contact 662-915-7283.

- 14 NBI "Frac Law: From Land Contract Negotiations to Environmental Disputes." 6.0 credits. Tupelo, MS, Bancorpsouth Conference Center. Contact 715-835-8525.

DECEMBER

- 2-3 UM CLE "CLE by the Hour - Memphis." 12.0 credits (includes 2.0 hours of ethics). Memphis, TN, Hilton Hotel. Contact 662-915-7283.
- 6 NBI "Medicaid, Medicare and Social Security Update." 6.7 credits (includes ethics). Jackson, MS, Jackson Convention Complex. Contact 715-835-8525.
- 9-12 UM CLE "CLE Study USA." 12.0 credits (includes ethics). Washington, DC, Capitol Hotel. Contact 662-915-7283.
- 11 MS Volunteer Lawyers Project "MVLP & Washington County Chancery Court Pro Se CLE & Legal Clinic." 5.0 credits. Greenville, MS. Contact 601-960-9577.

JANUARY

- 30 UM CLE "Winter MS Municipal Attorneys' Assn CLE." 6.0 credits (includes ethics). Jackson, MS, Hilton Hotel. Contact 662-915-7283.
- 31 UM CLE "Social Security Disability Law CLE Seminar." 6.0 credits (includes ethics). Jackson, MS, Hilton Hotel. Contact 662-915-7283.

- 31 UM CLE "Social Security Disability Law CLE Seminar." 6.0 credits (includes ethics). Live Webcast. Contact 662-915-7283.

FEBRUARY

- 7 UM CLE "20th Annual Mid-South Conference on Bankruptcy Law." 6.0 credits (includes ethics). Memphis, TN, Hilton Hotel. Contact 662-915-7283.
- 7 MC School of Law "16th Annual Guardian Ad Litem Training." 6.0 credits (includes ethics). Jackson, MS, MC School of Law. Contact 601-925-7107, Tammy Upton.
- 28 UM CLE "14th Annual Guardian Ad Litem Certification CLE" 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 662-915-7283.
- 28 UM CLE "14th Annual Guardian Ad Litem Certification CLE" 6.0 credits (includes ethics). Live Webcast. Contact 662-915-7283.

APRIL

- 25 MC School of Law "Mediation CLE." 7.0 credits (includes ethics). Jackson, MS, MC School of Law. Contact 601-925-7107, Tammy Upton.



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LAWYERS HELPING LAWYERS

Mississippi Bar to Launch Suicide Prevention Program *Question, Persuade, Refer*

Reprinted from Capital Area Bar Association Newsletter Article by Kate Margolis

As human beings, we are all required to deal with personal, professional and family issues, often all at the same time. We may sometimes reach a place in our lives when those issues seem insurmountable. Our view may be further darkened by depression, addiction, or traumatic circumstances. At some point, we may consider suicide as a permanent solution and even a logical choice. Yet in reality, suicide leaves a lasting legacy of pain for family members and leaves those of us left behind forever haunted by the question: What could I have done?

Chip Glaze, director of the Mississippi Bar's Lawyers and Judges Assistance Program (LJAP), is determined to spread the message that suicide is preventable and we can learn to help prevent it.

Chip is in the process of being certified as a "gatekeeper instructor" through the QPR Institute for Suicide Prevention, based in Spokane, Washington. The QPR program—"Question, Persuade, Refer"—was recently recognized by the National Register of Evidence-based Practices and Policies. The Institute reports that more than one million lay and professional suicide prevention "gatekeepers" have been trained in QPR since the Institute's founding in 1996.

Through the program, Chip is learning how to recognize the warning signs of suicide, how to offer hope, how to get help and how to save a life.

QPR is analogous to CPR. Just as a CPR trainer teaches about the classic signs of a heart attack and how to respond, once certified, Chip will begin teaching about the classic signs of suicide and how to respond. (For more information about the QPR Institute and the QPR program, see www.qprinstitute.com.)

Chip emphasizes that learning QPR is "not about being a therapist or an expert on suicide. It's about giving lay people the tools when presented with facts or circumstances to help get a person in crisis to a medical professional." Chip also hopes to dispel the myths that might cause a person to be reluctant to take action—for example, the unwarranted fear that mentioning the word "suicide" might cause a person to commit suicide, or that "only crazy people think about suicide."

Among professions, lawyers lead the nation with the highest incidence of depression, which, if left untreated, increases suicide risk.

The Lawyers and Judges Assistance Committee had been discussing develop-

ment of a suicide prevention program for some time, and decided that Chip should be certified as a suicide prevention trainer through the QPR Institute. Among professions, lawyers lead the nation with the highest incidence of depression, which, if left untreated, increases suicide risk. According to Chip, six Mississippi attorneys have committed suicide over the past seven years. The Kentucky Bar is reeling from 12 suicides since 2010, and the Louisiana Bar lost an attorney to suicide as recently as a few weeks ago, he said. Nationally, the rate of suicides among all Americans in the 35-64 age group has accelerated since 2008. (The economy is suspected to have played a role.)

Once Chip is certified, he plans to "test run" the QPR training program on the LJA committee, to be followed by a launch of the "full fledged program" in early 2014. Chip will train others to identify the signs of suicide, give them the "skill set and confidence to ask the question, persuade the person to get help, and make a referral" to a professional who can help. Trainees will learn how to "raise an appropriate objection without scaring the person off," Chip said. As with other LJA programs, "education is the primary focus," Chip said.

While the focus of the program will be lawyers, the training will be made available to everyone. This is "not just about work—it's about family and community," he said. Chip also noted that because lawyers often have "special access into people's lives," we are in a unique position to be able to help others. With the launch of QPR in Mississippi, we will have the opportunity to take proactive steps, so we will know we did what we could. ■

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