

THE ABBHS NEWSLETTER

ALABAMA BENCH AND BAR HISTORICAL
SOCIETY



Alabama's Electric Chair

Riding the Lightning: Kilby Prison and the Big Yellow Mama 1927-1965

By S. Jonathan Bass

Louisiana they called it “Gruesome Gertie.” Tennessee officials named theirs “Old Smokey.” Several states, including Georgia and Florida used the moniker, “Old Sparky.” Other states dubbed the electric chair, “Sizzlin’ Sally.” After Alabama prison officials painted theirs with five gallons of shocking, reflective-yellow, center-stripe road paint, someone said, “that’s one big yellow mama.” The name stuck. For almost forty years, Kilby Prison near Montgomery housed Alabama’s death chair. Since it was first used in April 1927 until a moratorium on the death penalty in 1965, some 153 inmates—127 black, 26 white—died in the “Big Yellow Mama.” This was Alabama at its worst: Kilby Prison. Where, for over forty years, hundreds of death row inmates were stripped of their humanity with no hope for life, just the anticipation of death in a most cruel and unusual manner.

At the time of its opening in 1923, Kilby Prison was hailed as one of the country’s most modern prisons. Named for Alabama’s reform-minded governor Thomas Erby Kilby, the 27-acre prison complex contained a gloomy and symmetrical series of uniform buildings enclosed by a colossal white wall (twenty-inches thick at the base), and guarded by a squat red-brick classification building. High above the gate was a circular terra-cotta display of the great seal of Alabama and the boldly lettered words “Kilby Prison” etched in stone.

The first stop for all prisoners entering the Alabama prison system was this classification building, where guards removed the prisoners handcuffs and then his clothes. They took the naked prisoner and placed him in a tiny stall, where they sprayed him with the insecticide DDT to kill any potential parasites, like lice. They were then hosed off and given a “septic bath” so that the filth and grime from county jails were not transferred to the state prison. With the cleansing process complete, a guard carefully fingerprinted the naked prisoner: Right thumb, fore finger, middle finger, ring finger, little finger; then up the left hand from thumb to pinky; and finally both full hands. After the prisoner wiped the black ink from his fingers and hands, the guard handed the man a large white coverall and a pair of white canvas slippers. “Less than 10 minutes of prison life,” a reporter once observed, had taught any prisoner arriving at the Classification and Receiving Center “that he would be told what to do and when to do it.” Once attired, the guard yelled, “over here” and opened a heavy iron door that led to a dark, narrow

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Preserving the History of Alabama



EXECUTIVE DIRECTOR'S COLUMN

People who love history love to read. Although I knew as a junior high librarian I would have to coax kids to pick up a book, I thought as these kids matured into adults and realized not only the value, but the wonderful pleasure of reading, that they would become life-long readers. However, according to a Jenkins Group survey, 42% of college graduates will never read another book. I guess this is on my mind because of a conversation I had recently with a friend (no name to protect the innocent) who is college educated and successful in her career. I had asked her if she had read a certain book, and she responded that she did not read. In fact, she said she had read only one book in high school and used it for every book report from 10th to 12th grade. I was astonished thinking about how I love to read, how I love to talk about reading, and how I like to know what others have enjoyed reading. I emailed our Board of Directors asking them to share with our readers some of their favorite titles. I concurred with Leah Rawls Atkins who stated that often her favorite book is whatever she is reading at the time. And, I had to agree with Jonathan Bass in selecting *In Cold Blood* by Truman Capote, a classic in the true crime genre, that still lingers in my mind after reading it over thirty-eight years ago. These are the responses that I received:

Leah Rawls Atkins- Kenneth W. Noe, *Reluctant Rebels: The Confederates Who Joined the Army after 1861* (Univ of N.C. Press, 2010), Jerry Elijah Brown's *Alabama's Mitcham Wars: Essaying Mortal Wounds* (Decatur, GA: Looking Glass Books 2011). Harvey H. Jackson III's *Inside Alabama: A Personal History of My State* (Univ. of Ala Press, 2004)) and Harvey H. Jackson III's *Rivers of History: Life on the Coosa, Tallapoosa, Cahaba, and Alabama* (Univ. of Ala. Press, 1995).

Sam Rumore- *From Power to Service*, Pat Rumore (2010), *Taming Alabama, Lawyers and Reformers, 1804-1929*. Paul Pruitt (2010), *Fighting the Devil in Dixie*, Wayne Greenhaw (2011), *A Goodly Heritage: Judges and Historically Significant Decisions of the United States District Court for the Middle District for the Middle District of Alabama, 1804-1955*, compiled by R. Volney Riser (2010).

Jim Noles- *Blessed are the Peacemakers: Martin Luther King, Jr. Eight White Religious Leaders, and the Letter from Birmingham Jail* by S. Jonathan Bass, *Martin Luther King and Alabama : The History of a Deep South State* by William Warren Rogers, Wayne Flynt, Robert D. Ward, Leah Rawls Atkins, and *From Power to Service*, Pat Rumore (2010).

Jonathan Bass- *Parting the Waters: America in the King Years 1954-1963*, Taylor Branch, *The Right Stuff*, Tom Wolfe, and *In Cold Blood*, Truman Capote.

I hope to make this a regular feature of the ABBHS Newsletter. If you have any titles to add to the list or if you would like to submit a book review, email me at rjgarrett@alabamabenchandbar.org. Some of my favorites are *A Civil Action* by Jonathan Harr, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* by Richard Kluger, and the perennial favorite, *To Kill a Mockingbird*, Harper Lee.

Jane



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(Continued from page 1)

stair

case. The prisoner walked up the stairs where a door swung open and another guard escorted him into a quarantine dormitory cell for a battery of tests, including a complete physical and dental examination, as well as extensive psychiatric and general intelligence tests. Prisoners also went through a series of interviews to determine his or her personal, or “social,” history, including family life, previous employment, sexual orientation, and drug use. All test results, interview transcripts, FBI arrest records, and findings from the pre-sentence investigations were placed in the prisoner’s file and presented to the Classification Board. The final step of the classification process was the prisoner’s interview with the Classification Board. Interviews lasted five to fifteen minutes, and at the end, the board assigned a status to the prisoner—minimum, medium, or maximum security—and a prison.

A death-row inmate, was automatically classified as a maximum security prisoner. He was then photographed: one shot staring into the camera; another a profile view. And the newly classified prisoner received his standard-issue prison clothes—again all white—with his number etched on the inside. All entering Death Row received a “Z” designation—the last letter of the alphabet and symbolic of the prisoner’s final stop. “You belong to the State of Alabama now,” one prison official liked to tell a newly classified inmate, “you’re nothing but a number.”

Guards led the prisoner from the classification center beyond the main cell houses, down a narrow concrete corridor, to the heavy iron door entrance to the detention and punitive cell house. Here was where the incorrigibles and the death row inmates were separated from the rest of the prison population. Here was where the sounds of busy prison life were replaced by the oppressive silence of those awaiting death. Here was where the sun never shined. It was a world of gray steel, one newspaperman wrote in the late 1950s, where the days and nights were no different. “There are no windows in death row,” he added, “only time, and the everlasting glow of electric lights.”

Unlike the five-tier main cell blocks, the detention center was only two tiers high, death row contained four to twenty men at any given time, and their lives differed drastically from those of the regular prisoners. In every aspect of their daily routines, Death Row inmates remained apart from the main prison population. Cells on Death Row were essentially the same as those in the main prison, but in “Little Alcatraz,” the segregation unit, each prisoner had his own cell, depending on the size of the Death Row population at the time. The inmates were fed only twice a day, at 7 a.m. and 3 p.m., inside their cells. Prison officials allowed them to order special food twice a week, such as peanut butter, bread, candy bars, or milk. Death Row inmates received visitors every Saturday, whereas general inmates saw visitors every other Sunday.

Death Row inmates never worked in the prison’s cotton mill, dairy farm, or tag plant. They waited in a small cell where every moment seemed like a day. “You had to find work for yourself,” one Death Row inmates said, “There was no air, no sight of the sky, no exercise. You were let out only once a week to walk six or eight feet away, handcuffed, to get a quick shower. Then you walked back to your cell.” They spent most of their time reading, sleeping, talking to other inmates; a few wrote poetry or songs.

Death Row prisoners remembered those nights someone died in the chair; the sounds of death cutting the silence: “If I live to be a hundred,” one prisoner recalled, “I will never forget that day because the juice was turned on in the death chamber. When they turned on the juice . . . we could hear the z-z-z-z-z-z of the electric current outside in Death Row . . .” The prisoners said the condemned man was “riding the lighting.” After the “juice was squeezed into him,” a guard often came out and smiled as he told the other death row inmates that the prisoner had “died hard.” “We even stuck a needle through his head just to make certain he was dead,” the guard said. A complete lie, but words which caused one inmate to “sweat my clothes wet.” The generator was separate from the prison’s main power system, so when the current built to its climax, the lights in the building continued to burn

THIS IS THE FIRST PART OF A TWO PART ARTICLE BY JONATHAN BASS. PART TWO WILL APPEAR IN THE NEXT ISSUE OF THE ABBHS NEWSLETTER.

bright. The dimming of the lights during an execution was, as a guard said, was what's on "in the movies,"

and not the reality in Kilby.

THE PATONA COURT OF INQUIRY

"I am not prepared to say how far Society can go in protecting itself. It doubtless retains all the rights of self-defense. But the forms of the law cannot be invoked in order to give immunity to the stronger portion of a divided community, who choose to assail the weaker portion. This would soon make brute force the law of the land. We must therefore look to the law. This alone can protect all, do justice to all; and thus we may be able to secure Life, Liberty and Happiness."

Justice Thomas M. Peters, Supreme Court of Alabama
"Examining Court at Patona."

The Weekly Huntsville Advocate, October 28, 1870, p.2 col.2

On Thursday, August 18, 1870, Associate Justice Thomas Peters, of the Supreme Court of Alabama, convened an inquiry into the murder of William Luke, a Canadian Methodist minister, and four black men, Tony Cliff, Berry Harris, Caesar Frederick, and William Hall on the night of July 11, 1870. Another black man, Essex Hendricks was also murdered that same night by the same gang of disguised men, although he was not murdered with the others.



Justice Thomas M. Peters
would later serve as Chief

The Court of Inquiry was requested by Governor William Smith to investigate the lynching of Luke and the other victims and to bring those responsible to justice. Luke, originally a Canadian, had come from Talladega where he was an employee of Talladega College, to work as a bookkeeper for the Selma, Rome, and Dalton Railroad which had its headquarters in Patona, a small, but growing boom-town one mile from the older, more established village of Cross Plains in Calhoun County. Among Luke's many duties for the railroad was teaching at a school established by the Railroad for freedman whom the railroad intended to employ. Luke was not welcome by either the community at Patona or that of Cross Plains, and soon became a target of the Ku Klux Klan, members of which spread the rumor that Luke was "teaching racial equality." After a fist-fight between freedmen and whites in Cross Plains escalated to an exchange of gunfire, a posse arrested the freedman supposedly involved in the incident. Luke, while not part of the riot, was also detained. Later, Ku Klux Klansmen, in disguise, seized the prisoners from the building where they were held, took them to a grove of trees on the edge of town and promptly hanged them all including Luke.

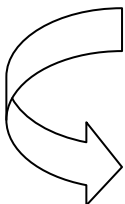
Former governor Lewis Parsons was asked by Governor Smith to participate in the investigation, led by Justice Peters, which led to the arrest of ten individuals, William Estes, Thomas L. Estes, Sanford Slaton, John Farmer, Milton Keith, Patrick Craig, John W. Nabors, George Dempsey, Joseph Morrison, and George Stewart. Four of the prisoners were bound over to the current term of the Calhoun County Circuit Court for the murder of Luke and the four black men: William Estes, Thomas Estes, Sanford Slayton, and Patrick Craig. Bond was set at \$2,000. Andrew Bailey, Milton Keith, and Patrick Craig were charged with assault with intent to murder in the shooting of Jacob Moore and Caesar Frederick and held under \$1,000 bond.

The next week the grand jury considered the evidence turned over to it from the Patona investigation. A handwritten document over eight hundred pages in length, containing the testimony of 140 witnesses, was offered as proof against the men already on bail. The grand jury refused to return a bill of indictment against any of them. The only official action taken by the local courts in the Cross Plains tragedy was to return a charge of assault against Jacob Moore, a black man who was wounded and escaped the hanging tree by his wits, to testify against his assailants.

The Patona Court of Inquiry is the only known instance of an Alabama Supreme Court Justice stepping outside his role as a justice to adjudicate a proceeding of this nature. Justice Peters issued a legal opinion on the findings of the Court which was published, not in an official publication of the State, but in a *The Weekly Huntsville Advocate*, a newspaper favorable to the Reconstruction government.

DEATH AT CROSS PLAINS

Learn more about this little-known chapter of Alabama history by reading, *Death at Cross Plains: An Alabama Reconstruction Tragedy* by Gene Howard. University of Alabama Press, 1984.



NEWS, NEWS, NEWS!

The Board of Directors of the
ALABAMA BENCH & BAR HISTORICAL SOCIETY
Invites You to Join Us
 At Our 3rd Annual Meeting Featuring

ABBHS Members: \$25.00
 Non-Members: \$30.00
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Make Checks Payable to ABBHS:

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Reservation deadline:
 October 17, 2011

For more information about the
 event, email Jane Garrett at
rjgarrett@alabamabenchandbar.org
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Members!
 Please bring a guest!

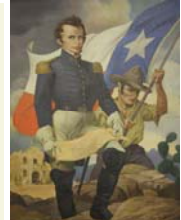
WILLIAM C. DAVIS

Author of *Three Roads to the Alamo*



“William Barret Travis”

Alabama Attorney and Hero of the Alamo



On Friday, October 21, 2011, 12:00 noon
 The Club, 1 Robert S. Smith Drive
 Birmingham, Alabama

Following the Meeting, Professor Davis will sign copies of his latest book,
Rogue Republic: How Would-Be Patriots Staged the Shortest Revolution in American History.

Our Speaker

Historian William C. Davis



William C. Davis is a professor of history at Virginia Tech University. An expert on the American Civil War, Davis has written more than 40 books on the American Civil War and other aspects of Southern history. He was nominated for a Pulitzer Prize for Battle of Bull Run and Breckinridge: Statesman, Soldier, Symbol. His work on the Confederacy has also earned him a Jefferson Davis Award and the Jules F. Landry Award for Southern history. His book Lone Star Rising has been called "the best one-volume history of the Texas revolution yet written". Davis's expertise on Southern history has made him a valued consultant, both for newspaper articles, as well as television productions, including the Arts & Entertainment Network/History Channel series "Civil War Journal" and other television productions. He also served as a consultant for the creation of a United States postage stamp of Jefferson Davis and has provided information for the formation of the Museum of the Civil War in Petersburg, Virginia. Davis holds Bachelor of Arts and Master of Arts degrees from Sonoma State University. He was awarded the Sonoma State University Distinguished Alumni Award in 1993. Davis is a past president of the National Historical Society. In 2000, he became a professor at Virginia Tech where he also serves as director of programs for the Virginia Center for Civil War Studies.

BE A PART OF ALABAMA LEGAL HISTORY! JOIN THE ABBHS!

Your Annual or Special membership contribution enables the Society to fulfill its mission of preserving Alabama's legal history, promoting better understanding of the legal system and judiciary, and recovering historical legal artifacts. Your participation provides for publications, programs, projects, and grants.

ABBHS is a 501(c)3 nonprofit organization. Contributions are tax deductible, within legal limits, and will be acknowledged by ABBHS. Operations are financed by memberships in the Society and by contributions from the public. All society board members and officers serve without compensation.

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<u>Levels</u>	<u>Donation</u>	<u>Description</u>
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Student	\$15 per year	Student members shall be entitled to all the benefits of members except they shall not be entitled to a vote.
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Individual	\$35 per year	May be held only by an individual person.
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Founders	\$100+	Payments made until December 2009 will qualify members as Founders.
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Corporate	\$500 per year	Firms, foundations, and corporations paying dues of \$1,000 or more per year, may name a member of the Society for each \$100 multiple, not to exceed ten members.
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Sponsor	Contribution of \$5,000 or more but less than \$10,000 shall entitle the donor to be a Sponsor of the Society.
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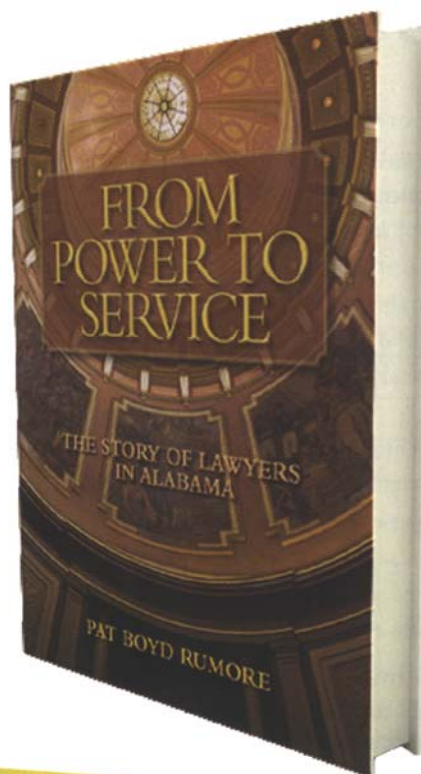
(As a Lifetime Member the foregoing amounts may be paid over a period not to exceed ten (10) years, provided, however, that until such minimum amounts are paid, the member shall be classified under the appropriate category for Annual Membership as listed above.)

Gift Membership: Present the perfect gift to a history enthusiast or a fellow attorney—a gift membership to the Alabama Bench and Bar Historical Society. Please select the membership category that would be most appropriate, and email rjgarrett@alabamabenchandbar.org that you would like to bestow a gift membership.

Please mail membership form with payment to: **Alabama Bench and Bar Historical Society**
P.O. Box 722
Montgomery, Alabama 36104

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Making History, Even Today!



From Power to Service: The Story of Lawyers in Alabama

Written by attorney-author Pat Boyd Rumore. This hardcover book, filled with pictures, many of which were not previously published, is the ideal gift.

The story of lawyers in the developing history of Alabama opens in Mississippi Territory days with the appointment by President Thomas Jefferson of the first territorial judge in St. Stephens, the earliest settlement in what would become Alabama, and continues to present day Alabama, where the profession has grown to more than 16,000 members.

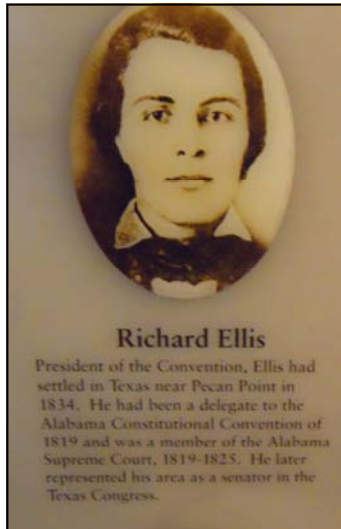
In these pages you will read about the people who pioneered Alabama's legal profession. The history of the profession in this state comes alive as Pat Rumore tells the Bar's story in the words of those who shaped it. It's a story of lawyers who ended radical reconstruction and founded the state bar. It's a story of federal jurists who helped to end the segregated "southern way of life" by their decisions brought by some of this state's great civil liberties lawyers. It's also a story about women in the profession and how their achievements have paved the way for a new generation of lawyers.

Publication of this book is co-sponsored by the History and Archives Committee of the Alabama State Bar and the Alabama Bench and Bar Historical Society. Proceeds from the sale of this book go to the Alabama Law Foundation and the Bench and Bar Historical Society.

The cost is \$40 per copy.

Order your copy today using a credit card, go online to: www.alabar.org/historybook

Shipping and handling charges will be waived for the first 250 orders and those orders will also be eligible to receive a signed first edition of the book.



RICHARD ELLIS

By Sam Rumore

My wife, Pat, and I proved that learning something new about Alabama's legal history can take place in unlikely ways and in unlikely places. Last year, during the Christmas to New Year's holiday week, we drove to Texas with the purpose of attending a college bowl game in El Paso and to see some of the sights along the way. After visiting the Bush Presidential Library at Texas A & M University, we headed toward San Antonio. We noticed an historic site on the map that was slightly off our travel itinerary. This was the Washington-on-the-Brazos State Historical Park. It was there that Texans declared their independence from Mexico on March 2, 1836, 175 years ago this year. The site includes a visitor center, a museum, a living history farm, and a walking trail. One of the exhibits at the visitor center honored Richard Ellis, a lawyer from Alabama.

Richard Ellis was born in "Tidewater" Virginia on February 14, 1781. In 1806 he was admitted to the Virginia bar and practiced law in Richmond. At some point between 1813 and 1817 he left Virginia and settled at Huntsville in the Mississippi Territory. He later moved to Tuscumbia, then in Franklin County, Alabama Territory, where he established a plantation and continued to practice law.

In 1818 Ellis was elected one of the delegates from Franklin County to the Alabama Constitutional Convention. He next was elected a Circuit Court Judge from the Fourth Circuit, which automatically made him a member of the first Alabama Supreme Court. He served as an Associate Justice from 1820 to 1831. In 1829 he helped establish La Grange College, then in Franklin County.

On February 22, 1834, Ellis moved with his family to Pecan Point in territory claimed by Mexico on the one hand and by the United States as part of the Arkansas Territory. In 1835 he was elected a delegate to the Arkansas Constitutional Convention, but due to ill health he had to resign his seat on January 21, 1836. Since his plantation was in an area where the boundaries were fluid, he was next elected a delegate to the Texas Constitutional Convention scheduled to meet at Washington-on-the-Brazos on March 1.

The Texas delegates unanimously elected Ellis president of the convention. As president he signed the Texas Declaration of Independence on March 2, 1836. The convention stayed in session and adopted a Constitution for the Republic of Texas. From 1836 to 1840, Richard Ellis served as a senator in the first four Texas congresses.

Richard Ellis died at his home in Bowie County, Texas on December 20, 1846. He was 65 years of age. Ellis had been an involved citizen and a leader in every place where he settled. Besides serving on the first Alabama Supreme Court, he may have the unique distinction in American history of being an elected delegate to the first constitutional conventions of three states - Alabama, Arkansas, and Texas. Ellis County in Texas is named in his honor.



Sam and Pat Rumore at the Washington-on-the Brazos Visitor Center



Supreme Court Records Project

On June 2, 2011, the ABBHS entered into an agreement with the Department of Archives and History and the Friends of the Archives to inventory the records of the Supreme Court of Alabama housed at the Department of Archives and History. These records, dating back to 1820, have been housed at Archives for 40 years and have never been inventoried. The ABBHS granted \$3,000.00 to the Friends of the Archives to hire a law student from the Thomas Goode Jones School of Law to perform the inventory. Rachel Foster, a third year law student, is working on the project and since beginning the project in June, she has identified and labeled over 945 volumes! This inventory will make these important and critical records of Alabama's highest court more accessible to historians and scholars everywhere!

Bits and Pieces

EQUALITY BEFORE THE LAW.—In the Circuit court of Montgomery county, Judge James Q. Smith presiding; on motion of John G. Stokes, Esq., County Solicitor, John Carraway, Esq., of Mobile, and now representing Mobile in the lower House of the General Assembly, was admitted to practice as an attorney and counsellor-at-law. This is the first instance of

the admission of a person of color to the Bar of Alabama. The State statute as a qualification prescribes that the person applying for admission shall be a *white* man. Judge Smith declared this qualification to be in conflict with the act of Congress known as the Civil Rights bill, and expressed astonishment that such a law should be permitted to remain unrepealed until the present time.

Mr. Carraway is known as one of the most intelligent colored men in Alabama. He is an active member of the Legislature and a good public speaker. We predict for him a career of usefulness as a member of the legal profession.

Who was first?

The column at left from the *Chicago Legal Journal*, March 2, 1870, indicates that the first African-American admitted to the Bar in Alabama was John Carraway, a freedman who was elected to the Alabama House of Representatives in 1869 and who also served as a Mobile alderman in 1868. He was also a delegate to Constitutional Convention of 1867. According to the authors of the *Legal Journal*, Carraway was admitted to practice before the Montgomery Circuit Court in 1870. Historians have generally accepted Moses W. Moore as the first African-American admitted to the Bar in Alabama. Moore was admitted to practice in Mobile in 1871. The *Legal Journal* is not the only newspaper of the day that recorded Carraway's accomplishment. The *Montgomery Advertiser* and the *Columbus Ledger* both mention that Carraway was admitted. Carraway's parents were Charles Carraway, a wealthy, white planter, and a slave whose name was unrecorded. He was born in 1834 in New Bern, North Carolina. Upon the death of his father, he was freed and went to Brooklyn, New York where he became first a tailor and then a seaman. During the War Between the States, he enlisted in the famous 54th Massachusetts regiment and is credited with authoring a song entitled "Colored Volunteers" about the experience of the black soldiers in the 54th Massachusetts. Following the War, Carraway went to Mobile to live with his mother, where he became president of the Loyal Newspaper Society of Alabama and assistant editor of the *Mobile Nationalist*, the first black-oriented newspaper in Alabama. Unfortunately, for historians, Carraway disappears shortly after his admission to the bar and nothing further is known about him or whether he ever carried on a

More on Moore (Moses that is...)

Whether or not Moses W. Moore was the first African-American admitted to the bar in Alabama, he certainly did not totally disappear from history as did John Carraway, although very little is known about Moore after he was admitted in November of 1871. Researchers have discovered a passport application dated June 11, 1879 in which Moore, along with his wife, applied for a passport to leave the United States. Most recently, it was discovered that in 1883, Moore was serving as the Professor of English Language in the Academy Polytechnique in Paris, France. Stay tuned for further updates (hopefully).

And We Thought We Had Money Problems...

The headline at right is from the November 3, 1911 edition of the *Montgomery Advertiser*.

The article further stated that:

"Alabama's Supreme Court drew on the Treasury for \$52,071.99. The State National Guard \$40,198.22. It cost \$137,595.74 to feed the State's prisoner and the State Experiment Station at Auburn got \$20,260.00. The Judiciary Department of the State received \$177,070.98 and \$43,355.49 went for the Governor's Residence.. The Court of Appeals got \$10,862.74 of the State's money and the 1911 session of the Legislature cost \$115,357.73"

No doubt a dollar went a lot further in 1911.

**SUPPLY OF MONEY
RUNNING LOW IN
ALABAMA TREASURY**

**Balance Available on September 30 Was only \$7,-
071.26**



JUDGE JAMES E. HORTON, JR. – THE HERO??

By Mary Horton

Lawyers and judges often find themselves in difficult situations. Sometimes, lawyers and judges have to pay the price, often ending their chosen and loved career field, in order to “do the right thing”. Judge James E. Horton, Jr. (no relation) was one of those people. He paid the price. He overturned a jury’s guilty verdict.

This story began on March 25, 1931 – nearly eighty years ago. On that fateful day, nine black men and boys were pulled off a freight train in Paint Rock, Alabama. They had been accused of “brawling” with a group of white men. At approximately the same time, two white women – Ruby Bates and Victoria Price – also exited the train. The nine blacks were roped together, loaded on a truck, and taken to Scottsboro, Alabama. Meanwhile, the women told the deputy sheriff that they had been sexually assaulted by the blacks. This caused intense anger, hatred, and outrage by the local villagers. The blacks denied this, stating that they never even saw the women until they were pulled off the train in Paint Rock.

These blacks, who quickly were labeled “The Scottsboro Boys”, were tried, convicted, and condemned to death the day following their arrests for rape of the two women. The Boys’ grand jury legal representation was inadequate. The trial was a mockery, with no real defense. Facts were hidden, including that

- 1) The women were never even in the same part of the train as the Boys;
- 2) After being evicted from the train, the women sat under a tree with some of the local women, chatting pleasantly;
- 3) The doctors who examined the women following the alleged attack found little evidence of any attack, although there was evidence of recent sexual relations; and
- 4) Both women had served as prostitutes in the past.

Shortly after sentencing, two organizations – the International Labor Defense of the American Communist Party (ILD) and the National Association for the Advancement of Colored People (NAACP) carried on a “tug-of-war”, wanting to handle the Boys’ defense. Judge Hawkins, not wanting to take a difficult stand, allowed both organizations to participate in the Boys’ defense. Ultimately, the ILD appealed to the U.S. Supreme Court, which annulled the earlier judgments, and ordered new trials based on the lack of proper defense.

The ILD hired Samuel Leibowitz, a New York attorney, who was granted a change of venue – to Decatur, Alabama, and the courtroom of Circuit Judge James E. Horton, Jr. More than two years had passed since the Boys’ arrests.

Meanwhile, one of the doctors that examined the women stated that even though there was no evidence to support the women’s claims, he still believed that they had been sexually assaulted. A second doctor, who also examined the women, was excused from testifying, assuming that his testimony would be the same as the first doctor’s testimony. This second doctor later approached Judge Horton in private, telling Judge Horton that he didn’t want to testify, because his testimony would NOT be the same as the first doctor’s. Although Judge Horton encouraged him to testify, he refused. Additionally, the women admitted that they had lied about the rape.

In spite of all this, the jury again returned a guilty verdict. The ILD requested a new trial. Judge Horton held court to hear a defense motion for a new trial, and he read to the lawyers the following: “Social order is based on law, and its perpetuity on its fair and impartial administration.” Additionally, he stated that “the law wisely recognized that ‘passions, prejudices, and sympathies’ affected the decision of juries in such cases. But as a judge, he had but one question to ask of himself: ‘Is there sufficient credible evidence upon which to base a verdict?’” Judge Horton, stating that there was new evidence, granted a new trial. He focused on innocence and guilt – not the emotions of the time. This took courage. He bucked the system. Judge Horton believed in the rule of law. He believed the law must be absolutely colorblind. This decision, although it was the right one, the legal one, the ethical one – sealed the fate of Judge Horton’s legal and political career. He made a tremendous sacrifice when he overturned the jury’s verdict. He knew his political career was over when he made that decision to do the right thing. Instead of fulfilling his dreams of being a Justice on the Alabama Supreme Court, he went home.

Over the next several decades, more trials were held, with reviews by the Alabama Supreme Court and the U.S. Supreme Court. All led to convictions. As the years rolled by, biases of judges, fraudulent jury rolls, and attempted bribery were all uncovered. Additionally, there was further controversy regarding the Boys’ representation, physical fights resulting in brain damage to one of the Boys, broken verbal promises, claims of unfairness and hypocrisy, and the revocation of promised pardons. Alabama became a source of ridicule and embarrassment – as well as shame and disrepute to the state that Judge Horton loved.

Thirty-two years after his decision, he said that he never regretted his decision, because he had to live with himself.

In 1976, a complete pardon was granted – 45 years after the alleged crime was committed. Only one of the Boys lived long enough to see that pardon – and Judge Horton died three years before the pardon. As a result of the Scottsboro Boys’ case – essentially too little, too late – the U.S. Supreme Court reconsidered the meaning of “due process” and helped to guarantee the right to proper legal representation for all criminal defendants. The damage, however, had already been done.

The times then were different from today. It was easy to blame others. But the one legal figure who could truly hold his head up high, because he had done the “right” thing, one who would have been a great asset to Alabama’s judiciary, was the one who was totally brought down because of his integrity.

SEPTEMBER LEGAL MILESTONE

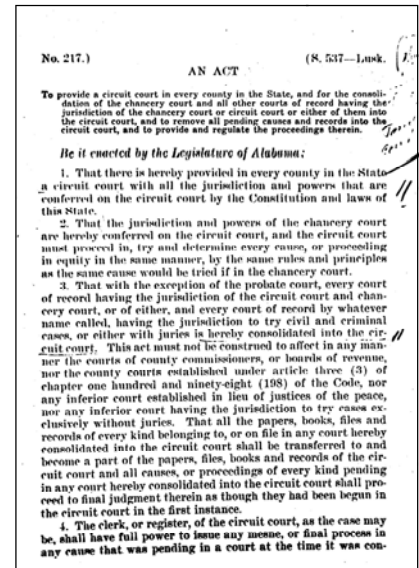
Abolition of the Chancery Courts

Under the Alabama Constitution of 1819, equity jurisdiction was vested in the judges of the circuit courts. The General Assembly reaffirmed this constitutional provision with an enactment that the "equity jurisdiction heretofore belonging to the superior courts of law and equity in the territorial government" should be vested in the circuit courts of the State. In 1823, rules were enacted to govern proceedings in chancery court. Although (or maybe because) equity cases were infrequent, these cases were generally pushed by the judge to the end of the court term, when there was very little time (or inclination) by the judge to consider the case properly. Consequently, equity cases often dragged on for years, with no action by courts. Even if a decision was made, the rulings were often incorrect because the judges were exhausted by the labors of a long term, and they wanted to adjourn the court. Because of this, from time to time, judges and lawyers recommended that separate courts of chancery should be created,, to no avail.

Finally, in 1838, Gov. A. P. Bagby, an attorney, recommended that separate chancery courts be established. In 1839, the General Assembly created two chancery divisions, each having three districts. The equity powers of the circuit judges were withdrawn, "and vested in the courts of chancery, and the chancellors hereby established." The General Assembly elected two chancellors, E. Wolsey Peck, of Elyton (Northern Division) and Anderson Crenshaw of (Southern Division), each to serve six year terms.

Four years later, in 1842, the General Assembly reorganized the Chancery Courts into three divisions, the Northern, Middle, and Southern, to which the now 40 districts were assigned. A new system of proceedings was adopted. In 1887, the General Assembly again rearranged the chancery divisions, creating a new division and designating the four divisions as the Northeastern, Northwestern, Southeastern, and Southwestern divisions. In 1895, a fifth division, the Northern, was added.

Two decades later, Governor Emmet O'Neal, an attorney, in his end-of-the-term address to the Legislature, called for reform of the State's judicial system. In 1912, O'Neal had appointed a committee of "thirty distinguished lawyers of Alabama" to study judicial reform. One of their recommendations was, "that all jurisdiction now vested in the chancery courts, circuit courts and the inferior courts...should be consolidated in one system of circuit courts." In 1915, O'Neal recommended and the Legislature appointed a Special Commission on the Judiciary. During the 1915 session, the Legislature passed a series of acts drafted by a legislative committee known as the Recess Judiciary Committee, including act No. 217, approved on August 16, 1915, which consolidated the Chancery Courts with the Circuit Courts thus abolishing Alabama's chancery courts.



Why early Alabama Needed Chancery Courts.

The following story was related in William Garrett's *Reminiscences of Public Men in Alabama*, highlighting the State's need for separate Chancery Courts:

"Mr. Joshua L. Martin (Ed. Note: Governor of Alabama 1845-47) had filed a long bill in an important case, in one of the counties embraced in judicial circuit of Judge S. L. P....(Ed. Note: without a doubt Sion Luther Perry, later a Supreme Court Justice). The Court came on, and the session was tedious and protracted. At length the time for taking up the chancery docket arrived, and Mr. Martin, anxious to have a decree, which he expected, of course, to be favorable to the complainant, pressed the consideration of the cause, and his Honor called it; whereupon Mr. Martin proposed to read the bill which was quite lengthy, covering nearly a quire (Ed. Note: 24 or 25 sheets) of paper. It had become "grog-time" of the Court in those days, and the Judge had already entered upon the, brief holiday recreation allowed from the adjournment of a court in one county to opening of one in another, and the sight of a pile of papers was just about as distasteful to him in that stage, as a cup of cold water to an animal laboring under the first symptoms of hydrophobia. He inquired of counsel what that was he had in his hand? With the respect and suavity of manner for which he was remarkable, Mr. Martin replied: "If your Honor please, it is the original bill, which I propose to read for the information of the Court." The judge interposed, "You need not read the bill. I shall give judgment against you and dismiss it. The Court will not entertain a bill of such length, and, barring an accident, ten to one if I am not right." Mr. Martin tried to reason and persuade him out of it; but his orders and decrees were like the laws of the Medes and Persians, at least in this case. As might reasonably be expected, the counsel was dissatisfied with the decision, thought it was wrong, and appealed to the Supreme Court. The richest of the joke was, that the Supreme Court affirmed the decision of Judge P!"



ALABAMA BENCH AND BAR HISTORICAL SOCIETY

P.O. Box 722

Montgomery, AL 36101-0722

Phone: 334.229.0565

E-mail: rjgarrett@alabamabenchandbar.org

We're on the Web!
www.alabamabenchandbar.org

Preserving the History of Alabama

The Alabama Bench and Bar Historical Society is devoted to preserving the history of the state's judicial and legal system and making the citizens of the state more knowledgeable about the state's courts and their place in Alabama and United States history. The Bench and Bar is interested in preserving documents, artifacts, and memorabilia of the courts, as well as of judges and members of the state bar, and wishes to encourage the publication of scholarly research on bench and bar topics. The Society especially wishes to preserve the biographical information and stories of attorneys and judges who played prominent roles in the history of the state's legal system. To pursue its goals, the Alabama Bench and Bar Historical Society may sponsor publications, exhibitions, displays, lectures, and public programs.

ABOUT OUR CONTRIBUTORS



Jonathan Bass

Dr. S. Jonathan Bass is the Chair of the History Department and Professor of History at Samford University in Birmingham. He earned his B.A. and M.A. at University of Alabama Birmingham and his Ph.D. at the University of Tennessee. His book, *Blessed Are the Peacemakers: Martin Luther King, Jr., Eight White Religious Leaders and the 'Letter from Birmingham Jail'* (Louisiana State University Press, 2001), was nominated for a Pulitzer Prize. In 2005, Dr. Bass and his friend, Reverend Gerald Austin of the Center for Urban Missions in downtown Birmingham, received the interracial friendship award from the Birmingham Urban League for their partnership in exposing Samford students to problems of the inner city. He is also a member of the Board of the Alabama Bench and Bar Historical



Mary Horton

Mary Horton is the Assistant Secretary of the Alabama Bench and Bar Historical Society. During her previous career she worked for legendary Georgia football coach Vince Dooley, Alabama Supreme Court Chief Justices Bo Torbert and Sonny Hornsby, and Alabama Court of Civil Appeals Judge Charles Thigpen. She also served as Assistant Curator, Docent Coordinator, and Accountant for the Supreme Court and State Law Library.



Sam Rumore

A Birmingham native, Sam Rumore is a graduate of John Carroll Catholic High School, Notre Dame University, and the University of Alabama School of Law. He has practiced law in Birmingham since 1974. A former Chairman of the Jefferson County Historical Commission, Mr. Rumore has written articles on the history of each courthouse and county seat in the State of Alabama, published in *The Alabama Lawyer*. He served as President of the Alabama State Bar in 2000-2001 and is presently Chairman of the Alabama Lawyers' Hall of Fame Selection Committee. He was named a Super Lawyer of Alabama in the area of Family Law in 2009. Mr. Rumore is a retired Colonel in the United States Army Reserve. He is a 2010 MLIS graduate of the School of Library and Information Studies at the University of Alabama and was inducted into Beta Phi Mu International Library Science Honor Society. Sam is married to Pat Boyd Rumore and they have three adult children, Claire, Theresa, and Samuel.