Leadership, Legislation or Litigation

It has been said that the three-legged stool of government in Alabama is supported by the legs of Leadership, Legislation and Litigation. In a perfect world, the Leadership leg would be the sturdiest but with a three-legged stool all legs are of equal importance. If the Leadership leg is the sturdiest, the weakest would be the Litigation leg. Litigation is the leg that can unsettle all the good done by the other two legs but Litigation is a very important leg in support of government. It is through Litigation that issues often are resolved. The big question facing government is in Litigation is the state the plaintiff or the defendant. The answer to that question oftentimes defines what happens from Leadership or with Legislation.

Leadership is defined by Webster as the capacity to lead. A leader is defined as someone who has commanding authority or influence. In state government, leaders obviously would include the Governor, Lt. Governor, the Chief Justice of the Alabama Supreme Court, Legislative officials including the President Pro Tempore of the Senate, the Speaker of the House, Majority and Minority Leaders of both the House and Senate, Committee Chairs and other statewide elected officials. The citizens of Alabama look to these people for providing for the needs and desires of the electorate. Leadership often requires personal sacrifice for the greater good. Leadership requires, not only doing those things that get good press it requires making tough decisions in the face of public sentiment that might not be aligned with what the leader might want to do. Leadership also requires that those who are to be led have a sense of confidence in the leaders they are expected to follow. If there is a lack of confidence in those who are expected to lead, things tend to fall apart rather quickly.
Looking at Alabama’s leaders today there is a perception, and unfortunately perception becomes reality, that there are some in leadership positions who are not inspiring the confidence needed to lead effectively. Whether correct, or not, the perception can cause a number of problems for the State of Alabama.

Leadership

**Governor Robert Bentley**

There is absolutely no question that when Governor Bentley was first sworn into office his motives and goals were of unquestionable passion to do what was right for the state. He ran on the theme that Alabama needed a doctor and that he wanted to heal a state that had high unemployment and major budget problems. During his first four years, he recruited industry to the state, he led the effort to reduce state spending by over a collective $1 billion, and he led an effort to restore faith in government. Once reelected, he claimed that his staff informed him of the major budget crisis the state was facing. It matters not if that was what actually happened. The people of the state, and more importantly in the political process, the Legislature did not believe that he had just learned of the problem. His credibility started to be questioned. He had campaigned on a promise of no new taxes and then proposed over $500 million in new taxes in the first Legislative Session after his reelection without discussing his ideas with the industries that would be impacted by the tax increases. The Governor started ignoring some of his most trusted advisors from his first term and seemed, at times, to have no clue as to what the real people of the state were thinking or feeling. By late summer, his personal life started falling apart publicly. There have been reports that his family problems had started much earlier but public evidence of the problems did not appear until the summer. Based on decisions, and actions undertaken by the Governor in recent months, public confidence in the Governor is at an all-time low. In order to lead a leader must inspire confidence.

**Chief Justice Roy Moore**
The Chief has been a controversial figure for years. In 2003, Roy Moore was removed from office for failing to obey a lawful order from a higher court over the removal of the Ten Commandments monument he had located in the Rotunda of the Alabama Judicial Building. In 2012, Moore was reelected to the office of Chief Justice of the Alabama Supreme Court after having run for Governor and lost. Once again, Moore is embroiled in controversy as the Judicial Inquiry Commission has filed charges against Moore and he has temporarily been suspended from the Court pending action by the Alabama Court of the Judiciary in relation to his orders to Alabama Probate Judges regarding the issuance of marriage licenses to same sex couples. In the interim, Associate Justice Lynn Stuart will serve as the Acting Chief Justice pending the resolution of the Moore case. It would be reasonable to assume that the Chief Justice of a state Supreme Court would not openly disregard the order and decision of the United States Supreme Court. There are those who support Moore based on his religious beliefs and therein is a huge problem. Moore, who is quick to point to freedom of religion, tends to disregard his oath to uphold the Constitution of the United States and the State of Alabama. He claims that the Alabama Constitution prohibits same sex marriage in Alabama. What he fails to acknowledge is that the United States Constitution trumps the Alabama Constitution and the US Supreme Court overrules the Alabama Supreme Court. The sad thing for the State of Alabama is that whatever happens in Moore’s case he wins. If he is acquitted of the charges, he can claim religious persecution and prosecution and loudly proclaim he fought those who would trample religious freedom. If he loses and is sanctioned in some way he can use the case as the basis for what is certain to be his return to running for Governor in 2018 as someone who stood up for “Alabama Values” and was punished. Is this the type of leadership we all want for our state? As an aside those who defend his actions regarding the Ten Commandments monument should look at the bottom corner on the back of the monument for the copyright © and see who it is that is making money on each replica of the monument that is sold. Follow the money.

**Speaker of the House – Mike Hubbard**

Beginning on Monday, May 16, 2016, Speaker Hubbard’s trail will finally begin with the start of Jury selection. This trial has been coming since the return of a 23-count
indictment on ethics charges in October 2014. It will be up to a Jury of Hubbard’s peers to determine his innocence or his guilt. It is important to remember that under the American system of jurisprudence a person is presumed innocent until proven guilty. It is expected that the trial will last several weeks and hold the future of Alabama political leadership in the balance. To his credit, Speaker Hubbard attempted to keep the system running smoothly during the past two Regular Sessions and the two Special Sessions last year while under what had to be enormous stress. Regardless of individual feelings about the innocence or guilt of Speaker Hubbard, you have to feel some empathy for what Hubbard and his family have endured over the past several years. Regardless of the outcome of the trial there will have to be some sense of relief once finality is reached. If Hubbard is acquitted, he will be able to reclaim the political prominence he had before the indictments and will have to be considered a leading candidate for Governor in 2018. If he is convicted on just one of the counts, his political life is over. That does not necessarily flow to the benefit of others interested in running for Governor in 2018. Attorney General Luther Strange and Senate President Pro Tempore Del Marsh are also closely linked to this trial. What happens in the Lee County Circuit Courtroom of Judge Jacob Walker will have a major impact on the Governor’s race in 2018.

**Legislation**

The 2016 Regular Session of the Alabama Legislature was one to be remembered for the ages. Those who have been in, and around, the Alabama State House for years have remarked that the 2016 Regular Session was without question the most bizarre Session in memory. While the two budgets were both passed in near record time other, perhaps more critical legislation, failed to pass. The Education Trust Fund included a pay raise for teachers for the first time in years and was the second largest education budget in history. The General Fund budget included level funding for most agencies with a $15 million increase for Medicaid. Medicaid had indicated that it needed an increase of $100 million but there was not an appetite within the Legislature to find the additional revenue to fund the full increase. Without full funding for Medicaid the state stands to lose out on a grant of nearly $750 million from the Centers for Medicare and Medicaid Services (CMS) to
implement Medicaid reform in Alabama. A late effort by Rep. Steve Clouse, Chair of the House Ways and Means – General Fund Committee, and Members of his Committee to restructure the distribution of the settlement money from the BP oil spill that would have repaid most of the money borrowed to prop up state government for the past few years, provided road construction money for Mobile and Baldwin counties and would have freed up $70 million dollars for Medicaid passed the House but died in the Senate on the final day of the Session. The death knell was over the distribution of road money and the debt repayment. As has been said many times – “All politics is local” – and that proved to be the killing blow to the BP Settlement deal.

Another major legislative effort that failed was a proposed $800 million bond issue to finance construction of four new prisons across the state that would permit the closing of some 15 existing prisons. The proposed construction method and no-bid stipulation proved enough to kill the effort for the Session.

A proposed increase in the state tax on motor fuels proved to be a non-starter. There was no disagreement that there is a critical need for road improvement funding in Alabama there were severe philosophical differences about raising taxes. Maybe next year but I would not hold my breath.

**Litigation**

If there is not effective Leadership, and, if there is not effective Legislation, there is going to be litigation. Missouri may be the “Show Me” state. Alabama is the “Make Me” state. We, as a collective we, have regularly thumbed our nose at the federal government and quoted out State Motto – We Dare Defend Our Rights. Defend is the operative word. All too often we find ourselves in the position of defending litigation that would not have been necessary had our Leaders and our Legislature had done what was the prudent thing rather than giving in to the political will of the electorate. As a result of the Legislature failing to pass the BP legislation, we very well may be looking at litigation from CMS on our Medicaid program and from DOJ on the prisons and mental health. A very wise
woman (my mother) once told me “I can’t hear what you are saying because your actions speak so loudly”. We can only hope that one day our Leaders and our Legislators will act in a manner that Litigation will no longer be the norm in Alabama.

We have heard the greatest words that can be heard at the Alabama State House “I move we stand adjourned *Sine Die*”. Stay tuned. There will be additional issues of the Strategy Report coming over the coming months.

**The Alabama House will reconvene at Noon on Tuesday, February 7, 2017**

**The Alabama Senate will reconvene at Noon on Tuesday, February 7, 2017**