

BIRMINGHAM BAR ASSOCIATION

BULLETIN

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MESSAGE FROM THE EXECUTIVE DIRECTOR

As you read this message, we are a couple of months into our new Bar year and exciting things are on the horizon! Our remodeled CLE rooms will be open and ready for use soon, and I think our membership will be proud and impressed. The new space will be functional and comfortable, and will provide outstanding training capability and opportunity.

The ABA's Division for Bar Services recently sent a consultant to the BBA to review our organizational and operational structure. The ultimate goal is to ensure that the Bar and its related entities (the Bar Foundation and the Volunteer Lawyers Program) operate with optimal efficiency and coordination. The Bar's Task Force on Organizational Structure will review observations and recommendations from the Division for Bar Services, and will make suggestions to the leadership of the respective entities as appropriate. We expect the ABA's report during Summer of 2017.

For now, Spring is right around the corner! We hope to enjoy and use our upgraded courtyard as much as possible, and please stay tuned for more on CLE programs and other opportunities to meet and visit with colleagues.

John W. (Bo) Landrum
Executive Director



HONORED

Retired Brigadier General and former Jefferson County Circuit Judge Tom King, Jr. was recently honored by Athletics Director Bill Battle and The University of Alabama at the 50-yard line in Bryant-Denny Stadium for his 32 years of service to our country and state. General King, a 1971 Distinguished Military Graduate of The University's ROTC Program, was presented with our nation's flag to commemorate his service.

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1951 - 2017

GENERAL COUNSEL,
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FROM THE President

Thank you for the high honor and privilege of serving as your President. We are one of the strongest and largest local bar associations in the country and I pledge to build upon the stature this association has achieved and find innovative ways to grow that respect among our members and the larger community in which we live and practice.

I would be remiss if I failed to acknowledge the great leadership of my immediate predecessor, Bob MacKenzie. Bob gave us important foundations and ideas on which we can easily build.

Work on the new CLE facility at the Bar Center started in late December. Under the leadership of Bob and the Building Task Force led by Bruce Rogers, the decision was made to renovate the second floor space that contained the CLE rooms. Our excellent CLE programming brings more members and guests to the Bar Center than any other function of the Association, and these old rooms were drab and unwelcoming. Building plans were drafted and bids awarded to reconfigure the two rooms into a much more usable space, and install state-of-the-art audio-visual technology to enhance functionality to the highest level.

During the design process, Bruce Rogers and the architects struggled with finding a financially feasible way to bring natural light into the rooms. The solution presented itself when during the demolition, three huge windows in perfect condition were uncovered on the back wall of the building! I am not saying that the windows alone will enhance the CLE programs, but at least we won't feel like we are sitting in a bomb shelter any more. Another great discovery during demolition was that the old sheetrock was hiding beautiful brick walls, which are now fully exposed.

The construction should be complete and the new furnishings and carpet installed by the end of March. Look for the invitation to the CLE Facility Open House in April and come celebrate the completion of this phase of renovations to the Bar Center.

The new facility will accommodate up to 160 people at desks in an inviting space. A sliding partition can divide the space into two rooms to accommodate multiple meetings at the same time. Power Point and other presentations can easily be displayed on monitors strategically placed around the space. The furniture will be mobile so the room can be configured for any kind of program.

This is your Bar Center, and I encourage you to schedule events in the Noon-jin courtyard and the new CLE Facility. The Community Education Committee,

chaired by Alicia Jett and Josh Harrison, are planning the Law Day program here on May 5, 2017. In the past, the Bar Center did not have the space to host a program of this size and stature and Law Day had to go off-site. No longer! Outside organizations and vendors also can rent the Facility and the Courtyard. Information about scheduling and pricing is available by contacting our Bar staff.

Bob created the Task Force on Judicial Funding last year, tapping members of the BBA to take on the important task of protecting the interests of Jefferson County on the issue of judicial reallocation. The Task Force studied, researched and drafted revisions that were given to key members of the state House and Senate, the Alabama Law Institute and the Alabama State Bar. The bill was not reached last year, and hopefully the Birmingham revision will be passed this year. Importantly, the Task Force carried on their work in the most respectful manner, making it known that the BBA is a resource for everyone in Montgomery. Lloyd Gathings is the 2017 chair of the Task Force, and will carry on this good work.

More than 4,000 lawyers, judges and law students are members of the BBA. Last year, we recorded the highest membership number in history. Bob MacKenzie energized this bar and rekindled an excitement for the BBA and for each other and an enthusiasm for our work as

lawyers. He revived a tradition of lawyers getting together at the courthouse, lawyers gathering at the Bar Center, lawyers meeting in a relaxed environment to get to know each other, and working together to reach solutions. We like each other. When we get together, we collaborate and we become engaged. I encourage everyone to come to Coffees With The Judges, Cocktails In The Courtyard, the Bench-Bar Retreat, Bocce Ball, Rock The Bar, Pro Hops Vino, and everything in between. We will continue to gather for good and better.

This is not your father's bar any more. I mean this in the most positive way. Your father's bar was not presided over by a Japanese-American female lawyer.

Today, your mother could be a committee chair, a member of the Executive Committee and a leader of our bar. And, Jefferson County citizens just elected nine African-American women to the bench. Although we see these visible signs of increasing diversity in the Birmingham Bar, the most recent U.S. census statistics show that the law continues as one of the least diverse professions. We should all praise and encourage our efforts, but we should still ask: While the BBA has advanced, have we *succeeded* in achieving diverse inclusivity?

Last year, Hope Marshall and Chris Nicholson, the co-chairs of the Diversity/Inclusivity Committee, led us in an open discussion of "inclusive diversity." The

starting point was data gathered from the ABA and the Alabama State Bar showing that the relatively strong numbers of female (47.8% in 2014) and minority (28.5% in 2014) law students are not maintained in the population of employed lawyers. Of in-state members of the Alabama State Bar, women comprise 31.1% of the population and minorities are only 7.2% of lawyer members. (The BBA does not keep similar statistics.)

The focus of the first symposium was diverse law students and how we can meet expectations as they enter the profession. One of the best recommendations was also the easiest, because each of us can do this: become a sponsor. This is more than being a mentor. It means adopting

Continued on page 10

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a diverse lawyer and helping him or her get the right case in your firm, or putting them on the best committee for their talent, and making an introduction to judges, other counsel, and clients and community leaders that highlights their goals and achievements. My bosses did this for me and it made an impact on my career.

This year, the Diversity/Inclusivity Committee is chaired by Diandra “Fu” DeBrosse-Zimmermann, and the discussion will continue in a second and maybe even a third open symposium. I look forward to working with this Committee again. Every member should join this discussion so our association can continue its forward movement. Look for the announcements of these symposiums as we move ahead.

Another very important aspect of the discussion is the engagement of young lawyers. I believe that young lawyers are the force of change; I do not want to lean on the generation that is slowing down or retiring from practice. Young lawyers can be innovative, diverse, energetic, quick and fun. I want to learn what the young lawyer needs and wants from their bar association; what is required of the association for young lawyers to take ownership of it.

As lawyers, it is our charge to increase access to justice, to serve our community and to help others. The Birmingham Bar Volunteer Lawyers Program and the Birmingham Bar Foundation have made it their mission to do just this. The VLP has capitalized on the one thing that only a lawyer can do in our country, and that is to represent another person in the court system. The VLP's Help Desks are now in the civil district court, domestic court, and bankruptcy court. Clients that need more in-depth assistance are referred to the VLP's Pro Bono network. Legal

help is also provided to veterans and the homeless through clinics located at the VA and Cooper Green Clinic. The Bar Foundation has focused on educating the community about the justice system through dispute resolution programming in the high schools, co-sponsoring programs for civic teachers and providing teaching materials, supplies and books. All this good work would not be possible

“When citizens see us giving back and becoming engaged in our own community, it builds respect for all of us.”

without the contributions of our membership. The Association, BBVLP and the Foundation are all mindful of the demands and requests placed on our member lawyers, and want to work together to reduce competition for those valuable resources of members' time and money, without sacrificing the important services

and programs provided.

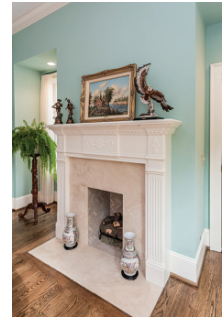
This year, we have created the Task Force on Organizational Structure, chaired by Charles Fry. This Task Force is charged with examining the current organizational and operational structure of the Bar, the Bar Foundation, and the Birmingham Bar Volunteer Lawyers Program. The ultimate goal is to ensure that the three groups operate optimally, and in coordination. Toward that end, with the cooperation of the leadership of all three organizations, we have invited the ABA Division of Bar Services to assist with the review. A representative of the Division of Bar Services will meet with the Executive Committees of all three groups in February and then report to the Task Force. This will be a deliberative and exhaustive review, and the end result should be recommendations that allow the Bar to increase organizational efficiencies and maintain and grow our excellent service programs.

Lawyers are leaders. Our education, knowledge and skills lead each of us to this position in the community. I encourage every lawyer to find a community partner and participate with the organization or agency to reach their goals, to volunteer time to the community, and to talk proudly about your profession and your job. When citizens see us giving back and becoming engaged in our own community, it builds respect for all of us.

I appreciate every member of this association. When we gather and collaborate for good and better, everyone, including each of us, reaps the benefits. Thank you for the opportunity to serve. I am so proud of this bar and all its members and all the good work we do. I am looking forward to spending time with all of you this year. 🙏

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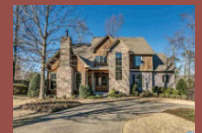
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WHERE THE NEXT CHAPTER BEGINS...

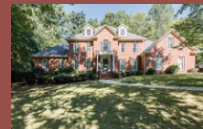
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OSHA'S New Reporting and Anti-Retaliation Rule

Historically, OSHA has required most employers to keep records of work-related injuries and illnesses, and to report fatalities and certain serious injuries. The requirements were expanded in 2014 to include reporting of all in-patient hospitalizations, amputations and losses of any eye that occur within a certain period. "Section 8 of the Occupational Safety and Health Act of 1970 (OSH Act) gives the Secretary of Labor broad powers to require covered employers to maintain and provide access to occupational safety data, but this information has traditionally been private."¹ OSHA has now issued a rule that requires certain employers to submit workplace safety information electronically and prohibits employers from retaliating against workers who report such incidents.²

WHAT IS THE RULE?

In November of 2013, OSHA presented a proposed rule to add requirements for electronic submissions and publication on the OSHA website for public review. When the proposed rule was published for comment, concerns arose that there would be a tendency toward under-reporting since the injury and illness information was being made public. OSHA, therefore, expanded the final rule to include anti-retaliation measures. The final rule, which at the time of this writing was to go into effect January 1, 2017, states as follows:

Certain employers must electronically submit injury and illness information that they are already required to keep under existing OSHA regulations:

- companies with 250 or more employees must electronically submit each quarter all three OSHA forms: 300 (Log of Work-Related Injuries and Illnesses); 301 (Injury and Illness Incident Report); and 300A (Summary of Work-Related Injuries and Illnesses);
- companies with 20-249 employees in certain industries with historically high rates of occupational injuries and illnesses (e.g., construction, manufacturing, utilities and agriculture) must electronically submit Form 300A annually; and
- all other employers not required to submit information on a routine basis may be required to electronically submit under the rule upon written notification from OSHA;

OSHA will post establishment-specific injury and illness data (without identifying employee information) on its public website:

www.osha.gov.

OSHA may cite an employer for taking adverse action against an employee for reporting a work-related injury or illness, even if the employee does not file a retaliation complaint under the whistleblower provision.

In order to comply with the anti-retaliation rule, employers are required to do the following:

- post OSHA's Job Safety and Health - It's the Law worker rights poster from April 2015 or later to inform employees of their right to report work-related injuries and illnesses free from retaliation;
- implement a procedure for reporting that must be reasonable and must not deter or discourage employees from reporting; and
- not retaliate against employees for reporting.

WHAT IS THE POLICY BEHIND THE RULE?

The public policy behind the new reporting rule is to encourage workplace safety and discourage employer retaliation. OSHA intends the publication of work-related injury and illness information to provide quick access to details amongst the various industries; to provide potential investors with new tools to evaluate risk and potential liability; and for state and local governments to consider when reviewing bids for large construction contracts.

Insofar as the anti-retaliation provision is concerned, OSHA reasons that employees may not have the time or knowledge necessary to file a complaint or may even fear additional retaliation. OSHA has specifically addressed concerns regarding safety incentive programs and post-accident drug and alcohol testing. One exam-



ple is a company that holds periodic prize drawings or gives out cash bonuses for team/department/individual employees who remain accident-free. Another example might be a half day off barbeque for any team going one year without a recordable accident. In such cases, when an employee is injured on the job, she may feel discouraged from reporting the injury so as not to lose the incentive or benefit for herself and/or the team. OSHA has now determined such programs to be a violation for which the employer may be held financially responsible.

Instead, OSHA suggests that employers develop programs that encourage safety in the workplace and promote worker participation; e.g., providing benefits for complying with safety rules, attending safety training, succeeding on safety quizzes, identifying workplace hazards, wearing safety equipment, engaging in proper lifting techniques or participating in injury investigations.

Concerning post-accident drug and alcohol testing, OSHA has determined that blanket post-injury drug testing policies may deter reporting; therefore, employers are prohibited from using drug testing, or the threat of drug testing, as a form of adverse action against employees who report. These new regulations do not prevent pre-employment, reasonable suspicion or random drug testing. OSHA is more concerned about testing that is automatically required following any work-related accident. An exception is when state law requires it, e.g., at a health care company or in a drug-free workplace. The new regulations are focused on contributing to understanding why an injury occurred or concerning workplace safety. Employers, therefore, may perform testing (1) where there is a reasonable possibility that the employee's drug use contributed to the in-

cident and (2) the drug test can accurately identify that the impairment was caused by the drug use. For example, OSHA reasons that it would be unreasonable to drug test an employee who is injured after being stung by a bee, is injured due to lack of guarding on a machine or tool malfunction, or suffers a repetitive strain over a long period of time.³ The rationale, apparently, is that whether or not an employee had drugs in his/her system when stung by a bee more than likely did not lead to that injury occurring so that there is no need to test for drugs in the system.

Finally, employers may discipline employees for violating legitimate, specific safety rules; however, discipline for violating vague rules, like "work carefully," is seen as a pretext for retaliating and may be in violation.

WHAT ARE THE EFFECTS OF THE RULE?

In the past, employees had 30 days to file a complaint under the Section 11(c) whistleblower provision. OSHA also could not act unless and until a worker filed a complaint. Under the new rule, OSHA may instigate an investigation on its own and has up to six months to issue a citation. Previously, an OSHA investigator with retaliation training would be utilized to investigate versus now, where a government investigator dealing with potentially complex personnel issues and who has no formal training in employment discrimination law may be utilized.⁴ In addition to reinstatement and back pay owed to the employee, there is now a penalty to be paid to OSHA (up to \$12,471 for a serious violation or failure to abate, and \$124,709 for willful/repeated violations).⁵ In the past, there would be a "reasonable cause" inquiry by a whistleblower investigator. Under the new rule, there is an automatic complaint by the Secretary of Labor once OSHA issues a citation.

HOW SHOULD EMPLOYERS PREPARE FOR OSHA'S NEW RULE GOING INTO EFFECT?

Employers will need to review their injury-illness reporting requirements, post-accident drug and alcohol testing protocols and safety incentive programs. Employers should document all disciplinary actions, should clearly communicate with employees and should be consistent in enforcing safety work rules. Employers will also want to proceed with caution and/or consult with counsel when taking an adverse employment action against an employee shortly after an injury or illness is reported. Again, although the rule does not prohibit drug testing, it does prohibit such testing from being used as a form of retaliation against employees who report injuries or illnesses.

Certainly, these new reporting and anti-retaliation rules should cause employers some concern and will require companies to look closely at, and perhaps re-evaluate and/or re-work, their policies and procedures concerning workplace injuries and illnesses. Employers should take steps to ensure OSHA compliance so that OSHA fines and possible litigation can be avoided. ⚖️

ENDNOTES

¹ <https://www.bakerlaw.com/alerts/osha-new-reporting-requirements-and-anti-retaliation-rules-for-workplace-safety-violations>.

² 81 Fed. Reg. 29624.

³ <http://www.laborandemploymentlawcounsel.com/2016/06/new-osha-rules-on-drug-testing-retaliation-claims-and-accident-reporting/>

⁴ *Id.*

⁵ <https://www.osha.gov/>



Jennifer W. (Jennie) Pickett is a lawyer with the firm of Smith, Spires and Peddy.

DO I NEED AN ECONOMIST?

WHEN TO USE AN ECONOMIST IN ALABAMA PERSONAL INJURY & WRONGFUL DEATH CASES

In personal injury (PI) and wrongful death (WD) cases, attorneys may consider hiring a forensic economist (an economist serving as an expert in a legal matter) to calculate the present value of economic losses, such as from lost earnings. The economist is to assist the court by providing estimates that are to a reasonable degree of economic certainty, as the case permits. However, in Alabama PI and WD cases, an economist may or may not be useful.

In this article, I first suggest the instances in Alabama PI and WD cases when hiring an economist to calculate economic losses would be useful. Then, I review the methods economists frequently use for addressing 10 key elements of economic losses, and I evaluate the extent to which these methods are accepted within Alabama's legal framework.

IS AN ECONOMIST NEEDED?

Alabama statutes and case law for WD torts only allow for punitive—not compensatory—damages. When awarding damages, Alabama Pattern Jury Instructions preclude consideration of “the (pecuniary) (monetary) value of the life of the decedent,” as well as other financial and pecuniary losses sustained by the survivors of the decedent as a result of the decedent's death. Alabama courts acknowledge that this is designed to discourage future homicides rather than to compensate survivors for pecuniary losses. The result of this, though, is that an economist is essentially of no value, since Alabama WD damages are not based on economic losses.

An important exception to this is for WD torts brought under the 1908 Federal Employers Liability Act (FELA) for railroad workers and the 1920 Jones Act for maritime workers in Alabama courts (where Alabama courts and Federal courts have concurrent jurisdiction). In these cases, compensatory losses for survivors are

allowed, so an economist would have a role calculating the present value of economic losses. For example, jury instructions for Alabama FELA and Jones Act cases state that compensatory damages may include, among other things, “(a) benefits of monetary value, including money, goods and services, that the decedent customarily contributed to each survivor; (b) decedent's present and future earnings; (c) other money or assets the decedent would have received in the future during his lifetime....”

Similar to FELA and Jones Act cases, Alabama PI cases allow for compensatory damages for those injured. Alabama Pattern Jury Instructions explicitly mention “loss of earnings” as permissible compensation. Since the pecuniary value of economic losses may be included as damages, there is a useful role for an economist in Alabama PI cases.

EARNINGS CAPACITY

Forensic economists typically measure economic losses from lost earnings using “lost earnings capacity.” Earnings capacity is an individual's ability to earn income when working to their potential, measured by the amount the individual is able to earn. Alabama courts allow recovery for the pecuniary value of lost earnings in PI cases and in FELA and Jones Act matters, and the appropriate measure in these instances appears to be lost earnings capacity: “In a personal injury action, a plaintiff is entitled to recover both the value of the work time lost prior to the trial (“lost earnings”) and the value of the reduction in his ability to earn a living (“impairment of earning capacity”).” This also illustrates that plaintiffs can recover back pay—defined as losses from the tort to the trial—and front pay—which are losses incurred after the trial. The courts, in their instructions to juries, provide factors to consider when awarding damages for what would reasonably have been earned absent an injury, which include “the plaintiff's earning capacity, his earnings, the manner in

which he ordinarily occupied his time before the injury, (and) his inability to pursue his occupation." Much the same, in Alabama FELA and Jones Act cases, lost past and future earnings are recoverable, and earnings capacity is considered.

EMPLOYMENT BENEFITS

Common employment benefits include various types of insurance and employer contributions, on behalf of the worker, to retirement funds and government programs. Each has value, so forensic economists often include lost employment benefits as part of economic losses. Alabama courts consider damages from lost employment benefits, but these losses must be proven to be awarded. Alabama statutes do not provide unique instructions for calculating the value of lost employment benefits, and such losses should likely be treated in the same manner as lost wage and salary earnings.

HOUSEHOLD SERVICES

It might seem that lost household services are recoverable for the same reasons lost earnings are recoverable, but Alabama statutes and Alabama case law do not mention this source of loss, with perhaps one exception: parents have been awarded damages for lost services that would have been provided by an injured minor child in Alabama PI

cases. Nevertheless, the pecuniary value of lost household services is typically recoverable in many other states and in suits against the United States government, so this may be an area for Alabama courts to evaluate further. FELA and admiralty-maritime cases filed in Alabama have considered the value of lost household services.

GROWTH RATES

Earnings typically grow over time with inflation and productivity. To make the injured party whole, Alabama courts allow awards of front pay to grow over time with anticipated raises. However, the growth rate to be used is not specified by Alabama statutes or case law.

WORKLIFE AND LIFE EXPECTANCIES

Worklife expectancy is often used when calculating front pay to estimate the number of years an individual would have remained in the labor force and been employed. Alabama courts recognize the appropriateness of examining losses over one's worklife, but they state no preference for which methodology to use when approximating the number of remaining years of



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employment absent the tort. Alabama statutes mandate that life tables be provided regularly by the superintendent of insurance. These tables are to be used in court, but they are not necessarily considered conclusive. Alabama Pattern Jury Instructions imply the information these tables provide may be adjusted for a case's particular circumstances, and supplemented with additional information, as illustrated in Alabama case law. An economist would likely recognize that remaining worklife expectancy is less than remaining life expectancy.

MITIGATING FACTORS

Forensic economists typically assume that those harmed take reasonable actions to limit damage and offset losses with mitigating factors. Alabama rules traditionally have made pecuniary benefits from collateral sources other than the defendant inadmissible. However, legislative tort reforms passed in 1987 currently require collateral medical (and hospital) benefits in cases involving medical expenses to be disclosed but not necessarily deducted from economic losses. Forensic economists may wish to refrain from deducting collateral medical benefits when a third-party has subrogation rights to receive reimbursement from the plaintiff in the event of an award. In Alabama FELA and Jones Act cases, the injured party has a duty to mitigate. However, if the plaintiff does not adequately attempt to mitigate, then it would be the defendant's responsibility to establish that.

PERSONAL MAINTENANCE EXPENDITURES

In WD cases, but not PI cases, forensic economists may deduct an amount that the decedent is projected to have spent on their own consumption, had they lived, from the economic losses. Since only punitive damages are allowed in Alabama WD cases, neither Alabama statutes nor Alabama case law mention personal consumption deductions. Economists have deducted consumption expenditures in WD cases with federal guidelines.

DISCOUNT RATE

With rare exceptions, forensic economists discount future losses to their present value to identify the lump-sum payment—paid in the present—that will grow when invested to the amount lost earnings and benefits would have been in the future. When awarding future damages (e.g., front pay) in PI cases, Alabama courts are guided by the present value of future lost earnings. Alabama Pattern Jury Instructions state, "Present cash value' means the sum of money needed now, which, when added to what the

sum may reasonably be expected to earn in the future, will equal such earnings at the time in the future when these earnings would have been received." However, the specific rate and methodology to use is not currently stipulated or defined. The below-market discount rate method for discounting to present value is to be used in Alabama FELA and Jones Act cases.

INTEREST

Just as economists discount future losses to their present value, economists may add interest to past losses. In Alabama, prejudgment interest may only be awarded when damages are certain. Since all damages in Alabama WD cases are punitive, courts believe it will be rare that prejudgment interest will be awarded in those cases. Economists have included prejudgment interest in Alabama FELA and admiralty-maritime cases.

TAXES

Lost earnings in PI and WD cases would otherwise—absent the tort—have been taxed, but any award for economic damages likely will not be. As a consequence, forensic economists may deduct projected income taxes from their measure of economic losses. Alabama law does not address whether income taxes should be incorporated. In some instances (in PI cases), Alabama courts have held that income taxes need not be deducted. However, federal guidance requires income taxes to be deducted from losses in FELA and Jones Act cases, and economists in these cases filed in Alabama courts have done so.

CONCLUSIONS

Alabama case law regularly notes errors made in calculating economic losses when an economist is not used. Nevertheless, an economics expert is not required in order to prove economic losses in Alabama courts. Since PI cases (and FELA and Jones Act WD cases) brought to Alabama courts may claim compensatory damages, an economist may be useful in calculating the present value of economic losses such as lost earnings. This is not true for other Alabama WD cases where only punitive damages are allowed. This paper summarizes common approaches used by economists to quantify lost earnings and benefits. Lawyers and forensic economists should follow Alabama court proceedings carefully to know which of these methods are admissible. ⚖️



Charles L. Baum, II, is a Professor of Economics at Middle Tennessee State University and may be reached at (615) 556-9287, or baumeconomics@gmail.com.



In Memory of Richard Ferrell Ogle

Richard Ogle departed this earth on Oct. 27, 2016 after a long fight with pulmonary fibrosis. To call his fight courageous would be to trivialize it. His fight was more than that. Richard accepted no sympathy and complained to no one. Through his long illness Richard was far more concerned with those who worried about him than he was with his own health. "Inspirational" is often overused, but not when referring to Richard Ogle.

Richard was born on March 11, 1942, in Birmingham. He attended Ramsey High School in Birmingham. Richard's work ethic was forged early and was well known. His first job was at nine years old, shoveling coal into the furnace of an apartment building. He worked construction jobs while in high school while still managing to play on the school's football and baseball teams. Richard was voted "Friendliest" by his Senior Class, a superlative that certainly fit him.

Richard later attended the University of Alabama, where he was a member of ODK, and then graduated from the University of Alabama School of Law. His le-

gal career began in 1968 and he practiced law in Birmingham for almost 50 years.

On May 1, 2008 Richard moved his practice to and joined Christian & Small LLP. He had an immediate impact, not only in the firm's profitability, but in its attitude. Richard was never afraid of a good fight and his attitude was infectious. Richard had no fear of any case, any client, any fact situation, any opposing counsel or any judge. His bravado was far from false. Richard was a warrior and a genuine advocate for his clients. Everyone knew it. Some lawyers feared him, some loved him, but all of them respected him. The manner and passion with which we practice law at Christian & Small was forever impacted by Richard Ogle.

Richard had a sharp mind and a quick tongue. I am fond of the story about Richard beginning a complicated jury trial before a former Federal District Judge in Birmingham particularly known for exerting excessive control over the goings on in his courtroom. Richard was told by the judge he would have only 10 minutes to present his opening statement to the jury. Richard protested loudly that he could not possibly present his opening statement in such a complicated case in only 10 minutes. He pleaded for more time, all to no avail. The trial began with Richard presenting his opening remarks to the jury. Precisely at the 10 minute mark, and mid-sentence, Richard was interrupted by the judge and uncer-

moniously told to sit down, as his time was up. The case then proceeded, as others do, with examination of witnesses and the taking of evidence from both sides. At the conclusion of the evidence, the judge called a side-bar conference with all of the lawyers. "Mr. Ogle", he said, "You are the plaintiff, how long do you need for closing argument?" "Well, first I'll need time to finish my opening statement," Richard zinged back. Richard naturally got the full time for closing that he asked for.

Richard had much to offer his clients and partners and was doing so up until his very final months. He was working almost to his final breath, having been in the office only a few days before his last.

As recently as January 2016 Richard began a trial of an arbitration alongside two other Christian & Small partners. Richard was lead counsel and strategist. On the fourth day of the trial, Richard became too ill to continue, an exacerbation of the terminal illness, which led to his hospitalization. Nevertheless, Richard mandated that he be reported to daily and consulted on strategy throughout the remaining eight days of the trial. (It is fitting that Richard's client fully prevailed in this case which was to become a two week trial, and Richard's final one).

Richard's compulsion to always do the right thing was evident in his mentoring to many younger lawyers, including those in our firm. Many Christian & Small lawyers

Continued on page 26

The Appellate Apothecary

A Few “Did You Knows?” for the Fervent Family Law Practitioner



Did you know...an award of retirement benefits pursuant to §30-2-51(b), Code of Alabama (1975), may not include retirement benefits that were earned before the marriage or any interest or appreciation thereon, may not include any retirement benefits earned after the divorce complaint was filed or any interest or appreciation thereon, and may not include any benefits that were not vested on the date the divorce complaint was filed or any interest and appreciation thereon; however, that such an award may include retirement benefits that were vested on the date the divorce complaint was filed and any subsequent interest or appreciation thereon? For valuation purposes, if all the retirement benefits were accumulated during the marriage and were vested before the complaint for divorce

was filed, then the present value of those benefits may be determined and subject to division on any date on or after the filing of the divorce complaint or on or before entry of the divorce judgment. *Hill v. Hill*, Ala. Civ. App. LEXIS 270 (Ala. Civ. App. Dec. 4, 2015).

Did you know...that actions that are consolidated by the trial court each retain its separate identity and each action, therefore, requires the entry of a separate judgment? Be diligent--especially for appellate purposes--in reviewing your client's case to make sure that the trial court has entered separate orders in all actions under consolidation. *Ex parte Glassmeyer*, 2016 Ala. Civ. App. LEXIS 73 (Ala. Civ. App. Mar. 25, 2016).

Did you know...that an award of alimony in gross must be payable out of the marital estate or the payor's estate as it exists at the time of divorce, and it cannot be based on the anticipated future earnings of the payor? *House v. House*, 185 So. 3d 1112 (Ala. Civ. App. 2015).

Did you know...that as the petitioning spouse requesting alimony, the burden of proof rests with the petitioner to convince the trier of fact that a financial need for alimony exists and that the responding spouse has an ability to pay towards that need? It is important to note that as of late, the appellate courts have painstakingly reiterated the burden that squarely rests on the petitioner's shoulders when seeking an award of alimony. First, in proving need, the petitioner should establish the standard and mode of living of the parties during the marriage and the nature of the financial costs to the parties of maintaining that station in life. While the submission of an

itemized monthly budget to the trial court may be the preferred practice, nothing in the law requires the submission of such a budget in order to meet the evidentiary burden. Rather, the petitioner need only present sufficient evidence from which the trial court can reasonably infer the costs associated with the marital standard of living. After establishing the marital standard of living, the petitioner must establish his or her inability to achieve or maintain that same standard of living independently. Here, a trial court should consider the ability of the petitioner to earn income when determining the need for periodic alimony. Once the financial need for periodic alimony is established, the petitioner should prove the ability of the responding spouse to meet that need. For purposes of determining an ability to pay and for calculating an appropriate amount of alimony, the trial court should ordinarily use the responding spouse's net income as the starting point for these evaluations. In considering the spouse's ability to pay, all the financial obligations of the responding spouse, including those obligations created by the divorce judgment, should be proven by the petitioner. Lastly, the petitioner should be prepared to argue the equities of the case, which lie particularly within the trial court's discretion. *Shewbart v. Shewbart*, 64 So. 3d 1080 (Ala. Civ. App. 2010).

Did you know...that in order for an adult, disabled child to receive child support under *Ex parte Brewington*, 445 So. 2d 294 (Ala. 1983) and *Ex parte Cohen*, 763 So. 2d 253 (Ala. 1999), Alabama law does not require that the condition causing the disability has been medically diagnosed or that the child must have received treat-

Continued on page 25

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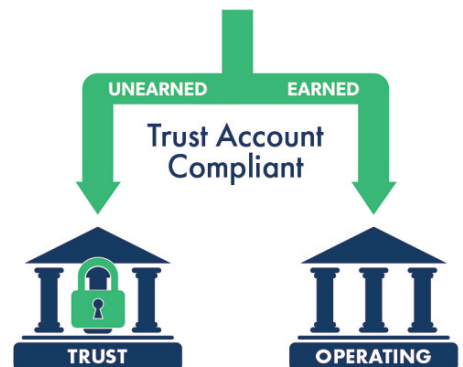
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The Memorial Scholarship Fund, administered by the Birmingham Bar Foundation, honors the lives and/or memory of individuals and offers scholarships to law school students. Donors may make an enduring tribute in memory or in honor of a loved one—an attorney, spouse, parent, child, or friend. The gifts provide two (2) \$2,500 scholarships awarded annually by the Birmingham Bar Association to second and third year law students at Cumberland School of Law, The University of Alabama School of Law, Birmingham School of Law and/or Miles Law School.

Donations may be sent to the Birmingham Bar Foundation, 2021 Second Avenue North, Birmingham, Alabama 35203. For more information, contact Nikki Tucker Thomas at (205) 251-2231 or bbfound@bellsouth.net.

The generosity of the following donors from August 2016 to January 2017 supports this important program which enables deserving students to further their legal educations:

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Birmingham Bar Foundation Plants Seeds in Young Minds

The Birmingham Bar Foundation has bravely wrested legal instruction from the grip of the classroom and dropped it right in the middle of Birmingham at the Central Public Library.

No, the Foundation didn't need a new place to host a CLE class. Its target participant was much younger than most lawyers and had almost no legal experience—unless you count a child's innate ability to cross examine anyone.

The Birmingham Bar Foundation and the Birmingham Public Library, in conjunction with the Office of the Federal Public Defender for the Northern District of Alabama, developed curriculum for and designed an after-school mock trial program for local area children. The chief architects of this program were BBF Board Members Kevin L. Butler, Federal Public Defender, and attorney Alicia Jett; Lance Simpson, System Teen Librarian; and Keiah L. Shauku, BBF Director of Education and Outreach.



The targeted student group was children, who typically spent several hours after school in the library. They are middle and high school students who attend the schools that surround the Central Library. The participants meet once a week on Thursdays at

3:30 p.m. in the Teen Zone Learning Lab.

Of the children, Kevin Butler has said “these guys are so impressive! Their curiosity and eagerness to learn about the law has reignited my passion for the law. Each week, I am amazed by how well the students demonstrate mastery of a particular concept. It is hard to believe that this is really their first time under this type of instruction.”

The program has introduced students to the interworking of the legal system, acquainted them with legal jargon, and equipped them to take on the various roles within a courtroom. More important, the program has boosted students' ability to think critically and taught them how to structure cogent arguments.

Lance Simpson describes the partnership with the Foundation as one that is “incredible because it represents a way for the library and the Foundation to directly impact the lives of children and

teens in our community through positive dialogue, mentoring, and academically rigorous afterschool programs. We are very grateful for this partnership, and are so excited about the work the Foundation is doing with our kids!”

Alicia Jett, Esq., feels that this program—and programs like this—will directly impact not just the legal profession, but also the future. “Lawyers should be involved in the community because this community is where we live and work and we should invest in the future of the community, which in this particular case is the future generation of people we will someday represent or who will be our colleagues. In such a negative world, it is fulfilling and uplifting to go do projects like this that have a positive impact on the future,” she said.

With parents trekking from as far away as St. Clair County, the program has already demonstrated how important it is to the greater community. Participants are giving the program ringing endorsements, like the one from 14-year-old Akili Shauku, who said “the lawyers have made learning about the legal system fun and engaging.”

With students volunteering to spend their afterschool hours learning about our legal system, it is evident that the Birmingham Bar Foundation has struck upon a unique way to engage with and create the lawyers of tomorrow. On March 16, 2017 at 3:30 p.m., the students will show their skills and what they have learned when they conduct a mock trial in Judge Joseph Boohaker's courtroom in the Jefferson County Courthouse.

“We are very proud of our participants. We greatly appreciate the time and talent that our attorney volunteers have given to make this program successful by working with the youth in our program. We, too, thank Judge Boohaker for his support of the program,” Nikki Tucker Thomas, BBF Executive Director, said.



For more information about the Foundation's mock trial program, contact the Birmingham Bar Foundation at bbfound@bellsouth.net.



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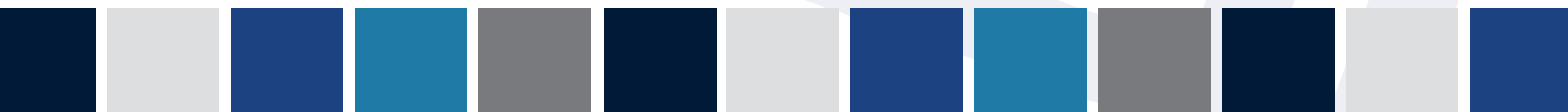


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When I went solo in 2007, one of the first things I did was join the Solo/Small Firm Practice Section of the Birmingham Bar. I have served the section as a Board member or Officer each year since, and I am here to tell you that it was one of the best decisions I have made in my 30-year legal career. This year, I am honored to serve as the Section Chair. We are one of the largest sections of the Bar with consistently well over 300 members, and there are some very good reasons for that. This year, I would like to see our section membership expand further and the reason I am writing this article is to give you some very good reasons you should join us. Section dues are only \$30.00 annually, but what you get out of it is what makes this a “no-brainer” decision, even if you don’t join at the very beginning of the year when dues are usually paid.

The \$30.00 section fee can pay for ALL of your required CLEs, including ethics.

On the second Wednesday of each month, we put on an hour lunch time CLE with a wide variety of very interesting topics and great speakers. Lunch is sponsored and usually served at 11:30 a.m. at the Bar center with the CLE going from noon to 1:00 pm. The lunches themselves are worth attending, but you get your CLE hours in, to boot. We also sponsor 2 lunch time gourmet hot dog lunches prepared by our own chef Charles Allen. In the spring, we have the “Ott

Dog Luncheon” CLE featuring Federal Judge John Ott giving an annual update of the goings-on at the federal courthouse. In the Fall, we have the “Ought Not Hot Dog Luncheon” CLE featuring counsel from the State Bar giving an ethics seminar which takes care of our yearly one hour ethics requirement. In October, we host a sitting Supreme Court Justice (most recently, Justice Mike Bolin) to give a one hour update on Supreme Court happenings, followed by a catered judicial reception honoring our local and state judges. This reception has graciously been sponsored by Cory Watson Attorneys over the past few years. With what other section can you get all these CLE hours, great food and drink for only \$30.00? If you are interested in either sponsoring or presenting (or both) at one of our monthly CLEs, please contact our Chair-elect, Cedrick Coleman at cdcoleman@maylegalGroup.com.

Fantastic Social Events

The CLEs and luncheons alone make an easy case for joining our section, but we also host some other great social events throughout the year. In March, we have our Spring Membership Drive party that has been hosted by Mickey and the late

Mike Turner of Freedom Court Reporting for many years at their lovely home. This event is catered with excellent food, and includes beer, wine, soft drinks and music.

Last year we replaced our annual Softball Challenge barbecue (featuring a game between the judges and the lawyers at historic Rickwood field), with a catered corn hole tournament at a local establishment. We also have an “End of Summer Party” at a Birmingham Baron’s game which is catered and has been sponsored by our friends at Hare Wynn during the past few years. Finally, we have our Christmas Party in early December that is also catered and usually at a local bar such as Rogue Tavern or Carrigan’s Public House. Last year the party was hosted by Pittman, Dutton and Hellums. Need I say more?

Networking

Section membership is an excellent way to network with other lawyers, both professionally and socially. Our membership’s practices are as diverse as one could imagine and communications amongst members often results in referrals and an ability to offer and receive valuable advice, forms, and feedback. Section membership includes access to a listserv which is available to all section members and is an invaluable tool to communicate about section events and your practice.

Continued on page 25

A True “No Brainer”... *Continued from page 24*

You don't have to be a sole practitioner or a member of a very small firm to become a member

One of the misconceptions of our section is that you have to be a sole practitioner or in a very small firm to enjoy section benefits. Not so. Our by-laws open the membership to any dues-paying member of the Birmingham Bar. To join, simply attend an upcoming monthly CLE at the Bar Center and bring a check made payable to the BBA for \$30.00 or you can send a check at any time in that amount to Dana Thomas at the Bar Center offices. Soon we will send out our “Save the Date” event calendar for 2017. So there you



have it. Where else can you get this kind of value for a mere \$30.00? If you have any questions about section membership, please feel free to email me at Goozlaw@aol.com. Come Join us! It is a no brainer.

Steve Goozee is Principal with the Law Office of Stevan Goozee, PC, and is Chair of the BBA Solo/Small Firm Practice Section.

Appellate Apothecary

Continued from page 18

ment during his or her minority? *Knepton v. Knepton*, 199 So. 3d 44 (Ala. Civ. App. 2015).

Did you know...that before an Alabama court gains subject matter jurisdiction to enforce a foreign child-custody order, the Uniform Child Custody and Enforcement Act requires that the foreign order be properly registered in this state? Proper registration of a foreign child-custody order is attained by strictly following the proper procedure outlined in §30-3B-305, and until that



procedure is followed, no subject matter jurisdiction exists. *Krouse v. Youngblood*, 171 So. 3d 49 (Ala. Civ. App. 2015).

Charles Dunn is a partner with the firm of Boyd, Fernambucq & Dunn, P.C.

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have stood in Richard's doorway seeking advice, me included, and his final case was no exception.

Richard's desire to mentor young people was further evidenced by his work with his college fraternity, Pi Kappa Alpha, of which he was chapter president at the University of Alabama, and later served as its National President for two years. Richard established and endowed a scholarship for young men of the Gamma Alpha Chapter of PKA who exhibited character, leadership and excellence in academics. Richard was proud that through his work with PKA he impacted the lives of numerous young men.

Richard long ago ceased actually attending the football games of his beloved Alabama Crimson Tide. Instead Richard had a habit of driving down to the PKA house in Tuscaloosa a few hours before

each Alabama home game. He would see and greet friends, old and new, and then leave exactly one hour before kickoff to be home in front of his television precisely at kickoff. "There is no better seat," he always told me. Every time he said it, I smiled.

Richard was active in Bar-related matters and causes, having served as President of the Birmingham Bar Association in 1990 and President of the Young Lawyers Section of the Birmingham Bar Association as well. He further found time to serve on the Boards of Directors for the Alabama Supreme Court's Advisory Committee on the Alabama Rules of Evidence, the American Judicature Society, and the University of Alabama Law School Foundation. Richard was recognized numerous times by the prestigious publication Best Lawyers in America.

Richard was interested in the betterment of our greater Birmingham community. He helped found the Birmingham Tip-Off Club and served as its first President. He was an attendee of Mountain Brook Community Church, and he served as a Board Member of the YMCA.

Richard was 74 years old when he left us, and he will be sorely missed by his family – wife Rhonda and daughters Brook Ogle and Jessica Ogle Tate, his numerous friends, his trusting clients, and the law firm of Christian & Small.



Daniel D. (Dan) Sparks is a partner with the law firm of Christian & Small, LLP



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March 23, 2017	GENERAL WORKPLACE VIOLENCE
April 21, 2017	ELDER LAW
April 28, 2017	DO'S AND DON'TS FROM THE JUDGE'S PERSPECTIVE
May 5, 2017	LAW DAY
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May 19, 2017	CLASS ACTIONS (CASE ASSESSMENT)

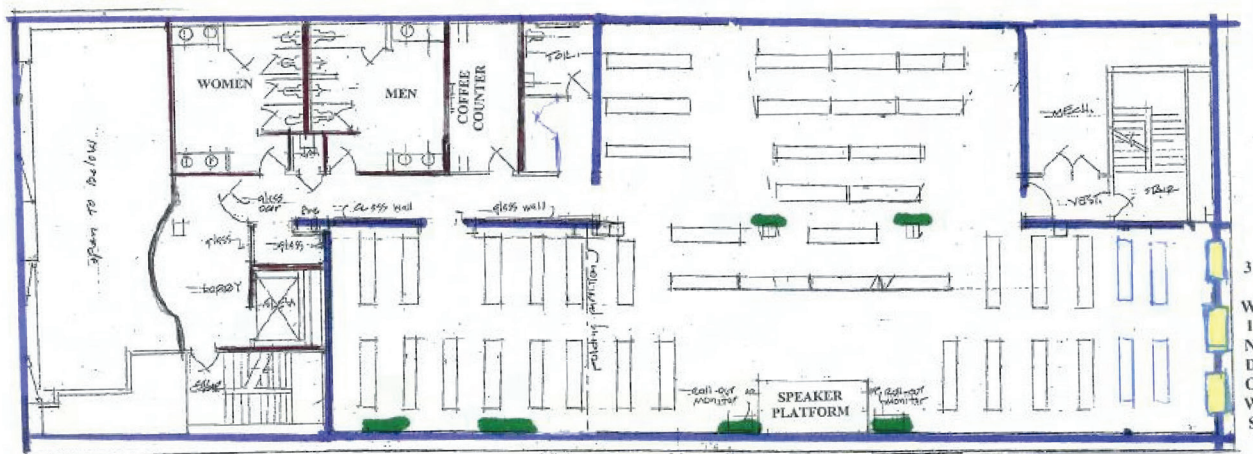
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By Joseph Madison Beck

W.W. Norton & Company, Ltd., NY, NY, 2016, 218 pp.

This reviewer was presented with *My Father & Atticus Finch* by his sister-in-law, a Montgomery native, to whom the author inscribed a salutation, "For Malone, you look so young! Joseph M. Beck." This reviewer is still not sure whether the book was passed to this reviewer out of vanity or content. It was concluded that it was a little bit of both. The content is a fascinating parallel of the true story of the author's father Foster Beck, a then-Pike County lawyer, who actually handled a real life trial involving similar facts that Harper Lee presented as fiction in *To Kill a Mockingbird*. The parallel doesn't end there, though, it continues, and the author, Joseph Madison Beck, an Atlanta lawyer, wonders whether or not Harper Lee might have remembered the true story of *State of Alabama v. Charles White, Alias*, which took place when Harper Lee was 12 years old. We are talking about the 1930's in a suburb of Troy, Alabama, called Glenwood. Monroeville is not too far away. This book is complete with an appendix which contains photos of

the author's father, grandfather, the Pike County Courthouse, and a letter from Dr. George Washington Carver to Madison L. Beck on the letterhead of Tuskegee Normal, an Industrial Institute. The letter was sent by Dr. Carver in gratitude for an article that appeared in the *Troy Messenger* that described Dr. Carver flatteringly.

The case of *State of Alabama v. Charles White, Alias* was a well-publicized case involving allegations that a Negro had "raped" a white woman. The author's father defended the Negro in Pike County, Alabama in the early 1930's. One of the more interesting aspects of the Pike County case as opposed to Harper Lee's fictional story is that the "rape victim" was declared by a physician to have an intact hymen after the "rape."

The author of this book is a member of the law firm of Kilpatrick, Townsend & Stockton, LLP in Atlanta. Mr. Beck handles intellectual property, copyright, consumer product safety and internet law. Interestingly, it was recently noted on national television that the Martin Luther King Family copyrighted the "I Have A Dream"

Continued on page 32

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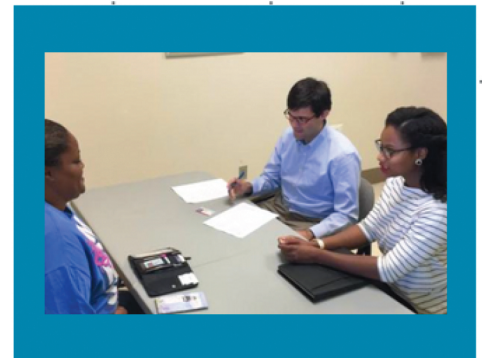
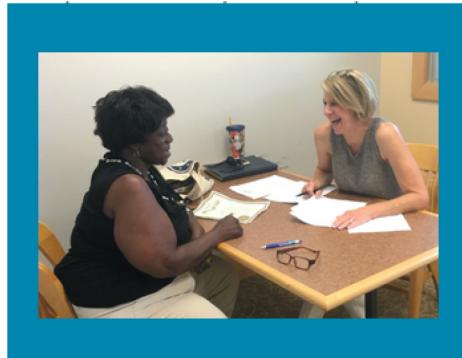
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speech and Mr. Beck was the attorney who enforced that copyright against a national television network. He has received numerous awards and received his JD from Harvard and his MA, summa cum laude, from George Washington University Law School and was the recipient of a BA from Emory University, magna cum laude. His writing style is articulate and erudite and he tells the story of his father and the Charles White case as if it is a memoir of past events recalled. On the dust cover of the book is a recommendation by Martin Luther King, III and by Morris Dees, of the Southern Poverty Law Center. It is worth your time and money to obtain this book and read a true story in contrast to the fictional "To Kill a Mockingbird."

The Klass: Tyro

By Dan Klasing

2016 Daniel R. Klasing, 322 pp

Mr. Klasing, a Birmingham Bar member, has written a fictional account which seems to be a Roman à Clef about life in Alabama while he was in college and law school. If the book is a "memoir," it describes life at the University of Alabama with affection and southern pride. It is set in Alabama in various recognizable geographical venues and tells the story of a coup attempted by "the Klass" which the author describes as follows: "For decades, rumors, innuendo and various accounts of a secret society at the University of Alabama called 'the machine' have been whispered about throughout the state. Rumors of the existence of 'the machine' inspired me to write *The Klass*." This is a sequel to another book written by Mr. Klasing called *The Klass: Doyens*. It is an entertaining read if one wishes to return to the carefree days of college and law school.

The Navigator II Irish Revenge

By Steve Coleman

2016 S.B. Coleman, 305 pp

Mr. Coleman is the son of former Bankruptcy Judge Steven B. Coleman. This book is a sequel to his former book called *The Navigator, A Perilous Passage, Evasion At Sea*. Steve has spent the last 12 summers in Northern Ireland and did his Rotary make-ups at the Rotary Club of Coleraine and developed several friendships there. This book describes the fervor by which Northern Ireland sets itself off against the British Crown. This reviewer visited Northern Ireland on a cruise several years ago, and the Northern Irish vehemence was evident at a wall where the tour bus stopped, which wall contained graffiti which is not suitable for re-printing here. The tour bus driver was asked the question, "What sort of reception would you give the queen if she visited Northern Ireland?" The answer: "So what - who cares?" The antipathy is obviously and openly present today and Steve tells the bitter history, "that in Northern Ireland the desire for deadly vengeance is far from over." This reviewer reviewed a history written by Steve of St. Luke's Episcopal Church, which was published in these pages many years ago. Steve is an excellent writer and actually does the oil paintings for the covers of his books.

Should Have Played Poker (A Carrie Martin and the Mah Jongg Players Mystery)

By Debra H. Goldstein

2016 Five Star Publishing, Gale Cengage Learning, Farmington Hills, Michigan, 241 pp

Debra Goldstein was an administrative law judge and litigator who now publishes her series of Carrie Martin books. It is pre-

sented to you for your consideration, evaluation and entertainment. It concerns the protagonist's life as a young corporate lawyer who becomes involved in a crime in a Wahoo, Alabama Retirement Home. This is a second novel for author Goldstein, her first being *Maze in Blue* which was reviewed on these pages previously. The former novel received a 2012 Independent Book Publisher's award and was reissued by Harlequin Worldwide Mysteries.

2013: Memoirs of A Writer: A Year of Travel, Interviews and Reflections on Life

by Sheldon Burton Webster

2016 Page Publishing, Inc., New York, NY 230 pp

Sheldon Webster is/was a certified public accountant in Birmingham who has written many books, both fiction and nonfiction, about his travels to such dangerous places as the Ukraine, Cambodia, West Africa, and other former Soviet Republics. He has traveled to 134 countries as an Army officer, CPA, mountaineer and writer. His roots are in Mississippi and his self-descriptive comments in his own words are, "Slightly right of center..." and he pontificates from time to time concerning the "Washington/military-industrial conspiracy and croney capitalism." Sound familiar?

Sometimes this reviewer wonders whether or not Sheldon, who has climbed Mt. Everest, goes on secret missions in an official capacity inasmuch as his writing material seems to involve dangerous places that you or I would never visit under the same or similar circumstances.



Editor Robert R. Kracke

ATTORNEYS IN THE NEWS

Baker Donelson has been ranked 43rd in Fortune's first-ever list of 50 Best Workplaces for Parents.

Balch & Bingham LLP has been honored by U.S. News & World Report and Best Lawyers in its 2017 edition of "Best Law Firms" as one of the leading law firms in the country for the seventh consecutive year. Each of the 58 Balch practices recognized received a Tier 1 ranking.

The law firm of **Christian & Small LLP** is pleased to announce 12 partners have been selected for inclusion on the list of 2016 Mid-South Super Lawyers, and three more partners were named to the 2016 Mid-South Rising Stars list. Additionally, Managing Partner **Deborah Al-**

ley Smith was named to the 2016 Top 50 Women Mid-South Super Lawyers List, and **Smith** and Partner **Daniel D. Sparks** were named to the 2016 Top 50 Alabama Super Lawyers list.

Baker Donelson received a perfect score of 100 percent on the 2017 Corporate Equality Index (CEI), a national benchmarking survey and report on corporate policies and practices related to LGBT workplace equality, administered by the Human Rights Campaign Foundation.

The Public Affairs Research Council of Alabama (PARCA) has selected **Lightfoot, Franklin & White** attorney **Clint Speegle** to participate in its 2017 PARCA Roundtable.

Hare Wynn Newell & Newton has been ranked in the 2017 U.S. News - Best Lawyers "Best Law Firms" list regionally in 10 practice areas.

Baker Donelson has garnered 170 first-tier metropolitan rankings in the 2017 U.S. News - Best Lawyers "Best Law Firms" list. These Tier 1 rankings across 11 metropolitan markets in eight states earned **Baker Donelson** a spot among the top ten firms nationally with the most first-tier metropolitan rankings.

Maynard Cooper & Gale is pleased to announce that Shareholder **Peter S. Fruin** was chosen as one of only five Law360 Securities Law MVPs for 2016.

Guided by Rodney A. Max, center, and Michael B. Walls, right, our experienced team also comprises Brad Wash, Arthur J. Hanes Jr. and Marty Van Tassel. They assist law firms and their clients in every phase of dispute resolution, settling major litigation in Alabama and nationwide.

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BIRMINGHAM'S **MEDIATION DESTINATION**

ATTORNEYS IN THE NEWS



Marc James Ayers

Bradley is pleased to announce that Birmingham partner **Marc James Ayers** has been appointed by the Supreme Court of Alabama to the Alabama Pattern Jury Instructions Committee.

Ninety-eight attorneys with **Baker Donelson** have been named to the 2016 edition of Mid-South Super Lawyers, which now recognizes attorneys in Alabama, Arkansas, Mississippi and Tennessee.

Christian & Small LLP is excited to announce it has received a Metropolitan First Tier Ranking for the fifth year in a row in the 2017 edition of U.S News and World Report and Best Lawyers "Best Law Firms" in 11 practice areas.



Donald B. Sweeney

Bradley is pleased to announce that Birmingham partner **Donald B. Sweeney, Jr.** will be presented with the Alabama Association of School Boards' (AASB) Legacy

Award.

Sara M. Turner, a shareholder in **Baker Donelson's** Birmingham office, has been appointed to a one-year term as vice chair of the Defense Research Institute (DRI) Retail and Hospitality Committee.

Bradley is pleased to announce that the firm has been named to the U.S. News – Best Lawyers® 2017 "Best Law Firms" Tier 1 national ranking table in two practice areas: Construction Law and Mass

Tort Litigation/Class Actions – Defendants. Additionally, Bradley earned "Best Law Firms" Tier 1 metropolitan rankings across 61 practice areas and eight offices.



Derek F. Meek

Burr & Forman LLP announces that Birmingham-based partner **Derek F. Meek** was named as chair of the Chapter Presidents' Council of the Global Turnaround Management Association (TMA) for 2017.

Four **Hare Wynn** attorneys were selected as 2016 Super Lawyers Mid-South Rising Stars, and ten **Hare Wynn** attorneys have made the 2016 Mid-South Super Lawyers list.

Bradley is pleased to announce that it has been selected as one of LMG Life Sciences' "Recommended" firms for product liability work.

Bradley is pleased to announce that Birmingham partner **J. David Pugh** has been elected to serve as 2017 Chair of the Associated Builders and Contractors (ABC) Alabama Chapter Executive Committee.



J. David Pugh

U.S. News - Best Lawyers has released their 2017 "Best Law Firms" listing, which ranks **Huie** as a Metropolitan Tier 1 firm in Birmingham in seven specialty areas.

Maynard Cooper & Gale proudly announces that 84 lawyers have been se-

lected as 2016 Mid-South Super Lawyers and seven have been recognized among the Top 50 Super Lawyers in Alabama.

Hare Wynn attorneys **Ashley Peinhardt** and **Hughston Nichols** were recognized as Birmingham's Rising Star Lawyers by the Birmingham Business Journal.

Lightfoot, Franklin & White LLP is pleased to announce that 35 of its lawyers have been selected as a 2016 Mid-South Super Lawyer or Rising Star.

Bradley is pleased to announce that 149 attorneys from across the firm's Southeastern offices have been named to the 2016 Mid-South Super Lawyers or Rising Stars lists.

Ogletree Deakins is pleased to announce that the firm has been named a "Law Firm of the Year" for the sixth consecutive year.

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BBA Law Day CLE Program
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ATTORNEY ANNOUNCEMENTS

Baker Donelson announces the addition of **Forrest Phillips** to its Birmingham office, one of 18 new associates to join Baker Donelson.

The law firms of **Baker Donelson** and **Ober|Kaler** have combined, resulting in one of the 50 largest law firms in the country. The combined firm, which maintains the name of Baker Donelson, boasts more than 800 attorneys and advisors across 25 offices in ten states as well as Washington, D.C.



Lee Johnsey

Balch & Bingham LLP recently welcomed seven attorneys into the firm's partnership, including Birmingham attorneys **Marcus Chatterton, Adam Israel, and Lee Johnsey.**

Balch & Bingham LLP recently added seven new associates to its Atlanta, Birmingham and Gulfport offices. The following new associates will work in the firm's Birmingham office: **Tara Bush, Mateo Forero, Christina Rossi, and Nick Theodore.**

Bradley welcomes 13 new associates across the firm's three Alabama offices in Birmingham, Huntsville and Montgomery.

Gaines, Gault Hendrix, PC announces that **Jordan E. Cherry** has joined the firm as an Associate practicing in the firm's Birmingham office.

Carney Dye, LLC is pleased to announce that **George D. Gasikin III** has become an associate with the firm.

Bradley is pleased to announce that the firm has recently named nine attorneys in its Birmingham office to partner. The new partners are **Kane Burnette, Maggie Johnson Cornelius, Nicholas A. Danella, T. Parker Griffin Jr., C. Meade Hartfield, Stephen Hinton, B. Radcliff Menge, James W. Porter III and Charles A. Roberts Jr.**



Jessica Hayslip

The law firm of **Burke Harvey, LLC**, is pleased to announce that **Jessica Hayslip** has passed the Alabama State Bar Exam and has joined the firm as an associate.

Burr & Forman LLP announces the election of nine attorneys to partnership, including Birmingham attorneys **Ryan Hebson, Ingu Hwang, Anthony Romano, Trent Scofield, Matthew Scully and Megan Stephens.**

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ATTORNEY ANNOUNCEMENTS

Burr & Forman LLP announces the re-organization of its firm-wide leadership structure and election of three partners to key positions. **W. Lee Thuston** assumes the newly established role of chairman, Birmingham partner **Ed Christian** is chief executive officer, and Atlanta partner **Erich Durlacher** will be president.

Carr Allison is pleased to announce that six attorneys have been named as Shareholders, including **Angel A. Darmer** and **Sara Beth DeLisle** of Birmingham, and Birmingham attorney **Carrie H. Bates** has been named as Of Counsel.

Carr Allison is pleased to welcome Associate **Bain Hanning** to the Birmingham office.



Jonathan Hooks

Christian & Small LLP announces that **Jonathan Hooks** and **Jordan Wood** have been named partner in the firm.

The Law Offices of **David M. Cowan, LLC** announces that **Wyatt**

P. Montgomery has joined the firm as an associate.

Jonathan D. Guin has been named a Member in the Tuscaloosa-based law firm of **Campbell Guin, LLC**.



Heather Fann

Heather Fann is pleased to announce her new firm, **Fann Law**, at 2151 Highland Avenue S, Suite 110. Visit fannlaw.com for details or call (205) 263-0743.

Maynard Cooper & Gale is excited to announce the addition of

associate **Brian Robbins** to the Employee Benefits & Executive Compensation practice group in the firm's Birmingham office.

Miller, Christie & Kinney, PC is pleased to announce that **Patrick W. Franklin** has been made a partner with the firm.



Stewart McCloud

King Simmons, P.C. proudly announces that **Colin S. Clark**, former member of the 14th Marine Regiment, has joined the firm as an associate.



Suzanne A. Fleming

Lightfoot, Franklin & White LLP is pleased to announce that attorney **Brooke Garner Malcom** has been named a Partner in the firm, while **Suzanne A. Fleming** has been named Of Counsel.

Lightfoot, Franklin & White LLC is pleased to announce that it has expanded into the Texas market with the opening of an office in Houston.



Tony Jones

Retired **Lieutenant General Anthony R. (Tony) Jones** has joined **Maynard Cooper & Gale's** Government Solutions Practice as the Chair of the Defense and Aviation Strategies Group.

Maynard Cooper & Gale is pleased to announce that **Robert F. (Bob) Dow** has

joined the firm as a Shareholder in the firm's Securities Law Practice Group



M. Allison Taylor

joined the firm as a Shareholder and will serve in the firm's Corporate, Securities & Tax Practice and the Trusts, Estates and Business Planning Practice groups.

Maynard Cooper & Gale is pleased to announce that **Craig Parker** is joining the firm as its first Entrepreneur-in-Residence. In this role, Parker will focus on helping younger lawyers develop the skills and insight needed to represent and add value to entrepreneurs and start-up companies.

Maynard Cooper & Gale proudly announces **L. Justin Burney**, **Stephen D. Davis II**, **David H. Humber**, and **Guy C. Oswald III** have been named shareholders of the firm.



Jonathan K. Sprole

Former Remington Outdoor Company General Counsel **Jonathan K. Sprole** has joined **Maynard Cooper & Gale** as Of Counsel.

The law firm of **Smith, Spires & Peddy, P.C.** is pleased to announce that **Hannah H. Stokes** has joined the firm as an associate.

Webster, Henry, Lyons, Bradwell, Cohan & Speagle, P.C., is pleased to announce that **Tamera K. Erskine**, **Brannan W. Reaves**, and **S. Scott Sasser** have joined the firm's Birmingham, Montgomery, and Auburn offices, respectively.

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131st BBA ANNUAL MEETING

December 2016



◀ *Outgoing President Bob MacKenzie congratulates incoming President Leila Watson.*
Top image: Outgoing President Bob MacKenzie addresses the BBA membership.



▲ U.S. District Court Chief Judge Karon Bowdre addresses the BBA annual meeting while members of the judiciary look on.

131st BBA Annual Meeting



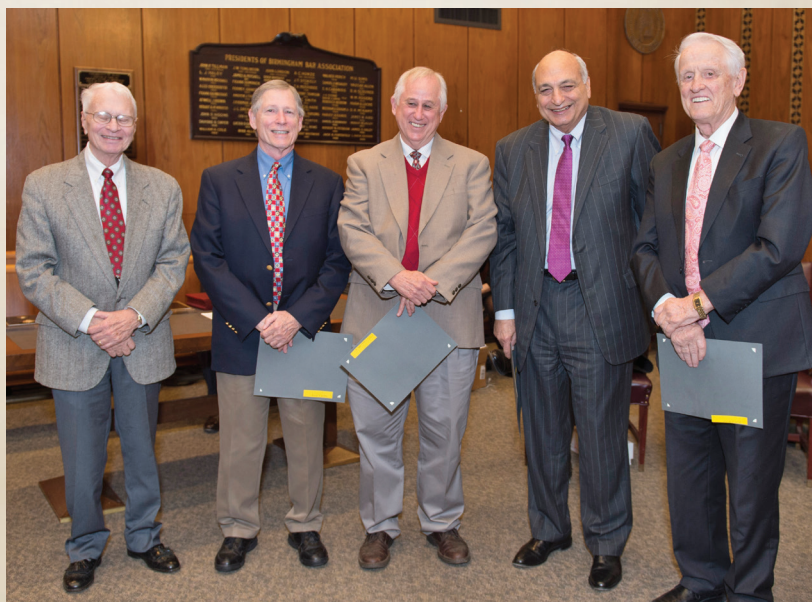
▼ Law partner Ernie Cory presents Leila Watson with a commemorative lei sent by her family.



◀ Past BBA President Marda Sydnor, right, presents the Lifetime Achievement Award to Martha Jane Patton.



▲ Maurine Evans, right, presents the L. Burton Barnes, III, Public Service Award to her father, G. Daniel (Danny) Evans.



▲ Recipients of 50-year practice certificates.



▲ BBVLP Pro Bono Award recipients.



▲ Incoming BBVLP President, Andrew Nix, thanks and acknowledges outgoing President Angie Cameron Smith.



▲ Outgoing President Bob MacKenzie is recognized by Judge Carole Smitherman and Alabama State Senator Rodger Smitherman.



▲ New BBA president Leila Watson is congratulated by Past BBA and former Alabama State Bar President Anthony (AJ) Joseph.



▲ 2016 Future Leaders Forum participants.

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