



Douglas McElvy

Service To Clients, The Public and The Profession

As Doug McElvy enters the final four months as 2004-05 president of the Alabama State Bar, he looks back on the past year with The Alabama Lawyer Editor Robert Huffaker.

The Alabama Lawyer: Doug, describe your experience so far as the bar president. Has it been what you anticipated?

Doug McElvy: It's really been more than I anticipated. One of the things that I decided to do when I was elected was to visit as many of the local bar associations as I could during my year as president. That has probably been one of the most rewarding things I have ever done. Yesterday, as a matter of fact, I was in Athens in Limestone County. Not long ago I was in Geneva County. Last week, I was in Baldwin County and Mobile County. I've been from one end of the state to the other, from the smallest and most rural bars to the largest. It's been a great experience.

AL: What feeling have you gotten from visiting the local bar groups as to the state of our profession at this time?

DM: Based on what I've seen, the legal profession in Alabama is very healthy and robust. We have great lawyers all over the state who care deeply about their clients, the quality of services they render, the communities they live in, and the legal system. My view is that we have an outstanding bar and the quality of the legal profession in Alabama is equal to or far exceeds the legal profession anywhere. However, many lawyers have expressed a common concern about the declining public perception of the legal profession and the misunderstanding of the role of lawyers.



"The Alabama State Bar...continues to be a national leader." Pictured above with the ABA 2004 Outstanding Law Day Activities Award for the play, "Cross That River," are Tommy Klinner, Montgomery attorney and Law Day co-chair; ASB President Douglas McElvy; Alan Kopit, chair, ABA Division for Public Education; Tim Lewis, Montgomery attorney and committee co-chair; and Jane Garrett, Montgomery librarian and co-author of "Cross That River."

AL: What's been the theme of your administration?

DM: The main focus has been oriented toward our professional responsibilities as lawyers and how the Alabama State Bar can assist our lawyers in fulfilling their duty of service to their clients, the public and the profession. The Alabama State Bar does an excellent job in fulfilling our regulatory responsibilities and lately we've been asking ourselves how we can better serve the lawyers of Alabama? In fact, one of the questions we're asking is, if the law of Alabama did not require lawyers to belong to the Alabama State Bar, are our services good enough that they would want to belong anyway? I guess that really amounts to two things, but they're interrelated.

AL: How have you focused on the professional responsibility of lawyers?

DM: In January 2004, the supreme court adopted a rule that requires every lawyer in Alabama to have one CLE hour annually in professionalism/ethics. I got the bright idea that if I offered a free CLE to fulfill that requirement, then the lawyers in local bar associations would come. I've had great turn-outs when I visit the local bars. I am able to not only talk about professionalism/ethics but also the services the bar offers. The seminar in part emphasizes that one way to counteract the declining public perception of the legal profession is to keep the core values of our profession (truth, integrity and service) in mind. It also focuses not just on core values but also on what the character of a lawyer should look like in order to fulfill the high calling of the legal profession. Rote obedience to the rules of ethics does not make a lawyer a professional. We all choose whether we will embrace the core values of our profession and the personal character necessary to live out those values. The bar has also played a very active role in working with Chief Justice Drayton Nabers on the development of his Commission on Professionalism. The legal profession nationally is devoting a lot of attention and energy to the whole issue of professionalism, and the chief justice's commission is



"I decided to visit as many of the local bar associations as I could." President McElvy traveled the state to present free ethics CLE to local bar associations and meet with members of the ASB. He's pictured here with Gadsden attorneys at Pas'ghettis Italian Restaurant.

one of only a few in the nation. I know the bar will continue to play an important role in the commission which will give some formal structure to addressing problems associated with our legal system.

AL: What are the services the bar is providing of which you are proud?

DM: The programs and services offered by the Alabama State Bar to its members are being followed by the bars of many other states. I was at the American Bar Association Mid-Year Meeting in February in Salt Lake City, and our programs and services were being showcased. Our new membership directory is second-to-none and is being copied by many other state bars for their members. In addition to that, the Alabama State Bar professionalism programs, Alabama Lawyers Assistance Program, communications programs and the Alabama Law Foundation programs are receiving national attention. At that same ABA meeting, the Alabama State Bar received a national award for "Cross That River: Brown v. Board of Education and the People Who Lived It." It's been very gratifying to me to see the Alabama State Bar continue to be recognized as a national leader for its programs and services. Perhaps many are not aware that the Alabama State Bar has been a national leader for over 100 years. We passed the first Code of Ethics which was emulated by the American Bar Association and many other states, and then we were one of the

very early states to adopt continuing legal education requirements. These are just a few areas. My goal for the state bar is not so much national recognition as it is that the lawyers of Alabama have at their fingertips the best cutting-edge tools, services and programs, and that the ASB serve as a great asset to their professional practice and careers. The Casemaker® project is a good example of the quality of services we are offering to Alabama lawyers.

AL: Bring us up to date on the status of the Casemaker project.

DM: Casemaker® is an online research engine scheduled to be available in May. All Alabama lawyers will be able to access Casemaker® simply by going to the Alabama State Bar Web site at www.alabar.org and clicking on Casemaker®. They will have available a powerful research tool that is state-of-the-art, has a complete Alabama and 11th Circuit library, is equipped with a cite check mechanism and will be very user-friendly. Best of all, there will be no access charge, and Alabama lawyers will be able to access the complete state and federal libraries included in over 20 other member states of the Casemaker® Consortium. This will save Alabama lawyers hundreds of dollars a year. All this is covered in the bar license fee.

AL: Have you appointed any task forces during your term?

DM: Yes. The bar's Long-Range Plan was adopted in 1994, and the goals of that five-year plan largely have been



President McElvy (above, standing, second from left) with fellow attendees at the recent annual meeting of the Southern Conference of Bar Presidents.

accomplished. I asked Caine O'Rear and Karen Bryan to head a task force to recommend a new five-year plan for the Alabama State Bar. The task force is doing an outstanding job and it is hoped that the plan will soon be ready for adoption. Our goal is to continue to offer to Alabama lawyers the most advanced and effective programs and services while promoting the highest standards of professional conduct. I also appointed a task force headed by Dag Rowe to study our election rules for president-elect of the Alabama State Bar. In some ways, our rules were very antiquated and didn't even allow for online solicitation. The task force did an excellent job, and our election rules are now up to date. In fact, they are in force for this current election cycle. Anthony Joseph chaired our task force to develop the procedures for expanding the bar commission. The legislature passed a bill last year to expand the bar commission by nine at-large commissioners to promote the racial, ethnic, gender, age, and geographic diversity of the ASB. The Board of Bar Commissioners is now accepting nominations for those at-large positions based on the work of the task force. We have another task force chaired by Steve Rowe, reviewing our Mandatory Continuing

Legal Education Rules to make sure they're up to date. As I mentioned, Alabama was one of the first states in the nation to adopt Mandatory Continuing Legal Education. We are reviewing our rules to make sure that they're effective and meet the needs of Alabama lawyers. Sam Stockman is chairing the Access to Justice Task Force. The task force is designed to investigate and determine if some forms of *pro se* litigation projects are appropriate for Alabama. The Task Force on Rules Governing Admission to the Alabama State Bar headed by Michael Waters is in the process of completing a rule authorizing a new category of membership for "authorized house counsel." We're hopeful that we will soon be able to present this rule to the Supreme Court of Alabama.

AL: Besides task forces, have you appointed any other committees?

DM: We activated a **Judicial Liaison Committee** headed by Jere Beasley and Sam Franklin which has been very active. We want to have a concerted effort to deal with issues of lawyers and the judiciary, and this is an excellent committee. They've done a great job. The committee is looking at ways to improve the relationship between the bench and bar, and they are seeking solutions to problems

such as lack of funding for education programs for new judges, response to criticism of the judiciary and several other issues. There's another program that was initiated last year that should be mentioned. Alyce Spruell and Patrick Graves and their task force did an outstanding job putting together the **Leadership Forum**. The forum is an excellent program that trains lawyers to become leaders not just in the bar but also in their communities. There has been a great response to that program. There are some great young lawyers involved who already are leaders in their communities. We also have the **Archives and History Committee** chaired by Ben Spratling working on the history of the Alabama State Bar. We have a **Quality of Life Committee** chaired by Matthew White. There are some studies that show that the legal profession is by far the most stressful occupation. Lawyers are almost four times more likely to have major depressive disorders. One in three lawyers suffers either from depression, alcohol abuse or drug abuse. Lawyers are more than twice as likely as the general adult population to become alcoholics. There's one statistic that indicates that lawyers are twice as likely to be divorced than the general population. That's pretty sobering. One of my real concerns, and I talk about this in the professionalism seminar, is that we ensure that we keep our priorities in the right place. For me, that's faith, family, then work. What we do is so important that it does cause stress. No lawyer I've talked to has disagreed with the fact that it's a stressful profession. We want to see if we can take off some of the stress and help lawyers. We don't need to be losing lawyers to depression, alcohol and drug abuse. Of course, we have some great programs in Alabama that deal with that. I've already mentioned Jeanne Marie Leslie's program, the Alabama Lawyer Assistance Program, and we also have the **Alabama Lawyers Helping Lawyers Committee** headed by David Wooldridge.

AL: Are you concerned about the availability of legal services to the needy of this state?

DM: Access to justice has been a concern of mine. Legal Services Alabama is doing a great job, but they need more lawyers and the easiest way to approach that is through our **Volunteer Lawyers Program**. I was glad Gibson Vance, the new president of the Montgomery County Bar Association, is focusing on getting more lawyers involved in the VLP. This is the kind of initiative we need. Mobile does an excellent job with 56 percent of their lawyers involved in the program. Many counties have less than 20 percent involvement, and I want to challenge them to get more involved. I have already mentioned the Access to Justice Task Force chaired by Sam Stockman. Sam and his task force are investigating other avenues to address access to justice issues, and to remove barriers and difficulties facing *pro se* litigants. Other jurisdictions, like Arizona for example, have instituted *pro se* litigation plans, and Sam's task force is considering whether those types of plans would be appropriate for Alabama. Melissa Pershing, the new director of Legal Services Alabama, is doing an excellent job. Unfortunately, her resources are limited, so we're also investigating how we can better assist her in fulfilling her responsibilities.

AL: Are there any other problems you would like to see addressed?

DM: In my view, we do not have enough lawyers in Alabama's legislative bodies. Out of 105 legislators in the house, only eight are lawyers. In the senate, only 11 of the 35 members are lawyers. I think we need more lawyers in the legislature. I'm not saying all legislators need to be lawyers, but it wasn't that long ago when Alabama's house and senate were populated by lawyers. In my view, if we had more lawyers in our legislative bodies, issues like adequate court funding, indigent defense and other problems would be addressed much more efficiently. No other profession is better trained and more equipped in the law-making process than the legal profession. Historically, we've done a good job of that. As I travel around the state, I emphasize the importance of lawyers

being involved in the legislative process and actually urge lawyers to once again run for public office.

AL: Speaking of the bar, as we're conducting this interview, the legislature is in

session and is considering a bill to raise the license fees of attorneys. Why did the bar feel the necessity to do that?

DM: The last license increase was in 1993. Since 1993, lawyers in Alabama



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"Since America was birthed, lawyers have been guarding and protecting the liberties and rights guaranteed by America's founding documents." President McElvy addresses attendees of a recent CLE seminar, encouraging them to participate in the legislative process.

have paid \$250 a year for a license. The bar is almost completely supported by the license fee. It's our main source of revenue by far. Over the last five years, our expenses have been rising at the rate of \$184,000 a year. Our revenues have been increasing at the rate of \$85,000 a year. As you can see, that created a collision course and, unfortunately, that collision occurred in fiscal year 2001/2002 for the bar. That year our expenses exceeded revenues by \$14,000. The next fiscal year, the expenses exceeded revenues by \$116,000, and last year it was by \$83,000, so the bar has to have a license fee

increase. Nobody I've talked to will deny that their business expenses have increased in the last 12 years. And, the bar and our staff have been excellent stewards of bar money. The Board of Bar Commissioners elected not to accept reimbursement for themselves for some of their expenses incurred on behalf of the bar, saving \$40,000 last year, because they knew that things were tight. As I said, we ended up having an \$83,000 loss.

AL: How much is the licensing fee increase that is being proposed?

DM: The license fee increase that is being proposed is \$50 a year, which will raise it to \$300 a year. That's only a \$50 increase over a 12-year period. Over that time, the Consumer Price Index has risen 30 percent and our requested dues increase is only 20 percent, so in real dollars, Alabama lawyers will still be paying less than they did in 1993. I think it's important that our lawyers understand that the Alabama State Bar offers more services than practically any other bar association in the country. In fact, the only one that is even close is the Oregon State Bar. Their minimum dues are \$432 a year, but they also have a mandatory legal malpractice insurance requirement that raises the minimum license fee to over \$3,000 a year. They are really the only other bar in the country that offers the same services as we do. Alabama lawyers are getting a real bargain for what they get from our bar. And, when you

consider the services we offer, we are way ahead of any other bar association.

AL: Are there any other matters of interest to the bar pending before the legislature this session?

DM: A crisis has developed in our indigent defense reimbursement system. The state comptroller, pursuant to an opinion of the attorney general's office, stopped paying the overhead expenses of lawyers appointed to represent indigent defendants. This is devastating to the criminal defense bar that takes appointed cases and provides a great service to our state. They get \$40 an hour for out-of-court time and \$60 an hour for in-court time. The state pays lawyers who take civil cases \$85 an hour. I know that's what they're paying in condemnation cases and perhaps more in some other kinds of cases. The lawyers taking these criminal appointed cases are not getting paid much for their work. In the past they were allowed to charge moderate overhead expenses which they were receiving up until just a couple of weeks ago when the comptroller said that the state would no longer reimburse for overhead expenses. So there's a bill right now pending in the house to allow lawyers to cover overhead expenses. There is also an Indigent Defense Bill, which provides for the creation of an Indigent Defense Commission for the State of Alabama. The Indigent Defense Commission concept will centralize and make uniform the provision of legal services to indigent defendants as well as providing centralization of payment issues for attorneys representing indigent defendants. There are bills pending in both the senate and house calling for the nonpartisan election of judges. Alabama is one of only eight states which allows for the partisan election of appellate court judges. Many other bills have been introduced which would have an effect on our legal system, such as a bill pending in the house calling for the election of the supreme court justices by districts. There is a bill which has been introduced in the senate calling for mandatory attorney liability insurance. There are many other bills of interest to

lawyers, and we try to follow these as best we can. Those are the main bills right now.

AL: What's on tap for the remainder of your term?

DM: I'm going to continue speaking at local bar associations and civic clubs when invited. At the civic clubs, I have talked about America's rule of law and the declining respect for our legal system. It seems to me that the attacks leveled against our legal system by many special interest groups can have a very damaging effect if the public respect and confidence in our legal system is destroyed. Shakespeare's admonition to "kill all the lawyers," was taken up by Marx, Lenin, Stalin, Hitler, Mao, Pol Pot, and others. They literally wanted to, and, in fact, did kill members of the legal profession so they would not be an obstacle

to their way of government that abhorred rights like those guaranteed by our founding documents. The attacks by special interest groups on our jury system and other aspects of our legal system unfortunately are eroding public confidence in what I believe is the greatest legal system in the world. These efforts, if successful, will have a devastating effect. This is a message I think the public needs to understand. Drastic changes to our legal and judicial systems would most likely be at the expense of rights that Americans have held dear for over 225 years. Since America was birthed, lawyers have been guarding and protecting the liberties and rights guaranteed by America's founding documents, and as I visit local bar associations, I am encouraging lawyers to continue to fulfill this professional responsibility with the high-

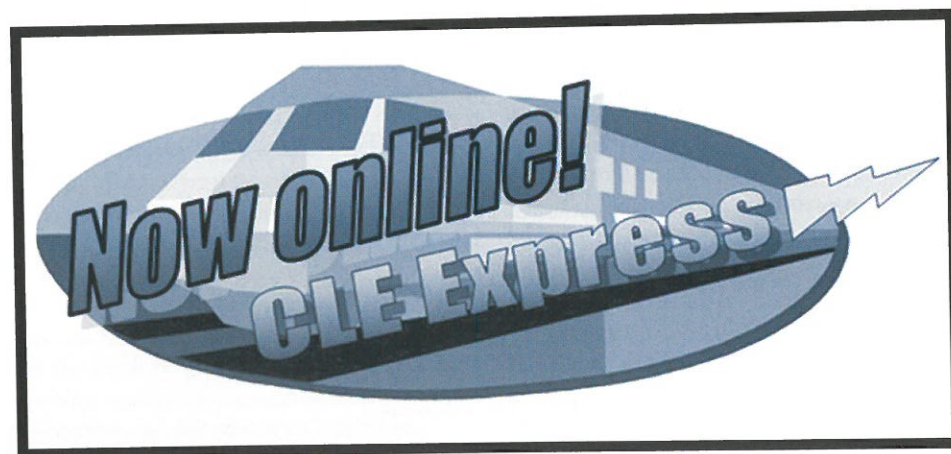
est standards of integrity, character and virtue.

AL: You've got an interesting background in that you practiced for many years in Tuscaloosa and then moved 100 miles away to Montgomery. How was it to pull up stakes and move?

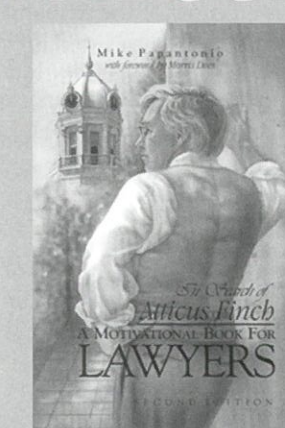
DM: Challenging. I was raised in Montgomery, so being back in Montgomery has been a great experience for my family and me. Tuscaloosa is a great community with great people and great lawyers. We have certainly missed our friends and community, but we have really enjoyed being here. No regrets!

AL: What are you going to do when you finish your term?

DM: I'm going to continue practicing law and continue my mediation practice. Of course, I'll continue to support the bar in every way that I can. ■

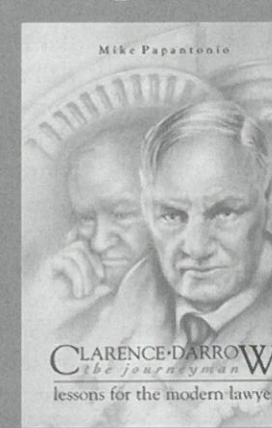


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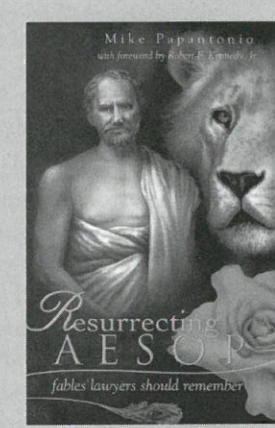
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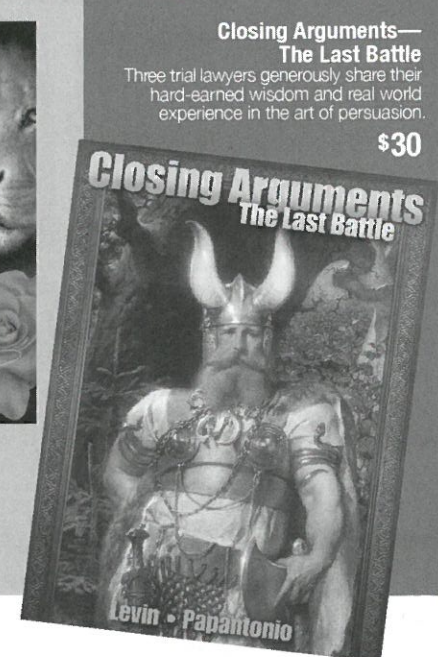
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