

Addendum

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NEW LAWYERS AND OLD BOOKS

Cumberland student takes discarded law books and helps new attorneys set up their own offices

With law firms moving toward electronic libraries, it is easy to forget that legal research can still be done with books. Today, law firms across the state are stacked with law books, which are barely used. As more lawyers become well versed in Westlaw or Lexis, many firms are beginning to see their paper libraries as being outdated and overly expensive.

Scott Foster, a law student at Cumberland School of Law, saw this trend as a potential benefit to new attorneys.

Scott's idea was fostered by necessity. Having decided to move back to Kentucky to open a law office, he knew that a law library would be essential. Scott also had found that on-line legal research could be cost prohibitive for new attorneys. He asked a librarian at his law school library about obtaining discarded law books. When Scott explained why he needed them, the librarian told him that people regularly call the library attempting to donate the books.

Scott decided not to wait until he heard from the librarian about available books. Instead, he started calling law firms asking if they had any books to be discarded, and offered to box up and move them. Word quickly spread around Birmingham about Scott's offer, and within a short time, he had filled up his living room, and then his garage, with books.

Scott's over-abundance of books fostered another idea: to give books to other law students. To date, Scott has helped at least six other law students build libraries for the

purpose of starting their own firms. The books that he has been

able to disburse include complete sets of *AmJur*, *Southern Reporters* and codes.

Josh Bearden, a law student from Albertville, was helped by Scott's program. Recently, Josh traveled with Scott to Demopolis to pick up books. Attorney **Hubbard Harvey, Sr.** passed away in 2002, after practicing law for 52 years. Harvey's family contacted Scott about taking his law library. When Scott and Josh arrived, they were amazed to find a library that most large firms would be envious to have. It took eight hours for them to load the 3,000 books donated by the Harvey family. Josh plans to use these books to start his own practice in Marshall County. He best summed up Scott Foster and his book program as "not being afraid to call and ask for help."

Scott will graduate in June 2003. With help from his law school, he is attempting to find someone willing to continue the book program. In the interim, you can contact the author at rjackson@auburnattorney.com or (334) 321-2006, if you are interested in donating law books.

—Raymond L. Jackson, Jr., Auburn



Paperless Appeal

Within a few years, it is envisioned that attorneys and court officials will be able to view docket sheets pertaining to pending appeals. . .and obtain filing extensions. . .by electronic means.

A postscript to "Paperless Court," featured in the April 2003 *Addendum*: The Alabama Court of Civil Appeals invites Alabama lawyers to participate in its paperless pilot project by electronically filing their appeals.

The air was charged with excitement in the clerk's office at the Alabama Court of Civil Appeals as

everyone crowded around, craning their necks to catch a glimpse of the computer screen. As the first document to appear on the screen was brought into focus, the crowd murmured expressions of admiration for the extraordinary clarity of the print, the handwriting and even the stamped filing dates on the documents. The staff of the court of civil appeals was witnessing the first "paperless appeal," after its transmission by electronic mail from Phenix City.

All Alabama attorneys and court officials are now invited to participate in the "paperless appeal" project in appeals filed with the Alabama Court of Civil Appeals. Until the Alabama Rules of Appellate Procedure are formally amended to provide for e-filing of records and briefs, the court of civil appeals is encouraging counsel and court officials to send an electronic copy of the record and briefs along with the usual paper copies now required. The electronic copies may be transmitted on IBM compatible 3.5" floppy diskettes, IBM compatible CD-R format compact discs, or via e-mail attachments sent to civbriefs@appellate.state.al.us. The electronic submissions should consist of data files in the following document formats only: WordPerfect 5.0 and above (*.WPD), Microsoft Word 6.0 or above (*.Doc), Rich Text Format (*.RTF), or Adobe Portable Document File readable by Acrobat Reader 4.0 or above (*.PDF).

Kim Mask has assumed primary responsibility for handling the project, and **John Wilkerson**, clerk of the court of civil appeals, says that she is doing a fantastic job.

Within a few years, attorneys and court officials should be able to view docket sheets pertaining to pending appeals, and get certain filing extensions, copies of released

opinions and certificates of judgments, by electronic means. In fact, paper appeals may become an anachronism on the Alabama Court of Civil Appeals.

—Judge Sharon Yates,
Montgomery



The Alabama State Bar's **Solo & Small Practitioner's Committee** wants to know if there is any interest in forming a section. The section would create a forum for discussion of small firm issues; provide networking opportunities; establish benefits and develop CLE programs for members; obtain greater representation at the Board of Bar Commissioners; and perform all functions permitted of ASB sections.

Before a section can be formed, we must identify lawyers who would be interested in joining. For more information, contact Don Wiginton, 200 Office Park Drive, Suite 314, Birmingham 35223-2404, don@wiginton.com.

Putting Passion in Your Practice

The overwhelming consensus is that your practice must be about more than just you

Recently, I read Max Lucado's experience of almost losing his two-year-old daughter to drowning when she accidentally fell into a pool. Lucado walked away from the experience with a renewed commitment to living life passionately. But what is passion and how can we bring it into our legal practice? Maybe, we just need to renew the passion that we had when we first entered the legal field.

Passion is an intense, extreme or overpowering feeling that compels action. It is a strong devotion to some activity or concept. It is the zeal with which we attack our day and make a difference in the lives of others. Lucado's story compelled me to examine how to zealously represent my clients, and put passion in my practice.

Lucado feels that the enemy of passion takes "what is most precious and make[s] it appear most common." The risk is not losing my practice, but for it to be "painted in a coat of drabness" such that I don't appreciate it. We all drag to work sometimes, thinking about starting over the same old routine. The trick is to not let that feeling take over, but to break that routine and be enthusiastic about our work.

I observed several people whom I thought might have some insight into a passionate practice. The overwhelming consensus is that your practice must be about more than you. **Robert Baugh**, with Sirote & Permutt, says, "When I go into work I remember that I am there to help others with problems. I remember my client is counting on me to help resolve that problem. When I go to work, it is not for me but to help someone else. It is a great motivator to remember that someone is relying on me."

The practice of law has not become 'old hat' to **ASB President-Elect Bill Clark**, of Redden, Mills & Clark, because he likes to help people with very serious problems. **Tom Methvin**, of Beasley, Allen, Crow, Methvin, Portis & Miles, says, "I believe in what I am doing. I feel called to practice law and that is why I don't quit. Without lawyers, average folks would not have representation and everybody

deserves justice."

People who are excited about what they are doing

are an inspiration. Choose positive, energetic co-workers, and it is easy to remain passionate. **Dean Corliss**, of Bradley Arant Rose & White, did this and says it makes all the difference.

Lucado believes that doing what you are called to do rather than just working a job keeps you passionate.

Circuit Judge Joseph Boohaker, of the Tenth Judicial Circuit, believes "law is a vocation, not a profession," and that "every problem that comes before me is a new problem and I enjoy creating order from disorder."

Whispers of procrastinate are seductive, Lucado cautions. Take stock in your practice now and decide to be passionate. The "faces around your table will soon be at tables of their own. Hence, books will go unread, games will go unplayed, hearts will go unnurtured, and opportunities will go ignored. All because the poison of the ordinary has deadened your senses to the magic of the moment." Find the passion within yourself and it will carry over from your home to your office. Be passionate all the time.

Passionate people are goal oriented. They take charge of their lives and make things happen. They are driven to reach beyond themselves and help others. They find ways to take ordinary, daily activities and see them in new and challenging ways. The legal field is full of passionate people, because it allows us to be zealous. But when the excitement is gone, when the drab and ordinary take over, overcome the enemy, take what is dull and common in your routine, and determine to find a renewed sense of zeal. Put the passion back into your practice!

—Leatha Gilbert, Birmingham



The Sarbane

Stopping Scandals Before They Start: Overview of the Act

Throughout the past year, the headlines of our local and national publications have been plagued with stories of fraud and deceit by corporate executives of high profile companies, including the likes of Enron, WorldCom and Arthur Andersen. Most recently, in our own backyard, we have watched as the HealthSouth scandal has unfolded before our eyes. These scandals have indisputably left a bitter taste in the mouths of employees, customers and investors alike and have left the American public as a whole questioning how to prevent this vicious cycle of unethical conduct.

In response to the sentiment of the American public, the Sarbanes-Oxley Act of 2002 ("the Act") was passed by Congress on July 25, 2002 and signed into law by President Bush on July 30, 2002. Enacted on the heels of the collapse of several high profile public corporations, the Act has quickly gained a reputation as the most significant legislation in the securities area since the early 1930s. In an attempt to restore a sense of ethics to public companies and once again invoke investor confidence, the Act has increased government regulation of publicly held companies by establishing audit committees, enhancing the disclosure obligations of public companies, mandating reporting of corporate wrongdoing, lengthening the statute of limitations for private securities fraud lawsuits, and increasing criminal penalties for securities fraud.

The Act has also established guidelines that govern not only the conduct, but also the disclosure of the conduct, of public companies, their auditors, officers, directors, attorneys, and employees. One of the more stringent requirements under the Act, and likely to be one of the more successful elements, is the complaint notification system. All public

companies are required to establish a confidential procedure to receive and address complaints of ethical violations and misconduct. While some companies have established telephone hot lines by which individuals may call to report violations, the latest and most technologically advanced reporting system is known as Ethicspoint. Ethicspoint is a wholly anonymous, Internet-based reporting system that allows employees to report violations 24 hours a day from any part of the world. This system allows employees, who are usually aware of inappropriate behavior long before management, to report this information in an anonymous manner without the threat of retaliation by their employer.

Will the implementation of this Act halt the lies and deceit that have become the norm for corporations over the past few years? While the effects stemming from the implementation are not likely to be realized overnight, the fast-approaching compliance deadline will hold the corporations' feet to the fire and, it is hoped, help the employees and investors of America's corporations rest a little easier at night.

—Joy A. Jaye, Birmingham



Sarbanes-Oxley Act

Whistle-Blower Provision of the Act Affects Employers

Even though the recent threat of war in Iraq has dimmed the media spotlight on corporate accounting scandals, the effect of the Sarbanes-Oxley Act of 2002 on employers and their human resources departments remains intense. Though Congress passed the Act, effective July 30, 2002, in response to revelations of corporate fraud resulting in bankruptcies and billion dollar losses to investors, its impact reaches beyond the financial officers of a company. The Act's whistle-blower provision places responsibility on publicly-traded companies to prevent retaliation against employees who provide information or assist in a federal fraud investigation. Implementation of related policies typically falls on human resources departments of publicly-traded companies.

The Act provides a civil action to employees who experience certain retaliatory actions by any officer, employee, contractor, subcontractor, or agent of a publicly traded company (which is broadly defined). These actions include discharging, demoting, suspending, threatening, harassing, or discriminating against an employee who assists in an investigation or lawfully provides information to a federal regulatory or law enforcement agency, a member or committee of Congress, or a person with supervisory authority over the employee who has the authority to investigate or terminate the misconduct. This whistleblower protection applies to the disclosure of information regarding what the employee reasonably believes is a violation of federal mail, wire, bank or securities fraud statutes, rules or regulations of the SEC, or any other federal law relating to fraud against shareholders. An employee who believes he or she has been subjected to retaliation must file a charge of dis-

crimination against the employer with the Department of Labor within 90 days of the violation. If the DOL does not issue a decision within 180 days, the employee may file a lawsuit in federal court. If the employee wins the suit, he or she may be reinstated with back pay and interest and compensated for other damages and expenses, including attorney fees.

In addition to civil penalties, the new law amends the criminal statute which bars retaliation against witnesses (*18 U.S.C. § 1513*) to prohibit one from taking harmful action, including interference with the lawful employment or livelihood of a person, for providing truthful information relating to the commission or possible commission of a federal crime to a law enforcement officer. This provision protects every employee from adverse action based on reporting a criminal matter to local, state or federal law enforcement.

To comply with the new laws, employers should take all complaints of fraud seriously and investigate and resolve the matter with the gravity of a racial or sexual harassment investigation. Human resource departments should also establish and implement procedures for required record retention (see *18 U.S.C. §1512* and *18 U.S.C. §1519*) and review them frequently, especially when there is a pending investigation, to ensure documents are not destroyed or lost. It is important that corporations not only act responsibly but that employees and stockholders have confidence in their actions. Thus, it is essential to follow the law and promptly investigate complaints to ensure that corporate policy is being followed and that the public maintains trust in the integrity of the enterprise.

—Susan Bullock, Birmingham



ALL IN A DAY'S WORK

District Clerk's office is an endless source of entertainment and drama

All of the law schools in the United States could not prepare you for the District Clerk's office. It is a cross between Judge Judy and Night Court. Nobody has an attorney, of course, because they all are amateur attorneys themselves. This can lead to some very frustrating events for all parties.

We have an endless supply of "entertainment," however. For example, one nice lady kept asking how to get someone out on bond. I don't know who she was interested in bonding out, but she had to hurry up and get that person out of jail because her grass needed mowing.

Then, there was the woman who came in to make a payment on her case. The judge allowed her to pay her fines and court costs on a monthly basis. While she was making her payment, she asked about her balance. She had been giving her husband the money every month to make the payment, so she was quite surprised to find that this was the first payment we had received. At her urging, we double-checked, triple-checked and checked again. She finally left, only to turn up in our jail-work the next morning on a domestic violence charge. Her husband came in the next afternoon to catch up her payments.

What is really surprising is what people will put in writing. One lady answered her small claims suit, admitting she owed the money. She offered to make payments to the plaintiff, but in lieu of interest, she was willing to have sex with him once a week. She actually put this in her answer!

My all-time favorite is the defendant who called, complaining because her case had been featured on "County Law" (Montgomery County's version of COPS). These cases are always reviewed for accuracy before airing. She insisted there was some mistake. She was informed that if she would just drop by our office and ask for "Joe", he would be glad to clear it up for her. Sure enough, she showed up and asked for Joe. When she reminded him of who she was, and again insisted there was a mistake, he assured her that he would take care of it. While she waited, he went to his desk and called security, who came around and arrested her. This cleared it up as far as we were concerned.

On any given day, similar stories are unfolding.

The full moon,

holidays, large community events and other occasions bring out the "best" in our clientele. There are more fugitives picked up at Christmas (they come home for the holidays). There is more domestic violence around St. Valentine's Day and Mother's Day. Any three-day weekend increases the DUI docket. We have learned to prepare for holidays in less traditional methods than most people, but it does keep our lives interesting.

—Holly Faems, Montgomery



Local Bar Award of Achievement

The Alabama State Bar Local Bar Award of Achievement recognizes local bar associations for outstanding contributions to their communities. Awards will be given during the ASB's Annual Meeting in July. Bar associations compete based on their size: large, medium or small. The following criteria will be used to judge the contestants for each category:

- The degree of participation by the individual bar in advancing programs to benefit the community;
- The quality and extent of the impact of the bar's participation on the citizens in that community; and
- The degree of enhancement to the bar's image in the community.

Bar associations must submit an application by June 13, 2003. For a form, contact Ed Patterson, ASB director of programs, at (334) 269-1515, ext. 161, or P. O. Box 671, Montgomery 36101.

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Mobile Co. Probate Court A Repository of History

Who's Your Daddy?

Records of the past can provide valuable guideposts to understanding current circumstances. Toby Keith's refrain "Who's Your Daddy?" reflects mankind's urge to identify our antecedents for comprehension of the present.

Mobile County Probate Court has protected the "peoples' records" for over 180 years. Many files pre-date the court's establishment, and were obtained as part of the French and Spanish legacy of the Gulf Coast. The oldest document is a 1715 concession, transferring property rights on Massacre Island (now Dauphin Island) to Joseph de la Pointe.

In 1989, under then **Probate Judge Lionel Noonan**, the court started the mammoth job of identifying, preserving and indexing its historical records. As current **Judge Don Davis**, who is continuing this effort, said, the probate court is "the court of the people." Its records are the benefaction of its citizenry, chronicling their life's issues from birth to death.

Preservation officially began in June 1989, when **Judy Busby, Coll'ette King** (now supervisor of the court's Archives Section) and two other employees climbed into the Mobile County Courthouse attic to retrieve aged documents. Court employees and jail trustees labored for more than ten years over these documents, some of which were in French and Spanish and now translated into English. The court's testimonial phylum of the past includes the originals of wills (from 1813), petitions to

become a slave, bounties paid on wolves, case records, and amnesty/proclamation oaths (1865 and 1868). A complete list is at www.mobile-county.net/probate.

Safekeeping the files has been a problem. In 1838, John Caro, under the direction of Governor Arthur Bagsby, snared and removed court records to Pensacola. Court officials traveled to Pensacola and threatened Caro with arrest to secure the return of the documents. During the Civil War, the Confederate government formed a plan to move the files to Biloxi, in case of "Yankee bombardment," but events never necessitated it. In 1997, the court learned that original documents of judicial cases from the Colonial period (1819–1850), in the hands of a Baldwin County antique dealer, were to be auctioned. Court personnel went to the auction site and seized over 130 Colonial cases and wills.

The program has drawn national attention. Since 1992, the Utah Genealogical Society, with The Church of Jesus Christ of Latter Day Saints volunteers and court personnel, has worked to complete the first inventory of the court's records in 104 years.

If you have roots in South Alabama, and want to find out "Who's Your Daddy" (or your granddaddy), the Mobile County Probate Court probably has the information. The existence of these records and their availability are the result of the hard work of the Probate Court of Mobile County.

—Barbara Holley Reid, Mobile

Snack Tax? Fat Chance!

New state tax option offers a cornucopia of benefits

Alabama needs to generate revenue but plans to raise taxes like sales, property and sin taxes were quickly rejected. Why not join 18 other states and consider charging a “fat tax” on foods with little or no nutritional value? Taxes placed on cookies, candy and nutritionally questionable convenience foods would raise revenue without affecting those who make wiser diet choices. Excess revenue could be used for public health campaigns and nutrition education. Wow! A tax that’s *good* for us!

Obesity is a national epidemic without age, gender, ethnic, income, or any other boundaries. Disclosure labeling of fat, carbohydrates, calories and other nutritional information has done nothing to relieve our national obesity problem. While labeling has improved opportunities for informed choices, it has done little more than fatten the printer’s wallet and provide consumer guilt trips. Taxing unhealthy eating could help change behavior, reward better choices and improve the national scenery by reducing highway litter,

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—Deborah S

Don't Forget! ASB 2003 Annual Meeting, July 16-19, Mobile

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