



# MONTHLY BULLETIN

Mobile Bar Association 153 Government Street Mobile, Alabama 36602 (251) 433-9790



**Mike Druhan, President  
Mobile Bar Association**



## President's Comments

### CHRISTMAS ISN'T JUST ANOTHER DAY

I hope that we all understand that Christmas isn't just a day to receive presents and gifts. I believe it is an anticipation of giving as it is anything. Have you noticed on Christmas past, that what really gets our spirits up is the anticipation of experiencing the joy of our loved ones upon opening our presents to them?

To me, the high part of the day, besides the remembrance of the Reason for the occasion, can be found in watching a son or grandson open a wrapped Super-Intergalatic Convertible 48 Mode Systematic gizmo, which he has dreamed of possessing, after which he says the perfunctory "Thank You", but his eyes tell you "Pop this is solid."

Most of all, Christmas is a happy time of remembrance of family and friends whom once shared our joy but are gone now and are still keenly missed. It is also a time we should spare a moment to remember our brothers and sisters in the Armed Forces who work to give us the gift of freedom by serving far from home and family. We need to pray for them and their safe return.

Lastly, this is my final epistle to the Bar as President and I want to thank you all for the opportunity to serve; it has been unique for me. My thanks, to my officers, **BRIAN MCCARTHY** and **PETE MACKEY**, each of whom bring varied accomplishments to the Bar. I also want to especially thank our Treasurer, Ginger Gaddy, for her uncompromising sense of appropriate management of our money and a spritely attitude toward getting hard things done.

May the good Lord continue to rain down good things on all the members of our Bar and their families and most of all may

***GOD BLESS AMERICA!***

## PROGRAM

On Friday, December 19, 2014

We will celebrate

*"The Traditional Holiday Egg Nog and Wine Get-together"*

11:30 am,

The Battle House Hotel Moonlight Ballroom

The Program will:

**Honor Past MBA Presidents**

**Present Mobile Bar Foundation Grants**

**Awards to South Alabama Volunteer Lawyer Program  
and**

**Legal Services of Alabama Participants**

**SPONSOR: FREEDOM COURT REPORTING**

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### 2014 OFFICERS

President – J. Michael Druhan

President Elect – Brian P. McCarthy

Vice President – Peter S. Mackey

Secretary – Ruthie F. Alexander

Treasurer – Ginger P. Gaddy

Assistant Treasurer – Bess P. Creswell

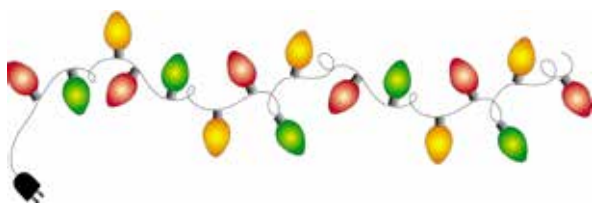
President Young Lawyers -

Kaisee S. Heisterhagen

Executive Director – Barbara C. Rhodes

Editor – Ferrell S. Anders





# *Browsing the Bar* *With Barbara*

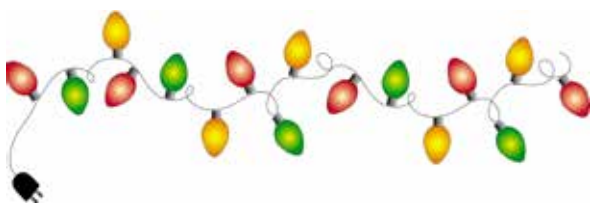


Looking for the “perfect gift” for that someone who is a history buff or associated with the legal profession? The MBA still has signed copies of *“Mobile’s Legal Legacy 300 years of Law in the Port City”*. This is a beautiful publication that anyone would be proud to own and display. It includes oodles of historical facts, photographs and anecdotes about both Mobile and its legal history. Call the MBA (251.433.9790) and reserve your copy now!

I know I say this every year but I really do enjoy my job and it is difficult to believe that another year has gone by. Working with the MBA Officers and Board is always a pleasure and has gone very smoothly this year. The Fall Party was a great success, thanks to **JAY ROBINSON** and his crew of “merry men”. Our CLE’s have been outstanding and we are looking forward to our **26TH ANNUAL BENCH AND BAR CONFERENCE** this year at the Riverview Plaza (I can remember the first one in 1988 at the Grand Hotel). We have greatly appreciated our luncheon sponsors this year – **THOMSONREUTERS; RULAND & RULAND, CPAS; THE LAW FIRM OF SATTERWHITE, DRUHAN, GAILLARD & TYLER, LLC; MOBILE BAY REPORTING; FREEDOM COURT REPORTING and FINDLAW INFORMATION.** THE ANNUAL FOOD DRIVE was once again very successful, with over 23 boxes of goods delivered to the Mobile Area Food Bank. Just another example of Lawyers giving back!

*Tammy, Wynette and I wish for each of you a joyous and blessed Holiday Season and look forward to working with you in 2015!*





Ferrell Anders  
Editor  
Mobile Bar Association  
Mobile, AL 36602

Dear Ferrell:

Recently, my father, **DONALD E. BRUTKIEWICZ, SR.**, age 84, a practicing attorney, was presented by a client this photo. From Alabama's admission to the Union in 1819 until approximately 1963, the state's judicial system allowed for male-only juries. The Supreme Court of the United States eventually declared that a state's systematic exclusion of female jurors was unconstitutional.

By agreement of the parties and attorneys, this all-female jury was a first in South Alabama. At that time, **DON BRUTKIEWICZ** was the chief assistant district attorney on **D.A. Carl Booth's** staff. This position was part-time and allowed him to also maintain a general law practice. The juror who provided this photo to my dad's client remembers that the case was an automobile accident dispute.

The opposing attorney is the late **JAMES LACKEY** who later became the presiding judge of the Municipal Court of Mobile for over 20 years. The other gentlemen pictured are the bailiff, **DAVE NORTON**, and **SUPERNUMERARY JUDGE MAYHALL**. This event occurred in the Old County Courthouse on the southwest corner of Government and Royal Streets. Today, with nearly one-half of new law school graduates being female, it is ironic that fifty years ago their foremothers were excluded from jury service.

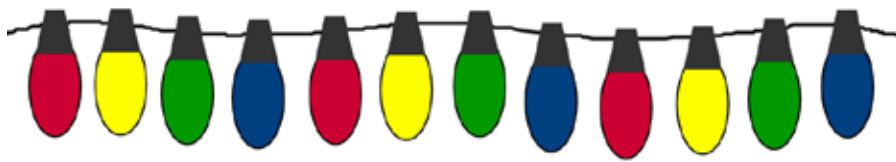
**JOHN C. BRUTKIEWICZ**  
Lawyer



From left to right standing: Donald E. Brutkiewicz, Sr., James Lackey, Dave Norton and Judge Roy Mayhall).



**DIED:** MBA member **BOB MCDONALD** died in Mobile on November 6, 2014. He practiced law in Mobile for many years, and was an active and longtime member of **St. PIUS X CATHOLIC CHURCH** and choir. He was involved in many other civic organizations, including a Mystic Society, Knights of Columbus, Elks, and The Friendly Sons of St. Patrick. He is survived by three daughters and six grandchildren.



## YOUNG LAWYERS

Kasee Heisterhagen, President

The Young Lawyers would like to thank everyone for joining us at the **November YL** meeting at **BISTRO ESCOFFIER**, hosted by **THE MALLETTE FIRM**. The crowd was lively and the food was delicious. We will not be hosting a December meeting due to the holidays.

As 2014 draws to a close, the **YOUNG LAWYERS** would like to thank everyone for their support this year. To recap, we accomplished quite a bit:

- Raised money for the Wounded Warrior Project at our annual golf tournament
- Hosted FunFest for the Children of St. Mary's Home and donated funds and sporting equipment for their use throughout the year
- Helped build a house at our first ever YL Habitat for Humanity Work Day
- And we had some wonderful monthly meetings!

We owe a special thanks to all of you who helped us by sponsoring an event or coming out to participate. We also owe a big thank you to our executive board, **TREASURER RUSS JOHNSON**, and **VICE PRESIDENT JONATHAN MAPLES** (who will be taking over as YL President effective Jan. 1, 2015).

If you would like to get involved with any of our upcoming events, are interested in sponsoring an upcoming meeting, or if you have any questions, concerns, or comments please e-mail me (ksparks@burr.com), **VICE PRESIDENT JONATHAN MAPLES** (jmaples@carrallison.com), or **TREASURER RUSS JOHNSON** (rjohnson@law-alabama.com). Also, if you have any events to share with your fellow Young Lawyers, let us know and we will be sure to include it on our YL Facebook Page.



# SALVP

SOUTH ALABAMA VOLUNTEER LAWYERS PROGRAM

## ARIANA H. MOORE, EXECUTIVE DIRECTOR

In December **SAVLP** recognizes volunteers for outstanding service provided throughout the year. Please make plans to attend the Bench and Bar Awards Ceremony Friday, December 5th at the Renaissance Mobile Riverview Plaza and the Mobile Bar Association's December Bar Luncheon on Friday, December 19th at the Battle House Hotel's Moonlight Ballroom. We look forward to recognizing volunteers for their support of SAVLP at both of these events.

**HOUSING FIRST'S SECOND PROJECT HOMELESS CONNECT (PHC)** will take place January 30, 2015 from 8:00am-2:00pm at The Grounds (1035 Cody Road North). The one day event provides needed services to the homeless and imminently homeless of Baldwin and Mobile Counties, including access to free legal assistance, a Homeless Court, medical services, dental and vision screenings, housing assistance, food stamps, state IDs, Social Security Cards, and more. This year PHC will be held in conjunction with Operation Stand Down, an event designed to provide similar services to area veterans. If you are interested in providing legal assistance to clients, please contact Ariana at 433-6693 or [ariana@savlp.org](mailto:ariana@savlp.org). General volunteers can find additional information and register to participate on the United Way of Southwest Alabama's website (<http://volunteer.uwsa.org/>). For any other questions, please contact Emily Head of Housing First, Inc. at 445-8027 or via email at [emily@hfal.org](mailto:emily@hfal.org).

SAVLP has not yet met the **2014 PRIVATE BAR CAMPAIGN** goal. Your donations play an important role in supporting the mission of SAVLP. Please consider donating if you haven't done so. Many thanks to those who have contributed already. We appreciate all that you do for SAVLP!

Special thanks to the following attorneys who accepted or closed cases in September and October:

JOSEPH P. H BABINGTON, MANDY BARTON, JOHN G BAYLOR JR., BILLY C BEDSOLE, RUSSELL E BERGSTROM, JAIME W BETBEZE, MARY ALLIE E BOLLER, KNOX BOTELER, EDWARD G BOWRON, HENRY H BREWSTER, S. JOSHUA BRISKMAN, JAMES D BROOKS, K. MEGAN BROOKS, PAUL D BROWN, HENRY H CADDELL, HENRY A CALLAWAY III, JEANNA D CHAPPELL, LISA CLAYTON, JAMES PAUL CLINTON, HARWELL E COALE JR., F. LUKE COLEY JR., HEATHER D COLLIER, GREGORY S COMBS, J. P. COURTNEY III, ROBERT J CRANE, RUDENE B CROWE, GLENN L DAVIDSON, BRENT T DAY, MARGARET F DEMERANVILLE, MOSHAE E DONALD, BRYAN G DUHE', GILLIAN G EGAN, PAGE S ELLIS, JONATHAN G FESTA, CHARLES J FLEMING, JACQUELINE FLEMING BROWN, JONATHAN B FRIEDLANDER, JOSH D FRIEDMAN, WILLIAM J GAMBLE JR., JASON C GERTH, JOSHUA M GRANTHAM, BRANDY B HAMBRIGHT, CHRISTINE C HERNANDEZ, R. SCOTT HETRICK, J. BRADFORD B HICKS, AMANDA S HUNTER, SCOTT W HUNTER, WESLEY J HUNTER, HERNDON INGE III, J. WALTON JACKSON, SIDNEY W JACKSON III, JACK F JANECKY, KYLA G KELIM, DAVID G KENNEDY, BANKS C LADD, GILBERT B LADEN, WILLIAM R LANCASTER, JARED N LYLES, E. RUSSELL MARCH III, CHAD C MARCHAND, GREGORY B McATEE, MARCUS E McCRORY, JAMES H McDONALD JR., SAMUEL G MCKERALL, ROSE METZGER, S. C. MIDDLEBROOKS, BROOKS P MILLING, PAMELA K MILLSAPS, JENNIFER S MORGAN, JOSHUA P MYRICK, MEEGAN NELSON, THOMAS B NORTON JR., CRAIG D OLMSTEAD, JAMIEL J PETERSON, MARY E PILCHER, JEAN M POWERS, ABBY M RICHARDSON, J. BURRUSS RIIS, IAN D ROSENTHAL, SAMUEL C ROSTEN, WILLIAM H SALIBA, SHEILA V SCHOEN, ATOYIA A SCOTT, CLIFFORD C SHARPE, TIFFANY B SMITH, HENDRIK SNOW, MARY ELIZABETH SNOW, D. TRICE STABLER, JOSEPH D THETFORD JR., RENEE E THIRY, RICHARD L THIRY, REILLY WARD, JARROD J WHITE, SAMUEL K WILKES, ANNA M WILLIAMS, MARGARET Y WILLIAMS, NICHELLE WILLIAMS, RICHARD R WILLIAMS, RICARDO WOODS, AND THOMAS T ZIEMAN JR.



# SIGINIFICANT DECISIONS

by Duane Graham



Over one dissenting vote, the *Supreme Court in Troy Bank & Trust Co. v. Citizens Bank*, No.1130040 (Ala., September 30, 2014), held that the bank that underencoded an item for payment breached its warranty under the statute and thus bore the burden of proof to overcome a loss, even though it corrected the underencoding the next day. The payor bank had initially paid the underencoded amount and then paid the corrected balance, but later discovered that the account had insufficient funds. Ultimately, the Court held that the payee bank bore responsibility for the error.

In a case of somewhat inconsistent rulings, the *Supreme Court in Yanmar America Corp. v. Nichols*, No. 1130214 (Ala., September 30, 2014), first held that when a manufacturer's affiliate undertook to provide warnings of a potentially defective product, that affiliate assumed liability for failure to warn, but then held that because the plaintiff, the brother of the purchaser of the product, did not actually receive notice of the warning, no liability could attain because the allegedly defective failure to warn had not increased the danger to plaintiff.

In a case of apparent first impression, the *Supreme Court in Taylor v. Estate of Alice Harper, No. 1130587* (Ala., September 26, 2014), held that under Ala. Code § 43-8-21, when petitions to probate wills were filed in two separate counties, the county in which the first petition was filed had proper jurisdiction to proceed, and not the second.

In another case of first impression, the *Supreme Court in First United Security Bank v. McCollum*, No. 1120302 (Ala., September 26, 2014), held that the purchaser at a foreclosure sale was an "owner" for purposes of receiving excess tax sales proceeds pursuant to Ala. Code § 40-10-28.

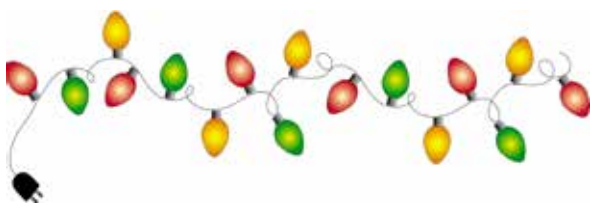
Over one dissenting vote, the Supreme Court in *CVS Caremark Corp. v. Lauriello*, No. 1120010 (Ala., September 12, 2014), upheld class certification of a fraud claim against objections based on the predominance test when the alleged fraud was the defendant's alleged misrepresentation in a prior class action settlement as to the amount of available insurance proceeds for settlement.



## NEW MEMBERS

**VIRGINIA GAYLE CHOUINARD**,  
University of New Mexico 2013;  
Alabama State Bar 2014.

**LUKE D. WILSON**,  
Tulane School of Law 2006;  
Mississippi State Bar 2006;  
Alabama State Bar 2013;  
sole-practitioner.



# ANNOUNCEMENTS



**THOMAS TROY ZIEMAN, JR.** announces the opening of his “solo shop” at 209 S. Cedar Street, Mobile 36602, P. O. Box 12, Mobile, 36601; telephone 251.307.5881, fax 251.307.5881, [tzieman@tommyzieman.com](mailto:tzieman@tommyzieman.com)

**GARDBERG, CLAUSEN & KEMMERLY, PC** attorneys at law is pleased to announce that WINSLOW BUTTS has joined their firm as an associate. Winslow will be handling Social Security Disability and Veterans Disability law.

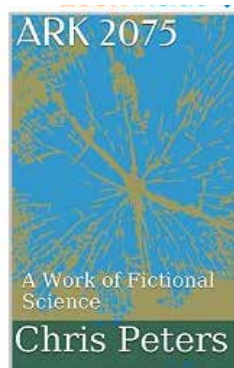


## CHRIS PETERS PUBLISHES NEW BOOKS

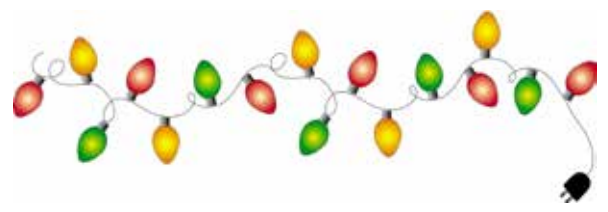
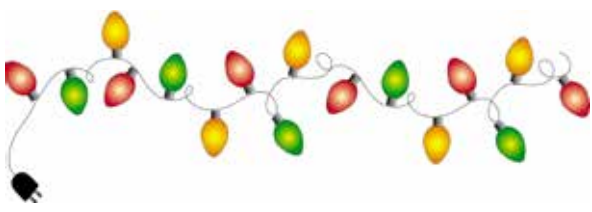
For those who may be interested readers, I thought you might like to look at the two books I recently published on Amazon Kindle. With a free app available from Amazon, they can be read on an iPad, any notebook, computer, or smartphone, as well as a Kindle.

*“Strange Events”* is an anthology of short stories, mostly humorous, about primarily fictional and sometimes actual characters in South Alabama who have a propensity to experience unusual odd natural events.

*“Ark 2075”* is an alternative history/ fictional science work about a group of people who are chosen to travel in time to 200,000 BCE to attempt to develop the technology to repel a gamma ray burst that threatens to destroy life on Earth in 2075 and, if successful, return to the present to use their technology to save the planet. Their experiences in the past offer a potential explanation for some of the myth, legend, and anachronistic historical events and archeological anomalies found in our existing history, and the book offers a vehicle for exciting and humorous events.



I would be interested in your feedback should you choose to give them a read. You might find a character or two in them that you may recognize, perhaps even yourself. Of course, the names have been changed to protect the “innocent”.



## SPECIAL NOTICE OF MBA DUES INCREASE

The **EXECUTIVE COMMITTEE OF THE MOBILE BAR ASSOCIATION** announces that beginning January 1, 2015 there will be an increase in the annual dues as follows:

Active and in practice for five years or less	\$ 60.00
Active and in practice for more than five years	165.00
Government Employees	60.00

This increase will be reflected in your dues notice for 2015.



## NOTICE FROM PROBATE COURT

**THE PROBATE COURT OF MOBILE COUNTY** is now offering its **PETITION FOR ADOPTION** form as a fileable PDF. Any attorney filing an adoption petition is encouraged to use this form, which is available under the Judicial Forms section of ROAM, the web component of the Probate Court's case management system. For more information, please contact Probate Court Paralegal, Samantha Booker at 251.574.6019 or [sbooker@probate.mobilecountyal.gov](mailto:sbooker@probate.mobilecountyal.gov).





# MOBILE BAR FOUNDATION

251-433-9790  
www.MobileBar.com

**PLEASE GIVE**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

I want to make a donation to the Mobile Bar Foundation.

In honor/memory of: \_\_\_\_\_

Acknowledgement to: Name \_\_\_\_\_

Address \_\_\_\_\_

I want to become a member of the Mobile Bar Foundation.

Check enclosed

Bill my credit card \$\_\_\_\_\_ Visa/Master Card/Amex # \_\_\_\_\_

Life Member (\$5000, paid in up to 5 annual installments)

Partner (\$500 or more)

Associate (\$100 or more)

Regular Member (\$50 - \$99 annually,  
or if member of MBA practicing 5 years or less \$25 - \$99)

I would like information on including the Foundation in my estate planning.

Signature \_\_\_\_\_ Exp. \_\_\_\_\_

Mail to: Mobile Bar Foundation, P.O. Drawer 2005, Mobile, AL 36652

## MEMORIAL GIFT

*A gift in memory of*  
**G. HAMPTON UZZELLE, III, Esquire**

By  
Gabrielle "Gaby" Reeves

# DECEMBER



## CALENDAR OF EVENTS

### DECEMBER 5 - FRIDAY

26th ANNUAL BENCH & BAR CONFERENCE,  
Riverview Plaza Hotel

### DECEMBER 11 - THURSDAY

MBA EXECUTIVE COMMITTEE MEETING,  
12 o'clock noon, Athelstan Club

### DECEMBER 12 FRIDAY

NATURALIZATION CEREMONY,  
11:00 am, Courtroom #2, Federal Courthouse

### DECEMBER 18 THURSDAY

MBA GRIEVANCE COMMITTEE MEETING,  
12 o'clock noon, MBA Headquarters

### DECEMBER 19 FRIDAY

MBA ANNUAL HOLIDAY EGG NOG & WINE LUNCHEON,  
11:30 am,  
The Battle House Hotel

### DECEMBER 25

THURSDAY – MERRY CHRISTMAS HOLIDAY

## CONTINUING LEGAL EDUCATION

### DECEMBER 5

26th ANNUAL BENCH & BAR CONFERENCE (5.0 hrs. 1.0 hr. Ethics)  
and YOUNG LAWYER MIXER (1.0 hrs.)

### DECEMBER 19

CIVIL LAW UPDATE, 3.0 hrs.

## 2016

### JANUARY 16

JUDGES PANEL: DO's & DON'ts, RULE CHANGES, 3.0 hrs.

### MARCH 20

EMPLOYMENT LAW, 3.0 hrs.

### APRIL 17

APPELLATE SEMINAR  
Including Criminal & Civil Issues, 3.0 hrs.

