

BIRMINGHAM LAWYERS

BY ROBERT R. KRACKE*

I first became interested in the subject of the history of the legal profession in Alabama ten or fifteen years ago and wrote an article published in four parts in the *Birmingham Bar Bulletin* revolving around the practice of law in the Alabama territory from 1785 to 1825. I noted in that article that Birmingham was barely in existence and that the only places lawyers practiced in Alabama were Huntsville, Tuscaloosa, Mobile, and the Tombigbee settlement in St. Stephens and McIntosh, Alabama, north of Mobile.

In Mobile there were Spanish Courts operating as early as 1785 and the Tombigbee settlement boasted a prominent Judge by the name of Harry Toulmin for whom Toulminville in Mobile is named. Judge Toulmin wrote the first Legal Digest in 1807, a copy of which is available for inspection not only in the Birmingham Public Library, but also, one donated by present Birmingham Bar member Wheeler Smith, at the original Constitutional Convention Center presently located in Huntsville. In 1880, there were a few lawyers in Tuscaloosa and a small bar in Huntsville where the constitutional convention was held in approximately 1820. From Huntsville came many of the first members of the Supreme Court of Alabama including, I believe, the first Chief Justice Clement Clay Comer for whom one of our recent Chief Justices, Clement Clay Torbert of Maynard Cooper, was named. All of this 1800-1825 development took place because of Andrew Jackson's foray into Alabama and his battle at Horseshoe Bend with the Creek Indians. Many of his soldiers stayed in Alabama and settled here. They would come down the Tennessee River and where the Tennessee River looped to turn northward near Decatur and Guntersville, they would go ashore and travel until they reached the Coosa River going southward. Or, alternately, they would travel the federal road from Milledgeville, Georgia westward through Alabama, near Montgomery and on down to New Orleans. A few would stay in Jones Valley and the small town of Elyton and, according to Francis Hare, Sr., the first record of a lawyer settling in the Jones Valley Area was of a man named E. W. Peck who came to the county in 1824 where he practiced until 1833 and then

moved on to Tuscaloosa where there was probably more legal business and because it was then the capital of Alabama. Later, Peck became Chief Justice of the Alabama Supreme Court in 1868 and William S. Mudd studied law under him, according to Mary Gordon Duffee in her book *Sketches of Alabama*. Judge William S. Mudd became the real paterfamilias of the Birmingham Bar and his antebellum home, Arlington, still stands today as one of the few extant pre civil war residences. Mudd became Judge in 1857 and remained on the bench until 1883. One of his descendants, Billy Mudd, is with McDaniel, Hall today. Judge Mudd had two daughters: one married Alberto Martin and the other married William A. Walker of Elyton. They joined with Goldsmith W. Hewitt also from Elyton to form the first real law firm in Jones Valley in which Alberto Martin was a partner. Hewitt had studied in Judge Mudd's office and finished his training at Cumberland Law School in Lebanon, Tennessee (the predecessor of our Cumberland Law School here). Later, he formed a partnership with John C. Morrow, whose descendent John H. Morrow practices today with Bradley, Arant and then his son John C. Morrow practicing with Burr, Forman. Our John Morrow's ancestor Hugh Morrow was with the law firm of what was then called Tillman, Bradley and Morrow and in 1899 Lee Bradley, Sr., the father of Lee Bradley, Jr., now in his nineties, joined with Hugh Morrow to form Bradley and Morrow. William A. Walker formed a partnership, which became known as Hewitt, Walker and Porter. I grew up with one of his descendants, Alfred Augustus Walker, whose grandfather, Alf Walker was the first pediatrician in Birmingham and Dr. Walker's grandfather was the previously mentioned William Augustus Walker who was born in Elyton in 1846. The other partner was Ben Porter.

Inasmuch as Birmingham was a postbellum city, not having been formed until 1871, the importance of a lawyer being a former confederate soldier cannot be stressed enough. Most of the prominent lawyers in early Birmingham were civil war heroes. Some examples of those heroes were Joseph F. Johnston (Cabaniss & Johnston today); all three

members of the Hewitt, Porter and Walker firm; Judge John C. Morrow; Lawyers Morgan and Pettus were all confederate soldiers. Family connections did not hurt either; Walker Percy married Mary Pratt DeBardelaben, his son lived in Tony Davis' present home. Oscar W. Underwood, the first secretary of the Birmingham Bar and later a United States Senator married a member of the Woodward family, an ancestor of one of my partners who was Rick Woodward, whose grandfather of the same name owned the Birmingham Barons Baseball team. Oscar W. Underwood, Jr. married Ellen Pratt and he became a Professor of Law at the University of Virginia. Colonel John Taliaferro Terry came from Carrollton, Alabama and formed the law firm of Terry and Willis in November 1872 when he practiced in Elyton where the county seat was at that time. In 1873, Judge Alex Oscar Lane came from Eufaula, Alabama and married Colonel Terry's daughter. They formed a partnership known as Terry and Lane, later known as Lane and Taliaferro, which is probably one of the Taliaferros of Burr & Forman. In 1882, A. O. Lane was elected Mayor of Birmingham and then he formed a partnership with Senator Frank S. White. Cabaniss & Johnston was founded by Edward H. Cabaniss who lived from 1857 to 1936 and Forney Johnston who lived from 1879 to 1965. In 1896 Martindale-Hubbell showed the firm of Cabaniss and Weatley and in 1902 Forney Johnston was listed with the firm of Johnston and Leadbetter. In 1907 Cabaniss and Bowie was listed and in 1920 Cabaniss formed a partnership with Forney Johnston, whose father was Joseph Forney Johnston, Selma lawyer, and Alabama Governor, United States Senator and descendent of the Great Confederate General Joseph E. Johnston.

Another early firm was Percy, Benners and Burr, later known as Thomas, Taliaferro, Forman, Burr & Murray (now Burr and Forman).

Walker Percy came from Mississippi and a line of Percys has practiced off and on ever since in the City of Birmingham where today one of the Percy namesakes, Walker Percy Badham, practices at Maynard, Cooper. The original Percy graduated from the University of Virginia in 1885 and in 1888 married Mary Pratt DeBardelaben, the daughter of Henry F. and Ellen Pratt DeBardelaben who was the granddaughter of Daniel Pratt of Prattville, Alabama (inventor of the cotton gin).

Other early firms were Bowman, Harsh and Beddow and the firm of Alex T. London. Martindale-Hubbell for 1890 lists Alex T. London and in 1894 London became the partner of John Tillman. Later he appears with John London, in 1898, which became London, Yancey and Brower; later, London, Yancey, Clark and Allen.

John Tillman was the first president of the Birmingham Bar Association and the aforementioned Underwood the first secretary and treasurer with R. H. Pearson as Vice President. The Articles of Incorporation were attested by Percy R. Somerville, presumably the ancestor of Lange, Simpson, Roberson and Orman Somerville. One of the descendants of A. C. Howze, one of the founders of the Birmingham Bar Association wrote an article about the history of the Birmingham Bar Association which was published in the Alabama Lawyer in July 1950. Judge Henry R. Howze noted that the Birmingham Bar Association was incorporated on April 15, 1885 (Ed. Note: The original Articles of Incorporation filed in Probate Court, recorded in Vol. A., page 247, indicated April 15, 1885 was the date of incorporation and indicates nineteen members.) Interestingly, among the objects of the association were the social and literary advancement of its members, especially in the advancement of the profession, the acquisition of a new law library, and otherwise to facilitate the practice of law. I have done a book review in just about every one of the last 100 quarterly issues of *the Birmingham Bar Bulletin* in a feeble attempt to "advance the literary achievement of the members of the Birmingham Bar Association and its profession."

Judge Howze was admitted to the Bar in 1891 by presenting his diploma (not then called a degree) and he obtained a position with the firm of White and Howze, the latter being his father. He was not allowed to begin practice until he was 21 years of age and at the time of his admission the then new courthouse was on the corner of 3rd Avenue and 21st Street, the present location of the YMCA parking lot. Judge Howze relates that there was a large room in the then new courthouse which was allotted to the Birmingham Bar Association for its exclusive use and this was the core of the beginning of the now Jefferson County Law Library. The law library had Alabama state reports and the lawyers were not allowed to take the volumes outside the courthouse but only to use the while

they were waiting on their case to be called (telephones were not in general use at this time). Judge Howze said it was a delightful experience for young lawyers to sit in the library and listen to the discussions of the older lawyers who were waiting on their cases to be called. They would discuss points of law in their various cases and it was as if the young lawyer were listening to a lecture from a professor in a law school. It also served to bind lawyers closer together and made them more intimate with each other than lawyers are today (the Birmingham Bar now has more than 2900 members).

In 1923 the first grievance committee of the Birmingham Bar came into existence and one of its roles was to censure or disbar those lawyers who professed allegiance to the Ku Klux Klan. The Birmingham Bar was dedicated to condemnation of all kinds of lawlessness whether in politics or not. The present Jefferson County courthouse was built in 1931 and the bar association moved its quarters to the top floor under the leadership of DuPont Thompson who was the host of many Birmingham Bar picnics at Bull Frog Bend out beyond Mount Pinson.

From Eugene Thompson Akins' book entitled "*Bull Frog Bend*" we find

"But the even to which Pa looked forward every year for twenty years was the barbecue of the Birmingham Bar Association, of which he served one term as president and many years on its executive committee.

"This, however, was the one group unwelcome by Mama because of the 'liquid refreshments' that she knew would flow. She gave Pa a hard time as he had the creek bank cut for the tables, the daffodil field cleared for cars, and got down paraphernalia needed to fee between two and three hundred hungry men.

"Mama's head got higher and her mouth tighter as the time approached. The evening before she would go to town, reluctantly leaving our son, John, to help his grandfather when he was old enough. The last thing she said as she crossed the bridge was, 'Remember, DuPont, no liquor.'

"And Pa would reply, 'No liquor'.

"Many of the men remained until dusk, and Pa once recorded that Mama returned and caught the crap-shooters in the last cast of the dice."

Judge Howze also mentioned the then Presiding Judge J. Russell McElroy who, I believe, served in excess of 50 years as a judge in Jefferson County. Also, J. L. Drennen was president of the association in 1947, his son Judge Arnold Drennen is still a member of the Birmingham Bar. J. L. Drennen was responsible for an abridgement of the Code of Ethics of the Alabama Bar Association which was sent to every member of the Birmingham Bar. The committee which did this was composed of Henry Upson Sims, Joseph F. Mead and Henry R. Howze. Sims was the only president of the American Bar Association prior to our present Lee Cooper.

Oscar W. Underwood became a member of the House of Representatives in 1895 and was a leader of the democratic majority in the Senate in 1922 until his voluntary retirement in 1927 when he would not endorse the Ku Klux Klan as a constituency.

Instead, Ku Klux Klan member Hugo Black was elected to the Senate in 1927. Other prominent Birmingham lawyers included George Huddleston who was elected to the House in 1915; Luther Patrick was in Congress and Frank Dixon was Governor of Alabama from 1939 until 1943; Frank Spain was international President of Rotary and Roderick Beddow, Sr. was international President of Lions - all were Birmingham Bar members.

The foregoing is just a thumbnail sketch of a history of the Birmingham Bar Association which will be published during the year 1997 in Birmingham Bar publications concerning the history of the association and its members.

* This article is adapted from a speech given by Robert R. Kracke to the Birmingham Legal Administrators Association on April 3, 1997. Thanks by the author are extended to Birmingham Bar member Sam Rumore who directed the author to research resources as on ongoing project of the History and Archives Committee whose chairman is Sam Rumore.