

August 2005

Addendum

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Hearts of Dixie Hits Home

Birmingham attorney Jim Noles introduces us to some of Alabama's celebrities and characters

As an Alabama native, I seldom remember how many amazing citizens that this state has had throughout its history. But Birmingham attorney **James (Jim) Noles'** latest book, *Hearts of Dixie, Fifty Alabamians and the State They Called Home*, reminds me of why I am proud to be an Alabamian. *Hearts of Dixie* tells the stories of 50 of our state's historical personalities. One of the book's engaging features is that famous living Alabamians wrote introductions for the biographies. For example, "Friends" star **Courtney Cox** profiles legendary actress **Tallulah Bankhead**, while ex-NFL great **John Stallworth** is paired with **Joe Louis**, "Alabama" musician **Randy Owen** with **Hank Williams**, *Forrest Gump* author **Winston Groom** with **Truman Capote**, Auburn football legend **Pat Sullivan** with **Shug Jordan**, ex-Alabama football star **John Croyle** with **Bear Bryant**, and **United States Representative Artur Davis** with **Booker T. Washington**.

Jim Noles is a partner in the firm of **Balch & Bingham LLP**. His father was a career Army officer, and Jim was raised as an Army "brat." It was a natural progression that he attended the United States Military Academy (West Point), where he majored in history. After leaving the Army, Jim attended law school at the University of Texas in Austin, while clerking at Balch & Bingham during the summers. Jim is married and the father of two young sons.

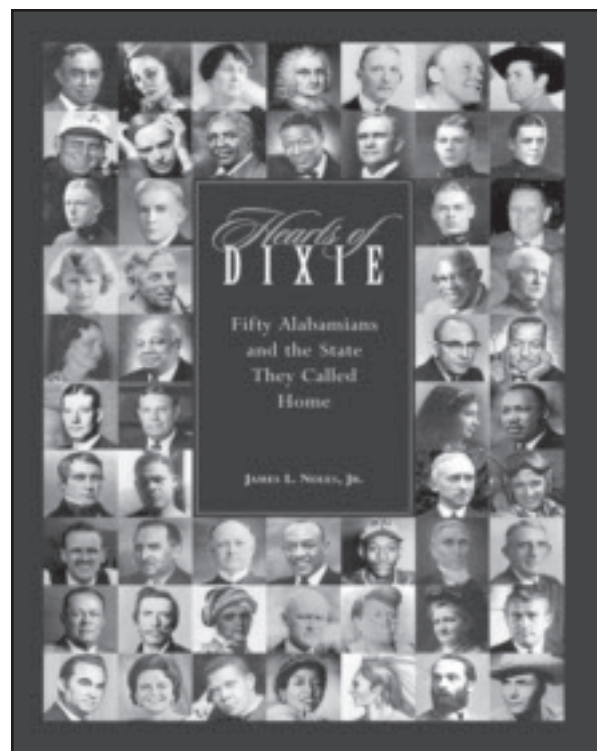
He always possessed a love of history, and he began his writing career by submitting articles to newspapers and magazines. His first book was a photographic history of Alabama Power Company. He went on to author several

more books, most recently *Twenty-Three Minutes to Eternity: The Final Voyage of the Escort Carrier USS Liscome Bay* (University of Alabama, 2004), and *Camp Rucker During World War II* (Arcadia, 2002).

Besides his law practice, book-writing and family, Jim also helps coordinate the local **Veteran's History Project**, which teams local lawyers with local veterans, getting their oral histories of wartime service. The interviews are recorded, transcribed and archived in the Linn Henley Research Library in downtown Birmingham. This project is saving an oral history of our country and our local contributions to the military for future generations. More information on this project can be found at the Library of Congress Web site at www.loc.gov/vets/about.

I encourage you to get a copy of *Hearts of Dixie* for your nightstand or coffee table. You will be utterly fascinated! If it is not available in your area, you can order one from Will Publishing at (205) 250-9006. A portion of the proceeds will help fund the Jenice Riley Memorial Scholarship, named after the late daughter of Governor and Mrs. Bob Riley.

—By Leatha K. Gilbert, Birmingham





Ponderings from Bucks Pocket

Rocky Watson determines that what he learned and the people he met during his campaign made running worth the time and effort

I am writing this letter from deep in the woods in Bucks Pocket, located in northeast Alabama on the DeKalb-Jackson county line. Some of you may not be aware of the legend of Bucks Pocket. According to **Big Jim Folsom** (the one who was governor in the '40s and '50s), Bucks Pocket is the place where all politicians who have lost an election go to lick their wounds. For those of you who followed the election for president of the Alabama State Bar, you now know why I am writing the letter from here in Bucks Pocket.

Bucks Pocket is indeed a beautiful place. It is a deep gorge which is richly adorned with plant life and animal life of all types. It is truly a peaceful place, and I can only say that I wish Boots could have visited here after the election.

While contemplating my loss, it occurred to me that, in the 30 years that I have practiced law, I rarely have learned anything in those cases that I have won. However, I have learned a plethora of lessons from those cases that I lost. Therefore, I thought that I ought to spend a little time trying to decipher the lessons to be learned from this resounding defeat.

First, in campaigning throughout the state, I learned what a wonderful group of people comprise the Alabama State Bar. I was warmly received everywhere I went. I was struck by the comradery, friendship and respect between lawyers. During the entire 30 years that I have been practicing law, I have listened to old lawyers (and now I am one) lament the decline in quality and professionalism among lawyers. I would admit to having said the same thing, except that I was admonished by my father not to admit that I swallowed the dipper even if the handle was sticking out of my mouth. But I learned in this campaign that it just isn't so. Lawyers I met

with around this state have a high degree of professionalism and competence and I am truly blessed to be a member of this group.

Second, I came to realize that those of us who live and practice in rural settings have every bit as much opportunity to serve the state bar, shape its policies and participate in its activities as do those who live in large urban areas and practice in large firms. I am not sure we have as much opportunity to be elected president, but there are many areas of service in which we can participate and in which I have been blessed to participate. The experiences that I have had serving on the commission, on the executive council, on the disciplinary commission and in other capacities have truly been some of the most rewarding aspects of my life.

The last thing that I am going to mention that I learned, though there are many others, is that I had far more friends that I ever had a right to expect. I called on a lot of people to help me in this campaign, and they all responded. I will not try to individually recognize anyone in fear that I might leave out someone who contributed. Let it suffice to say that I had people do things in an effort to help my campaign that I would have had no right to ask them to do and did not ask them to do. That fact alone made running worth the effort, despite the results.

I thank all of you in the state bar for the opportunity that I have been given in the past to serve, and I expect to serve more in the future. Boots Gale will be an outstanding president of the Alabama State Bar and I congratulate him on his victory. Thanks to each of you for your interest and participation.

—By W. N. Watson, Fort Payne

Mental Health Resources Are Available and Helpful



Probate courts have a wealth of information at hand to help clients and their families in mental health emergencies

Many lawyers do not know that probate courts handle involuntary commitment hearings for mentally ill individuals who have become a danger to themselves or others and are refusing voluntary treatment. Lawyers need to be aware of the resources of probate court to help clients and their families. As **Jefferson County Probate Judge Alan King** mentions in CLE seminars, “Studies show there are one in four families who may be touched by mental illness.”

“Even if they don’t practice in probate court, attorneys may very well have occasion to refer their clients to probate court in the event of a mental health emergency situation,” Judge King said. Probate courts have information on mental health and the knowledge of how to legally proceed. Once a petition to commit the defendant is filed, a *guardian ad litem* is appointed to represent the defendant, while another lawyer, known as an advocate, represents the petitioner. Following a hearing, probate judges in each county then

determine whether an involuntary commitment is ordered.

Aside from involuntary commitments, once a probate case, such as a guardianship, conservatorship or any number of other cases, has been filed, attorneys should stay on top of the file as the hearing date approaches. Staffs in probate courts throughout Alabama have a tremendous workload and any help is appreciated in the area of notice. Sometimes not everyone has good service of process and often this is discovered at the hearing or shortly before. If known in advance, an attorney sometimes can make arrangements with family members or a special process server could be used, instead of having to continue the case.

Lawyers should also strive for good communication. “It’s always good practice for probate lawyers to make contact with other attorneys before a hearing to determine if perhaps a middle ground can be reached, or possibly to narrow the issues,” King said.

—By Mack Knopf, Birmingham

Advanced Training in Domestic Violence Issues in Mediation: Protecting the Safety of the Victim

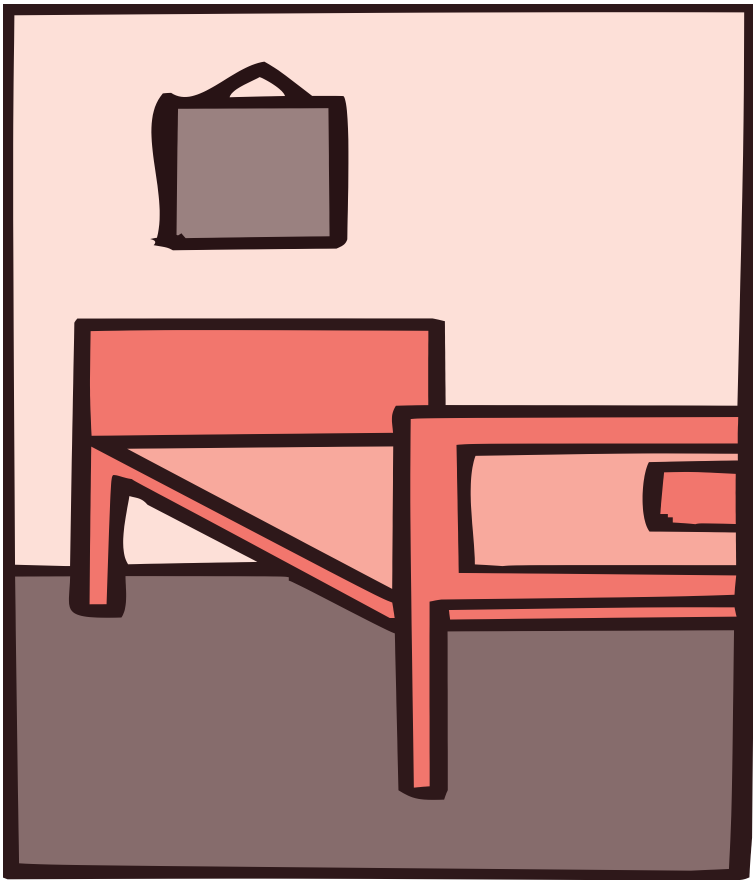
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Living Wills Should Be the Rule and Not the Exception

The Terri Schiavo case only re-emphasized what you should already know about planning for the inevitable

What would your loved one have wanted? No family should face this question in times of grief. The highly-publicized Terri Schiavo case spotlights why living wills, also known as **Advanced Directives for Health Care**, are so important. Family, friends and clients have likely inquired about living wills since the media frenzy surrounding the tragic Schiavo situation.

The purpose of a living will is to clearly delineate what actions should be taken on behalf of someone who is no longer able to give direction to healthcare providers or family regarding medical treatment options. Living wills should specify whether an individual wants medically indicated life-sustaining treatment, even if such treatment will not provide a cure and may only prolong the dying process. Living wills address whether medically indicated artificially-provided nutrition and hydration (such as a feeding tube) should be provided or withheld. Living wills allow the appointment of a healthcare proxy, or representative, to make medical treatment decisions in the event of incapacitation.

Additional considerations can be included. A living will can set forth an individual's wishes regarding organ donation or instructions regarding life-sustaining treatment in order to increase survivability of an unborn child, in the event of pregnancy at the time of incapacitation.

The Alabama State Bar Web site (www.alabar.org) has an Advance Directive for Healthcare form which can be accessed free of charge. Encourage your family, friends and

clients to execute a living will to ensure that their wishes are followed and not litigated in court.

—By Emily Marks, Montgomery

Notice of and Opportunity for Comment on Amendments to the Rules and Internal Operating Procedures of the U.S. Court of Appeals for the Eleventh Circuit

Pursuant to 28 U.S.C. §2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules and Internal Operating Procedures of the U.S. Court of Appeals for the Eleventh Circuit.

A copy of the proposed amendments may be obtained on and after August 1, 2005, from the court's Web site at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., NW, Atlanta, Georgia 30303 (phone 404-335-6100). Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by August 31, 2005.

Your Gift of Time Will Always Be In Good Taste

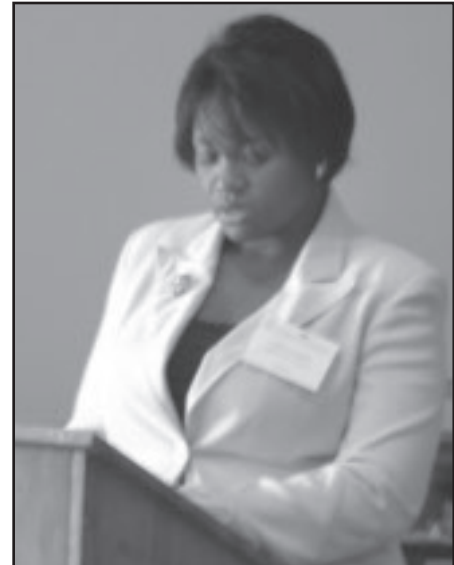
The Living Will Clinic helps Alabama families deal with matters of "life and death"

Maybe the one good thing to come out of the Terry Schiavo case in Florida is the interest it has generated in living wills also known as **Advance Health Care Directives**. All around the country people have decided that they never want their family placed in such an unfortunate situation and so have decided to get their affairs in order. This desire has led to a flood of inquiries and requests for assistance. To help stem the tide the **Alabama State Bar Volunteer Lawyers Program (VLP)** teamed up with the **Central Alabama Aging Consortium** and **Legal Services Alabama** to hold a **Community Legal Education Program and Living Will Clinic** June 15 in Montgomery.

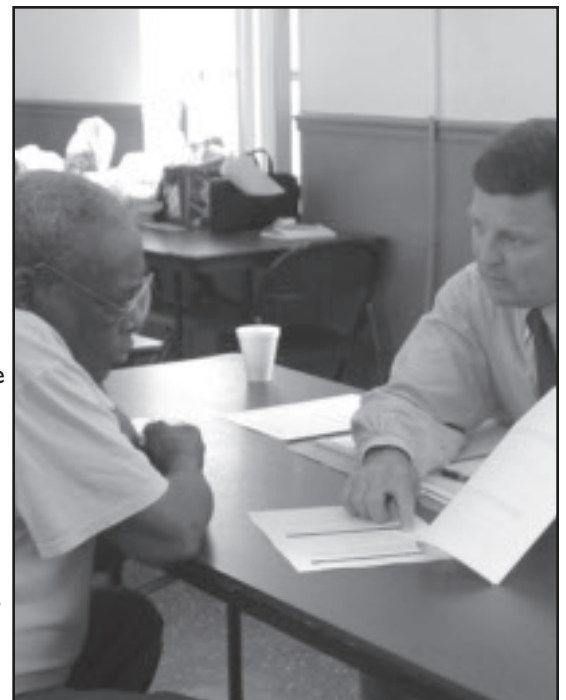
The Living Will Clinic was held at the St. Paul Church Senior Center and Nutrition Site which is part of the Central Alabama Aging Consortium. All of the senior centers that work in conjunction with the Consortium were invited to attend the program. Many of these centers happily accepted the invitation, bringing interested clients by the bus- and vanload, filling the auditorium to capacity. The program began with a short talk on living wills presented by **Jaffe Pickett**, a staff attorney with LSA who specializes in aging law. Participants were then invited to meet with a volunteer attorney. Attorneys answered questions and assisted in the preparation and execution of living wills. VLP attorneys who participated in the program include: **Richard E. Broughton, Malcolm Carmichael, Marci Johns, Paul Cooper, William Messer, Robert Powers, Riley Robey, Angela Starr, Micki Beth Stiller, and Robert Varley**. These volunteers received support from LSA attorneys **Debra Hansen** and **Kimberlee Gosney** and paralegal **Rosetta Crowell**. These volunteer attorneys spoke with scores of seniors answering questions and addressing their

concerns. By the end of the morning, they had helped more than 50 people complete a living will. **Linda Lund**, director of the VLP, reported, "The senior center directors gave the program high marks. They repeatedly thanked us for coming and praised the volunteer attorneys for the gift of their time."

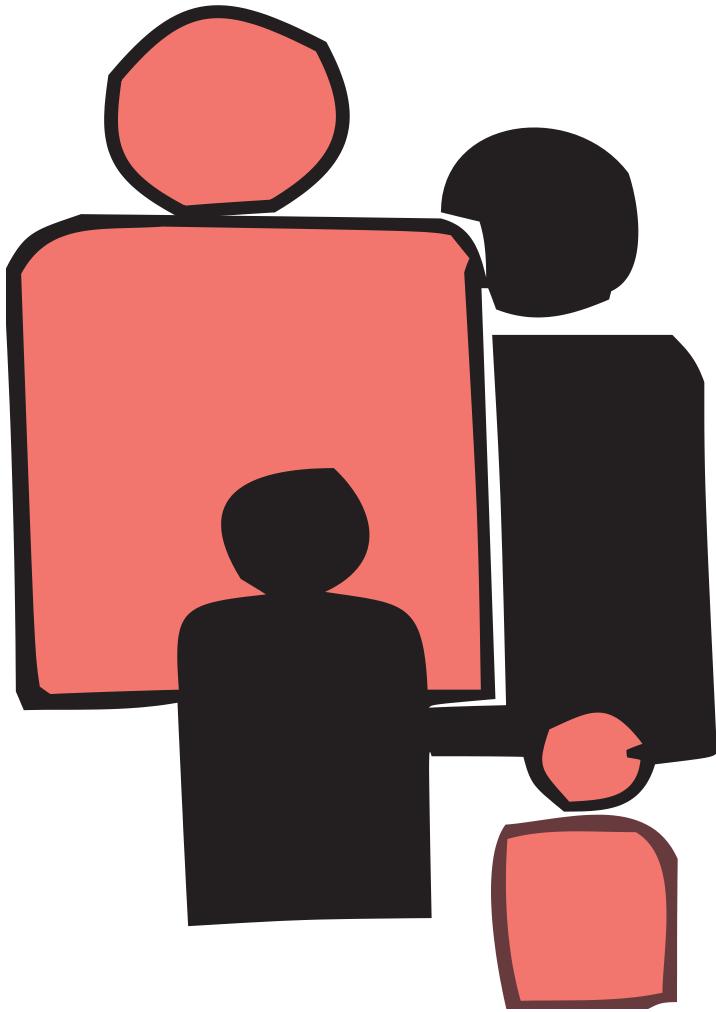
The Living Will Clinic was such a success that additional programs are being planned for this month in Anniston, Gadsden and Sylacauga. If you are an attorney in Etowah, Calhoun or Talladega county and would like to volunteer, contact Linda Lund at (334) 269-1515.



Jaffe Pickett, with LSA, discusses living wills during the recent Community Legal Education Program and Living Will Clinic.



Montgomery attorney Richard Broughton (right) and a senior citizen go over living wills during the June clinic.



Valentine Nesbit and The Foundational Principles of Chapter 13 Bankruptcy

An Alabama attorney's vision
continues to aid the bankruptcy
system today

The views expressed in this article are those of the author and do not necessarily reflect those of the United States Trustee Program of the Department of Justice.

On April 20, 2005, President Bush signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. At the signing the President stated, "America is a nation of personal responsibility where people are expected to meet their obligations. We're also a nation of fairness and compassion where those who need it most are afforded a fresh start. The act of Congress that I sign today will protect those who legitimately need help, stop those who try to commit fraud, and bring greater stability and fairness to our financial system." (President Signs Bankruptcy Abuse Prevention, Consumer Protection Act, at www.whitehouse.gov/)

The President's remarks echo the foundational principles enunciated by **Valentine Jordan Nesbit**, one of the first people to conceive of Chapter 13. See Timothy W. Dixon & David G. Epstein, "Where Did Chapter 13 Come From And Where Should It Go?", 10 *Am. Bank. Inst. L. Rev.* 741 (2002). That Nesbit was one of the founders of Chapter 13 perhaps

will strike some as odd. Nesbit was not one who was in need of bankruptcy protection. Instead, "[he] came from a wealthy and socially prominent family in South Carolina" and in 1908 "entered [legal] practice in Birmingham, Alabama." *Id.* At 747.

Asked how he had become interested in consumer bankruptcy, Nesbit responded: "At first it was rather a sociological proposition... I was interested to see if I could aid in rehabilitating men involved in financial difficulties." *Id.* At 748. As an appointed bankruptcy referee in 1930's Alabama, Nesbit believed that "the ordinary wage-earning debtor wanted to pay his debts in full, but often needed some breathing room in order to do so." *Id.* At 749.

In a precursor to what would eventually become some of the guiding principles of Chapter 13, Nesbit explained "that in his scheme the debtor was entitled to a living for himself and his family, and if there is anything left, it would be divided among the creditors..." *Id.* At 748. Nesbit's overriding concern appeared to be for the family: "I am not trying so much to protect the debtor, but his family..." *Id.*

Valentine Nesbit's original vision of the bankruptcy system, as a tool to protect the family and to provide an honest and orderly repayment to creditors, continues to guide the Chapter 13 system today.

—By Kristopher Aungst, Columbus, Ohio

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There Has to Be a Better Way

How do we protect the rights of disabled clients? One attorney's experience with the Alabama Family Trust

My client suffered from several disabilities, including mild to moderate mental retardation. As he was legally incompetent, a *guardian ad litem* (GAL) was appointed to ensure that the terms of his settlement were in his best interest. We often tell our clients that in settlement, there are no winners or losers. This time, however, I really believed that my client was the victor. To my surprise, the real battle had just begun.

My client received Supplemental Security Income (SSI) and Medicaid benefits. As he was going to receive more than \$2,000 in settlement proceeds, he risked losing his eligibility for these benefits. To be exact, if he did not spend down his money to an amount below \$2,000 (within 11 months), he would lose his benefits.

We first considered the Alabama Family Trust (Trust), which was created for these circumstances. By placing my client's money in this trust, he would remain eligible for SSI and Medicaid benefits. We were on board until we discovered that the minimum contribution was \$5,000, which was a non-refundable amount secured to maintain the Trust.¹ This fee would almost "devour" my client's settlement proceeds.

Although another option was establishing a special needs trust, the GAL immediately ruled out this alternative. In her experience, it was difficult to find a bank that would set up a trust for a small amount of money.

We were left with establishing a conservatorship, which means that my client is still faced with losing his benefits. Unfortunately, in order to keep his "spend-down clock" from running, I am holding *his* money in my trust account until we can think of enough ways to quickly spend down the same. Surely, there are better ways to protect the needs of the disabled members of our community.

—By Tamula R. Yelling, Birmingham

¹As of the writing of this article, a bill was waiting to be signed by Governor Riley, wherein the State of Alabama would provide financial support to the Trust. If the bill passes, the minimum contribution will drop to \$100; however, there will be a \$25 fee each time a check is written for the client. If the bill does not pass, then the Trust will cease to exist.

Humor in the Courtroom: Sometimes It Comes Out All Wrong

Truth or Consequences? Sometimes it's best to
stop talking while you're ahead

Prosecutor:

"The State proved beyond a reasonable doubt that the defendant is guilty of driving while intoxicated. Deputy Paul testified about responding to a complaint that the defendant was passed out in a car outside of where his former girlfriend lives. Defendant was asleep with about half a bottle of Crown Royal sitting between his legs. There were six empty beer cans on the floor. Deputy Paul shined his flashlight in on the defendant, tapped on the window and assisted the defendant out of the car before proceeding with sobriety tests. Mr. Yale was asked to touch his finger to his nose; he poked himself in the eye. When asked to walk a straight line, he began to cry about his girlfriend quitting him. When asked to take a breath test, he blew 0.20.

"The defendant pleads not guilty to DWI. The law says he is guilty. He was alone in the car, had actual physical control of the car and was drunk. Apply the law to the facts and the evidence, and find him guilty."

Defense:

"The prosecutor has the facts, the evidence and the law straight. But, she hasn't told you the truth, and without truth there can be no justice. Mr. Yale told Deputy Paul that he came over to have a few drinks with his girlfriend and she wouldn't let him in; he drank the alcohol himself because he was so hurt. He knew that he was too drunk to drive, so he thought he would sleep it off.

"To drive means to operate or put in motion. The car was parked, engine off, keys on the floor—no harm was done. What might have been is not in evidence; there is no truth in fantasy. Don't be bullied by the facts, evidence or the law; be guided by the truth. Mr. Yale was intoxicated but he was not driving. Find him not guilty because that's what the truth is."

Prosecutor:

"The defendant's blood alcohol level was nearly three times the legal limit. Sure, the car was parked, engine off and keys on the floor, but it doesn't matter. He could have driven the car and seriously injured himself and others. That's called actual physical control. That's the law. And never mind what the truth is."

—By *Monica Y. Agee, Birmingham*



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