



# HINDS COUNTY BAR ASSOCIATION

## MAKING OUR CASE FOR A BETTER COMMUNITY

JUNE 2006



### President's Column

by John C. Henegan

The Hinds County Bar Association, with Alveno Castilla as President, has had an active and productive 2005-2006 term. Under his leadership, HCBA immediately

responded with volunteer and financial assistance for those Mississippi Gulf Coast attorneys whose practices were devastated by Hurricane Katrina. It also supported and extended its pro bono and community services. HCBA co-hosted with Jackson Young Lawyers Association "The Evening Honoring The Judiciary", which is our annual event and continues to grow. HCBA also planned its annual golf tournament to be held June 12, which is the fundraiser for Volunteer Lawyers Project. Notably, HCBA also began laying the ground work for a Diversity Roundtable Conference, an event that you will read and hear more about. None of this would have been possible

without the unselfish volunteer efforts of countless HCBA members and the enthusiastic, efficient, and tireless support of Patricia Evans, our Executive Director.

The 2006-2007 term is the 75th anniversary year of the HCBA. We plan not only to continue these same activities but also to re-establish some old committees and begin some new ones. You can find a list of the committees elsewhere in this newsletter.

The 25 committees are chaired by some of the most capable people that I have had the good fortune to know in any profession or business. They come from a cross-section of our profession. Many are past presidents of this or other bar associations or organizations. All are very busy, but they have unselfishly agreed to give their time to the HCBA. I am optimistic about the promise that their leadership and efforts holds.

This theme of the 2006-2007 HCBA year is diversity. This topic has for me a number of different dimensions that will I hope become apparent as the year unfolds. State Supreme Court Justice James Graves and William Winter,

*continued on page 7*

### April Membership Meeting



*The April Membership Meeting program was given by John Dowdy, Assistant U. S. Attorney. Pictured with Dowdy is Dean Jim Rosenblatt of Mississippi College School of Law, and Alveno Castilla, 2005-2006 HCBA President.*



*At the April Membership Meeting the Hinds County Bar Association presented \$8000 through its Community Grant Committee to The Center for Violence Prevention. Accepting the check from Alveno Castilla and Melody McAnally, Chairman of the Community Grant Committee, is Josh Turner, a board member of the center.*

### HCBA LUNCHEON MEETING

Tuesday, June 20, 2006 Capital Club 12:00 Noon Cost \$15.00

Speakers: Honorable William Winter and Justice James Graves

## HCBA Calendar of Events

June 12, 2006

**HCBA Golf Tournament**  
Noon. Reunion Golf Club

June 20, 2006

**HCBA Membership Meeting**  
Noon. Capital Club

August 15, 2006

**HCBA Membership Meeting**  
Noon. Capital Club



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## William Winter Receives HCBA Professionalism Award

William F. Winter was presented the eighth annual Professionalism Award by John Henegan, 2006-2007 HCBA President at the Evening Honoring the Judiciary. Linda Thompson chaired the Professionalism Award Committee. Winter received a glass plaque bearing his name, the year of the award, and the criteria for the award. In addition, his name will appear on a trophy on permanent display at the Mississippi Bar Center.

The criteria for the award are that the nominated member must have consistently demonstrated adherence to professional standards, ethics, integrity, civility and courtesy; have encouraged respect for, and avoided abuse of, the law and its procedures, participants and processes; have shown commitment to the practice as a learned profession, to the vigorous representation of clients, and to the attainment of



*William F. Winter received the 2006 Hinds County Bar Association Professionalism Award. He is pictured with John Henegan and Alveno Castilla.*

the highest levels of knowledge and skill in the law; and have significantly contributed time and resources to public service.

Past Professionalism Award Winners are: Hal Miller, Reuben Anderson, William Goodman, George Hewes, Alex Alston, Thomas Crockett, and Louis Watson.

## The HCBA Diversity Roundtable - November 16, 2006

by John C. Henegan, HCBA President

Diversity is this year's theme of the Hinds County Bar Association. The word has a currency today that it did not have 15 years ago, and its meaning can vary depending on the experiences and the religion, age, gender, or race of each person that uses it. Exploring these differences in a candid way might be a challenge, even unsettling, for some, but, if so, it might prove also to be beneficial and productive. To this end HCBA will host a morning-long Diversity Roundtable followed by a keynote lunch on Thursday, November 16, 2006.

The Roundtable will address the broad issues of diversity as they relate to law firms and businesses in Mississippi. Officers and in-house counsel of Fortune 500 firms with a presence in Mississippi will be panelists and speakers. Along with HCBA, other organizations that will co-host this event include Leadership Jackson 2000, Mississippi College School of Law, Mississippi Economic Council, and University of Mississippi Law Center. Not only will the members of these host organizations be invited for a modest fee, but we also plan to invite the State Legislature, our state-wide elected officials, and other key county and local public officials to attend.

Our co-hosts and several of our local law firms have already agreed to help provide in-kind support and/or underwrite the expenses of this event. Each law firm with members in HCBA is being invited to be a sponsor of the Roundtable with those letters having already gone out as of today.

Why a Diversity Roundtable under the banner of HCBS, in this place, and this year? Diversity means to me that every person, regardless of race, color, gender, religion or creed, has a fair opportunity to play a role in the significant decisions of our republic that affect or influence their individual lives and those of their families. Mississippi has the sixth most diverse population among the 50 states, trailing only Hawaii, New Mexico, California, Texas, and Maryland, with Georgia and Florida following Mississippi. This is not a recent trend. In 1980, Margaret Walker Alexander, the Mississippi writer and Professor at Jackson State University, noted that Mississippi was "a part of the

great pluralistic fabric of this nation" being "home to four races in the family of mankind; the red men . . . white men . . . black Africans . . . [and] Oriental Americans." Since then, Mississippi like the rest of the country has only become more culturally and ethnically diverse, and current demographics predict that Caucasians will make up by 2050 less than 50 percent of the country's population.

Since Alexander's remarks, some gains have been made in the State related to the issue of diversity. Today, Mississippi has the highest percentage of minority public elected officials of any State. Three African-Americans and two women have since served or are serving on the State Supreme Court, with many more serving in our state trial courts. The Choctaw Nation in Neshoba County has obtained an economic self-sufficiency that many people would have not believed was possible 30 years ago. But much still remains to be done. Indeed in a recent state-wide poll of community leaders and public officials, improved race relations was identified as the number one priority of those responding.

Recalling the barriers of the past that have divided us may be one place to begin. Recognizing that while we are different we all have the same basic needs and wants is certainly another place to start. Obtaining a better understanding within the business and professional community about issues that are unique to minorities and women is another. Discussing the tangible social and economic benefits that can arise from a diverse professional and business community is another. No doubt there are other issues worth exploring as they relate to diversity. State Supreme Court Justice James Graves and William Winter, former Governor of the State, will be exploring different aspects of these subjects as our featured speakers at the HCBA's June 20 membership meeting.

The HCBA will address them further in later editions of this newsletter and in other ways leading up to the Diversity Roundtable and throughout the remaining year. As President of the HCBA, I hope that you will follow, and become a part of, this discussion.

# Among the Idiots

by Luke Dove

In The Common Law, Justice Oliver Wendell Holmes observed that “Judges are apt to be naif, simple-minded men”. Today, Holmes’ perceptive... characterization must be amended to include naive, simple-minded women. But whatever the gender of the wearer, Holmes understood that donning a judicial robe does not confer wisdom.

Justice Antonin Scalia apparently does not subscribe to Holmes’ maxim, for he regards himself the keeper of a wellspring of a judicial wisdom untapped by others. In particular, Justice Scalia is fond of appearing before sympathetic venues to publically deride the notion of a “living constitution”.

Speaking before disciples of the Federalist Society, Justice Scalia labeled as “idiots” those who regard the Constitution as a “living” document. He said:

But you would have to be an idiot to believe that. The Constitution is not a living organism, it is a legal document.

It says something and doesn’t say other things.”

It is true that the Constitution is a legal document. But it is not a real property lease, nor a Bill of Lading. It is not a Letter of Credit, nor a surety bond. It is the embodiment of our fundamental law, our principles of self governance and individual liberties. As others have said better, the Constitution is a framework to protect and nurture liberty, not a straitjacket to bind liberty to the 18th century.

But Justice Scalia would demur. He professes to be an “originalist” and asserts that judges must adhere to the precise text of the Constitution. The meaning of those venerable words, he believes, was locked in place at the time they were written. This meaning, Justice Scalia insists without irony, can be discerned by a study of contemporaneous writings. Thus, a judge who properly applies principles of originalism can neither create nor destroy constitutional rights. Those rights are fixed. Justice Scalia argues that proponents of a living constitution want fundamental issues decided by

appointed justices who answer to no one and who may twist and torture the words of the Constitution to create new “inherent rights” which must be applied irregardless of public will and Constitutional strictures.

Justice Scalia was appointed to the Supreme Court because of brilliant polemics. But, brilliant polemics may not equate to the most brilliant judgment. Fortunately, our system of stare decisis and multi-member appellate courts constrains the ability of individual judges, no matter how brilliant, to unilaterally advance personal preferences. They must, by persuasion and reasoning, convince a majority of colleagues to adopt their view. Because Justice Scalia has been unable to fully accomplish this to date, he resorts to lampooning others through public ridicule.

I am neither qualified nor inclined to address the doctrine of originalism in depth. But I feel confident enough to say that the genius of our Constitution is that its principles are sufficiently broad to allow responses to new conditions while remaining faithful to the original intent. It is easy enough to argue that Madison and Jefferson never intended that an abortion or the practice of consensual homosexual acts should become constitutionally protected rights. But consider the pending appeal of Bernard Ebbers who alleges that the deliberate refusal of the government to offer immunity to three crucial witnesses prevented him from being able to call these persons as defense witnesses and thus deprived him of his Constitutionally protected right to a fair trial and due process of law. No doubt that was not a right contemplated in 1789, but it is a right which the Second Circuit may now finally recognize due to the extreme circumstances of the Ebbers case.

So I am happily living and playing among the idiots. I believe in a “living constitution”, and certainly as opposed to a dead one. But even though I may be a idiot, I at least remain comforted by the knowledge that, as Justice Oliver Wendell Holmes observed: “Judges...are simple-minded”.

# Back to the Future

by Captain Equity

Where has the time gone? It seems like only yesterday that America entered what historians now nostalgically refer to as its "Police State Lite" period. Those were the good old days when the NSA egged on by Vice President Cheney from an undisclosed location aspired to become the American secret police equivalent of the KGB, SAVAK, and a dozen other twentieth century internal security arms of the ruling elite. These acronyms were scattered throughout the world, but were all dedicated to keeping the home folks in line. Actually, secret police is a little harsh. I like to think of these organizations as merely being the muscle of executive branch human nature that must be flexed whenever the rank and file attempts to speak truth to Power. Anyway, back in 2006 a majority of self-absorbed, multi-tasking Americans didn't seem too concerned. After all, the stated purpose of domestic spying was to keep Americans safe from the boogeyman (terrorists, communists, traitors, Howard Stern). It was reminiscent of former Mississippi Governor Ross Barnett's famous aphorism, "If you can't trust a Trustee, who can you trust?" Just substitute government for Trustee and there you go. You would have thought that past abuses of civil liberties by the likes of Joe McCarthy, J. Edgar Hoover and Richard Nixon would have tipped off Americans of things to come. George Orwell's 1984 or perhaps a study of German political history in the 1930s should have also done the trick. But, thanks to the nation's fragile attention span most Americans were just too busy to be bothered. And for those who did attempt to pay attention, there was always the omnipresent American Idol not to mention CMT's Search for Coyote Ugly, the Iron Chef, the NBA, et al to distract them. Ah, the good old days of carefree ignorance.

Yep, that was 26 eventful years ago when we had real larger than life heroes like Simon Cowell, Emeril Lagasse and Katie Couric. Yes those were the days when an "It's me" attitude coupled with old fashioned half hearted effort made it possible for every entitled American kid to be a college student athlete charged with a felony, an illiterate millionaire rapper or a gorgeous albeit dumb as dirt television spokesmodel. Heck, even a kid with a 2.1 GPA, a string of business failures and chronic bad judgment could go on to be President of the United States. Yes, it was 2006 and the USA was the envy of the world for having pioneered the interest only mortgage. Unfortunately, I doubt we will ever revisit those high

riding days again. I guess that is why I am writing this little essay (in secret of course). Thanks to advances in quantum physics not to mention a corrupt NSA block captain who looks the other way for a half pint of Heaven Hill, I am able to alert past generations to just how good things were back then while there is still time to make the most out of every precious moment in the present.

It all really started with the 2006 mid-term elections. Faced with a disenchanting electorate fed up with unprecedented levels of corruption, incompetence lies and just plain dumb decisions, the Democrats took back control of the House and Senate. By late 2007 it was clear that the Democrats would win the White House. The only uncertainty was the identity of the nominee. Senator Hillary Clinton was the odds on favorite back in 2006, but other ambitious Democrats diluted her commanding lead as November 2008 neared. No less than 83 Democrats were considered serious contenders in January 2008. The list included everybody from Senate Majority Leader Harry Reid and Speaker of the House Nancy Pelosi to former nominees Al Gore and John Kerry. Even Mississippi's former Lieutenant Governor Amy Tuck, again a Democrat, was polling well. Political experts said that given the number of Presidential hopefuls, a 2% following was considered viable. In the end, Senator Clinton fell victim to an anti New York backlash. It started in 2007 when the Mets beat the Yankees 4 games to 3 in the World Series. The 2008 Super Bowl was won by the Eli Manning led New York Giants over the New York Jets. But the clincher was American Idol, the true barometer of American culture and politics. Rhonda Berkowitz of Queens beat out Candles Portera of Manhattan for the crown. America and the Democratic Party were suddenly sick of the Empire State.

John Kerry defeated Senator Clinton by two votes at the annual convention held in Burlington, Vermont as a nod to Party Chairman Howard Dean. The ticket of Kerry-Pelosi routed Presidential nominee Bill Frist and his running mate Porter Goss later that November. Yes, looking back, Americans had high hopes as the country headed into 2009. Unfortunately, that is when things began to seriously unravel. President Kerry's unprecedented levels of imperiousness and incomprehensibility made his 2004 campaign look downright Reaganesque. By 2012 even Democrats

*continued on page 14*

