SUMMER 2003 Volume 17

Sentinel

NEWS FROM THE COURTHOUSE

JUDGE'S MEETING

JUDGE MIKE MCCORMICK
August 7, 2003 – 8:30 AM
Room 605 – Jury Room

1) Pre-indictment bond reductions
2) Information pleas without case numbers

****

SUMMER SOCIAL
&
INITIATION OF NEW OFFICERS

****

GREATER BIRMINGHAM CRIMINAL DEFENSE LAWYERS ASSOCIATION

THURSDAY
AUGUST 14, 2003

5:30 PM ----------7:30 PM

THE CROWN PLAZA HOTEL
BIRMINGHAM
2101 FIFTH AVENUE NORTH

****

THE OFFICIAL

NEWSLETTER

OF THE GREATER

BIRMINGHAM CRIMINAL

DEFENSE LAWYERS'

ASSOCIATION

******NEWS FROM THE PRESIDENT*******

****

My term as President is quickly coming to an end. I would like to take this opportunity to thank everyone involved in this wonderful organization. It has truly been a pleasure to serve as President this year. I believe we have made great strides toward the criminal defense bar.

Among some of the accomplishments this year: We had a CLE this past November on Criminal Defenses for three (3) hours of CLE credit; a Christmas party in conjunction with the District Attorney's Office in December at *The Barking Kudo;* a resolution encouraging a 10% bond for Defendants in the Birmingham Division of Jefferson County; and the Honorable Clyde Jones was appointed as Circuit Criminal Judge. In addition, we had over a dozen criminal defense attorneys volunteer their time for Law Day on Thursday, May 1, 2003.

Please continue to share your thoughts and ideas with other members of the organization. If we all work together, we can accomplish a stronger organization and presence in Jefferson County.

REMEMBER TO MARK YOUR CALENDARS FOR THE ANNUAL SUMMER SOCIAL FOR THURSDAY, AUGUST 14, 2003, AT THE CROWN PLAZA BEGINNING AT 5:30 PM.

****

THANK YOU AGAIN FOR THE OPPORTUNITY TO HAVE SERVED AS PRESIDENT OF THIS ORGANIZATION

VIRGINIA P. MEIGS

****

NOTE FROM VIRGINIA P. MEIGS

I received an e-mail from Attorney David Matheson in Canada regarding ex-policemen becoming lawyers, which stated:

I wonder if there's a way you could canvass your membership to determine if there are any defense counsel who have come from a previous police career? I have a burgeoning practice in Canada, specializing exclusively in the representation of persons charged with traffic/DWI violations and am developing an American clientele at an incremental rate. It has, therefore, become my charge to assemble what is certainly the only, and perhaps the most unique, lawyer network in the industry to whom I could send a career's worth of work!! Any suggestions would be most appreciated.

FROM: David Matheson
[david_matheson@on.aibn.com]

++
++

THIRD THURSDAY TRAINING 2003

WHEN: THIRD THURSDAY OF EACH MONTH
11:30 AM TO 1:00 PM

TRAINING STARTS PROMPTLY AT NOON!!!

WHERE: HUGO BLACK FEDERAL COURTHOUSE, BIRMINGHAM, AL

WHO: FEDERAL CRIMINAL DEFENSE ATTORNEYS

CLE: 1.0 HOUR EACH SESSION
(NO REGISTRATION FEE)

COST: BRING YOUR OWN LUNCH
(DRINKS PROVIDED)

REGISTRATION:

INDICATE THE SEMINARS YOU PLAN TO ATTEND. *YOU WILL BE REGISTERED FOR THE SEMINARS YOU HAVE SELECTED BY RETURNING THIS FORM TO::: DCUSPO CYNTHIA MCGOUGH, 1729 5TH AVENUE NORTH, BIRMINGHAM, AL 35203.

[ ] June 19
Q & A Session with Court Personnel
[ ] July 17
Legal Research
[ ] August 21
U.S. Sentencing Guidelines Criminal History Issues
[ ] September 18
Initial Appearance Issues for Criminal Defendants
[ ] October 16
Criminal Discovery Issues
[ ] November 20
Getting to Know the U.S. Marshal
[ ] December 18
U.S. Pretrial Services

NAME: _____

EMAIL: _____

PHONE: _____

*Pre-registration is not required in order to attend but will help us with planning for materials and space. We appreciate your help with this.

Reginald Dale Peters

v.

State of Alabama

Appeal from Cleburne Circuit Court

(CC-01-144)

COBB, Judge.

Reginald Dale Peters was indicted for trafficking in marijuana, a violation of § 13A-12-231, Ala. Code 1975. He filed a motion to suppress the evidence that resulted in his arrest, which was found in his vehicle, arguing that the evidence was the result of an illegal search and seizure. After a hearing, the trial court denied his motion. Peters then pleaded guilty to the offense, reserving the right to appeal the trial court's denial of his motion to suppress. He was sentenced to 10 years' imprisonment and was ordered to pay a $50,000 fine, a $1,000 Drug Demand Reduction Act fee, a $50 crime victims assessment, and court costs. This appeal followed.

At Peters' suppression hearing, State Trooper Thad Chandler testified that on May 10, 2001, he and Deputy Brock were patrolling Interstate 20, when he noticed a Chevrolet Silverado truck with a Texas license plate following another vehicle too closely. He turned on his emergency lights and stopped the truck. Trooper Chandler approached the truck and asked Peters to exit the truck and produce his driver's license. Trooper Chandler explained to Peters the reason for the stop. According to Trooper Chandler, Peters seemed agitated. Trooper Chandler testified that he had received training in looking for signs of human behavior that indicate criminal activity. Trooper Chandler testified that when he made the traffic stop, nothing initially indicated criminal activity. He became suspicious when he told Peters he was going to receive only a warning--not a traffic ticket--because Peters still seemed agitated.

Trooper Chandler had Peters sit in his patrol car while he wrote out the warning ticket. Trooper Chandler testified that in an effort to reduce the tension, he asked Peters where he was traveling. Peters told him that he was going to Myrtle Beach, South Carolina. At this time, Deputy Brock was speaking with the passenger in the truck. Trooper Chandler said to Peters, "I see you have your wife with you today." (R. 11.) Trooper Chandler said that his comment seemed to agitate Peters more. Peters said, "No, it's not my wife. It's a friend of mine." (R. 11.) Peters told Trooper Chandler that his wife had remained in Texas because she was having surgery or had had surgery. Trooper Chandler testified that at this time he concluded the traffic stop. Peters went to get out of the police vehicle. Trooper Chandler asked Peters if he would please sign the warning and receive his copy. Trooper Chandler testified that Peters then took the form and signed it abruptly. After signing the warning, Peters again went to get out of the vehicle. Trooper Chandler said, "Mr. Peters, if you will, please allow me to give you your copy." (R. 12.) Trooper Chandler testified that in his experience, a traffic offender's trying to exit the patrol car before the citation is complete is a key indicator of criminal activity. Trooper Chandler gave Peters his copy of the warning. Peters got out of the vehicle and began walking to his truck.

At this point, Trooper Chandler got out of the vehicle and said, "Mr. Peters, may I talk to you a moment more?" (R. 12.) Trooper Chandler testified that Peters sharply said, "What? Yes." (R. 12.) Trooper Chandler asked Peters if there was anything illegal in his truck. Peters said, "I travel up and down this interstate one hundred -- I have done this one hundred times. I have been stopped by law enforcement and no one has ever asked me to search my truck." (R. 12.) Trooper Chandler told Peters that he did not ask him if he could search his truck but only asked him if he had anything illegal. Peters told him that he did not. Trooper Chandler asked him if he had any marijuana in his vehicle. Trooper Chandler testified that Peters' response alarmed him. He said Peters looked down to the ground and dropped his chin to his chest, which Trooper Chandler believed to be clues that Peters was being deceptive. Peters said, "No. No. No." (R. 33.) Trooper Chandler then asked Peters if he could search the vehicle. Peters refused consent and stated that he did not have time. Trooper Chandler told him that that was fine, that he was free to leave, but that he was detaining the truck so the canine unit could make a sweep of the vehicle.

The canine unit arrived a few minutes later and made a sweep of the vehicle. The canine alerted to the tailgate of the truck. Trooper Chandler directed Peters

to open the camper shell on the truck. Peters said, "That dog's lying." (R. 17.) He continued, "I've seen those cop shows. Y'all can make those dogs do what you want them to do." (R. 17.) Peters said he did not have a key to open the top. A second canine unit arrived and also alerted to the tailgate. An officer then opened the camper shell. Trooper Chandler saw two large, duffle bags. He placed his hand on the bags and felt a block-like substance in each one. Based on his experience, Trooper Chandler believed that the blocks were illegal drugs. He opened the bags and saw blocks of vacuum-sealed green leafy plant material, later determined to be marijuana. At some point, Deputy Brock, who had spoken with the passenger, told Trooper Chandler that the passenger said they were traveling to Augusta, Georgia. However, Trooper Chandler said that this occurred after the traffic citation portion of the stop had been concluded. The only other testimony at the suppression hearing was that of Wesley Clark, Jr. Clark established the chain of custody of the marijuana.

Peters argues that the marijuana should have been suppressed because, he argues, Trooper Chandler did not have reasonable suspicion for the canine unit to search the truck. Peters argues that the scope of the stop should have been limited to what was necessary to issue the warning citation for the traffic violation. This Court has stated:

"Once the traffic offender signs the UTTC [Uniform Traffic Ticket and Citation], the arresting officer is to 'forthwith release him from custody.' § 32-1-4(a)[, Ala. Code 1975]. The officer may further detain the driver only if he has probable cause to arrest the driver for some other non-traffic offense, see Hawkins v. State, 585 So. 2d 154 (Ala. 1991), or has a reasonable suspicion of the driver's involvement in some other criminal activity justifying further detention for investigatory purposes under Terry v. Ohio[, 392 U.S. 1 (1968)], see United States v. Tapia, 912 F.2d 1367 (11th Cir. 1990).

"'Reasonable suspicion is a less demanding standard than probable cause.' Alabama v. White, 496 U.S. 325, 330, 110 S.Ct. 2412, 2416, 110 L.Ed 2d 301 (1990). However, reasonable suspicion exists only if the officer has 'specific, particularized, and articulable reasons indicating that the person [stopped] may be involved in criminal activity,' Hickman v. State, 548 So. 2d 1077, 1080 (Ala. Cr. App. 1989). 'To determine whether reasonable suspicion existed for a particular stop, the totality of the circumstances, as known to the officer at the inception of the stop, [or, in this case, at the time of the continued detention,] must be considered.' Arnold v. State, 601 So. 2d 145, 149 (Ala.Cr.App. 1992)(emphasis added [in Washington]). Accord Lamar v. State, 578 So. 2d 1382, 1385 (Ala.Cr.App.), cert. denied, 596 So. 2d 659 (1991)."

State v. Washington, 623 So. 2d 392, 395-96 (Ala. Crim. App. 1993).

Trooper Chandler's testimony at the suppression hearing clearly established that he had probable cause to stop Peters and effect a non-custodial traffic arrest for the offense of following a vehicle too closely. Trooper Chandler testified that Peters appeared to answer his questions truthfully and that he signed the Uniform Traffic Ticket and Citation ("UTTC"). The question is whether Trooper Chandler had the necessary reasonable suspicion to continue to detain Peters after Peters had signed the UTTC.

It appears that the only reasons Trooper Chandler gave for detaining Peters were that Peters acted nervous, appeared agitated, and tried to exit the patrol car before signing the warning citation or receiving his copy. "'[T]here is no constitutional requirement of reasonable suspicion as a prerequisite for seeking consent to search.'" State v. Washington, 623 So. 2d at 397, quoting State v. Abreu, 257 N.J. Super. 549, 555, 608 A. 2d 986, 989 (1992). As was the case in Washington, it is clear from Trooper Chandler's questions concerning any illegal activity that Trooper Chandler went beyond merely asking for consent to search and initiated, instead, an investigative detention.

"[I]nformation obtained ... during this further detention cannot be considered in evaluating whether the trooper had reasonable suspicion to further detain the defendant in the first place." Washington at 397. A defendant's ultimate refusal to consent to a search of the vehicle cannot be considered as a factor in the officer's determination of reasonable suspicion. State v. Washington, supra. Therefore, we are left with only the factors enumerated by Trooper Chandler at the suppression hearing that he considered before the detention: (1) that Peters was nervous, (2) that Peters appeared to be agitated, and (3) that Peters tried to exit the patrol car without signing the traffic citation or receiving his copy of the citation.

The prevailing view is that "unless coupled with additional and objectively suspicious factors, nervousness in the presence of a police officer and/or

failure to make eye contact do not establish reasonable suspicion to believe that the person is engaged in criminal activity." Washington at 398. The fact that Peters was agitated at being stopped is insufficient to supply a reasonable suspicion of criminal activity. Likewise, the fact that Peters tried to get out of the patrol car without signing his citation or receiving a copy of it does not rise to the level of reasonable suspicion. Peters may have thought the traffic stop was concluded, and it might not have occurred to him that he needed to sign the citation or receive his copy.

Even if we concluded that the detention did not begin until Trooper Chandler told Peters that he was free to go but that he was going to detain the truck for the canine unit, and thereby allow us to take into consideration the other factor of avoiding eye contact, the addition would not establish the reasonable suspicion necessary to justify Trooper Chandler's detention. "A detaining officer 'must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch.'" [Terry v. Ohio, 392 U.S.] at 27, 88 S.Ct. [at] 1883 [(1968)].'" Washington at 399. Since we cannot determine from the record at what moment Trooper Chandler learned that the passenger had given his partner a different travel destination, we cannot say that this factor was known to Trooper Chandler at the time of the detention. However, even if Trooper Chandler had had that information before he detained Peters, it still would not be sufficient to establish reasonable suspicion. South Carolina and Georgia are not in opposite directions of one another. It is not uncommon for people to ride together but yet have different destinations. The officers did not inquire further into this discrepancy to ascertain the reason behind the discrepancy. Thus, the mere fact that two people in the same vehicle gave different travel destinations does not change our conclusion that Trooper Chandler did not have sufficient reasonable suspicion to detain Peters.

The State argues that this case is more akin to Owen v. State, 726 So. 2d 745 (Ala. Crim. App. 1998), than to State v. Washington, 623 So. 2d 392 (Ala. Crim. App. 1993). We disagree. In Owen, this Court held that the trooper had reasonable suspicion to believe that Owen was engaged in criminal activity based upon Owen's nervousness and evasive behavior. The State claims that Peters was nervous, agitated, and evasive; however, it does not provide this Court with any examples of how Peters exhibited evasiveness. Trooper Chandler did not even claim that Peters was evasive. There is no indication that Peters exhibited any evasive behavior. In Owen, this Court cited many examples of Owen's evasive behavior. In Owen, the defendant, upon being pulled over by the officer, immediately exited his vehicle and went to the officer's vehicle. Owen tried to block the officer's view of his vehicle by moving into the officer's line of sight. Owen also lied about his arrest record. When the officer asked Owen questions about his vehicle, Owen would ask questions about the officer's vehicle. In this case, Trooper Chandler testified that Peters answered all of his questions truthfully. Peters did not get out of his vehicle until Trooper Chandler asked him to do so. There is no evidence that Peters tried to block Trooper Chandler's view of the vehicle. None of the factors this Court cited in Owen as showing evasiveness is present in this case. There is no evidence indicating that Peters was evasive, and Trooper Chandler does not claim that Peters was evasive. Thus, Owen has little application to this case.

Therefore, we hold that the trial court erred in denying Peters' motion to suppress. For the foregoing reasons, the judgment is reversed and the cause remanded to the Cleburne Circuit Court for proceedings consistent with this opinion.

REVERSED AND REMANDED.

McMillan, P.J., and Shaw, J., concur. Baschab and Wise, JJ., dissent, without opinion.

Subject: [ACDLA] Batson Twist

A Twist on the 'Batson' Jury Rule
The National Law Journal

Trial judges in Minnesota are being second-guessed when it comes to jury selection. The Minnesota Supreme Court for the first time reversed a conviction after finding that a lower court had improperly allowed an African-American woman to serve on the jury. The case also has a unique twist in that a white defendant used *Batson* to challenge the trial court's decision to include the African-American juror.

Subject: [ACDLA] Quotes By Great Ladies

> Great Quotes by Great Ladies!
>
> Inside every older person is a younger
> person – wondering what the hell happened.
> -Cora Harvey Armstrong-
> ++++++++++++++++++++++++++
> The hardest years in life are
> those between ten and seventy.
> -Helen Hayes (at 73)-
> ++++++++++++++++++++++++++
> I refuse to think of them as chin
> hairs. I think of them as stray eyebrows.
> -Janette Barber-
> ++++++++++++++++++++++++++
> Things are going to get a lot worse
> before they get worse.
> -Lily Tomlin-
> ++++++++++++++++++++++++++
> A male gynecologist is like an auto
> mechanic who never owned a car.
> -Carrie Snow-
> ++++++++++++! ++++++++++++
> Laugh and the world laughs with you.
> Cry and you cry with your girlfriends.
> -Laurie Kuslansky-
> ++++++++++++++++++++++++++
> My second favorite household chore is ironing.
> My first being, hitting my head on the
> top bunk bed until I faint.
> -Erma Bombeck-
> ++++++++++++++++++++++++++
> Old age ain't no place for sissies.
> -Bette Davis-
> ++++++++++++++++++++++++++
> A man's got to do what a man's got to do.
> A woman must do what he can't.
> -Rhonda Hansome-
> ++++++++++++++++++++++++++
> The phrase "working mother" is redundant.
> -Jane Sellman-
> ++++++++++++++++++++++++++
> Every time I close the door on reality
> it comes in through the windows.
> -Jennifer Unlimited-
> ++++++++++++++++++++++++++
> Whatever women must do they must do
> twice as well as men to be thought half
> as good. Luckily, this is not difficult.
> -Charlotte Whitton-
> ++++++++++++++++++++++++++
> Thirty-five is when you finally get your head
> together and your body starts falling apart.
> -Caryn Leschen-
> ++++++++++++++++++++++++++
> I try to take one day at a time, but
> sometimes several days attack me at once.
> -Jennifer Unlimited-
> ++++++++++++++++++++++++++
> If you can't be a good example, then you'll
> just have to be a horrible warning.
> -Catherine-
> ++++++++++++++++++++++++++
> When I was young, I was put in a
> school for retarded kids for two years
> before they realized I actually had a
> hearing loss. And they called ME slow!
> -Kathy Buckley-
> ++++++++++++++++++++++++++
> I'm not offended by all the dumb blonde
> jokes because I know I'm not
> dumb ... and I'm also not blonde.
> -Dolly Parton-
> ++++++++++++++++++++++++++
> If high heels were so wonderful, men
> would still be wearing them.
> -Sue Grafton-
> ++++++++++++++++++++++++++
> I'm not going to vacuum 'til Sears
> makes one you can ride on.
> -Roseanne Barr-
> ++++++++++++++++++++++++++
> When women are depressed they either eat
> or go shopping. Men invade another country.
> -Elayne Boosler-
> ++++++++++++++++++++++++++
> Behind every successful man is a surprised woman.
> -Maryon Pearson-
> ++++++++++++++++++++++++++
> In politics, if you want anything said, ask a man-
> if you want anything done, ask a woman.
> -Margaret Thatcher-
> ++++++++++++++++++++++++++
> I have yet to hear a man ask for advice
> on how to combine marriage and a career.
> -Gloria Steinem-
> ++++++++++++++++++++++++++
> I am a marvelous housekeeper.
> Every time I leave a man I keep his house.
> -Zsa Zsa Gabor-
> ++++++++++++++++++++++++++
> Nobody can make you feel inferior
> without your permission.
> -Eleanor Roosevelt-
> ++++++++++++++++++++++++++
>
> Send this to five bright women (or men) you know and make their day!
>

> The following decisions have just arrived via the LII's
> direct Project HERMES feed from the Supreme Court.
>

>
==========
> MASSARO V. UNITED STATES (01-1559)
> Web-accessible at:
>
http://supct.law.cornell.edu/supct/html/01-1559.ZS.html
>
> Argued February 25, 2003 -- Decided April 23, 2003
> Opinion author: Kennedy
>
>
==========
>
> Petitioner Massaro was indicted on federal racketeering charges
> in connection with a murder. The day before his trial began,
> prosecutors learned of a bullet allegedly recovered from the
> car in which the victim's body was found, but did not inform
> defense counsel until the trial was underway. Defense counsel
> more than once declined the trial court's offer of a
> continuance so the bullet could be examined. Massaro was
> convicted and sentenced to life imprisonment. On direct appeal
> his new counsel argued that the District Court had erred in
> admitting the bullet in evidence, but did not raise an
> ineffective-assistance-of-trial-counsel claim. The Second
> Circuit affirmed. Massaro later moved to vacate his conviction
> under 28 U.S.C. sect. 2255 claiming, as relevant here, that his
> trial counsel had rendered ineffective assistance in failing to
> accept the trial court's offer of a continuance. The District
> Court found his claim procedurally defaulted because he could
> have raised it on direct appeal. In affirming, the Second
> Circuit adhered to its precedent that, when the defendant is
> represented by new counsel on appeal and the
> ineffective-assistance claim is based solely on the trial
> record, the claim must be raised on direct appeal; failure to
> do so results in procedural default unless the petitioner shows
> cause and prejudice.
>
> Held: An ineffective-assistance-of-counsel claim may be brought
> in a collateral proceeding under sect. 2255, whether or not the
> petitioner could have raised the claim on direct appeal.
> Requiring a criminal defendant to bring ineffective-assistance
> claims on direct appeal does not promote the procedural default
> rule's objectives: conserving judicial resources and respecting
> the law's important interest in the finality of judgments.
> Applying that rule to ineffective-assistance claims would
> create a risk that defendants would feel compelled to raise the
> issue before there has been an opportunity fully to develop the
> claim's factual predicate, and would raise the issue for the
> first time in a forum not best suited to assess those facts,
> even if the record contains some indication of deficiencies in
> counsel's performance. A sect. 2255 motion is preferable to
> direct appeal for deciding an ineffective-assistance claim.
> When a claim is brought on direct appeal, appellate counsel and
> the court must proceed on a trial record that is not developed
> precisely for, and is therefore often incomplete or inadequate
> for, the purpose of litigating or preserving the claim. A
> defendant claiming ineffective counsel must show that counsel's
> actions were not supported by a reasonable strategy and that
> the error was prejudicial. Strickland v. Washington, 466 U.S.
> 668. The evidence introduced at trial, however, will be
> devoted to guilt or innocence issues, and the resulting record
> may not disclose the facts necessary to decide either prong of
> the Strickland analysis. Under the rule announced here,
> ineffective-assistance claims ordinarily will be litigated in

> the first instance in the district court, the forum best suited
> to developing the facts necessary to determining the adequacy
> of representation during an entire trial. The court may take
> testimony from witnesses for the defendant and the prosecution
> and from the counsel alleged to have rendered the deficient
> performance. In addition, the sect. 2255 motion often will be
> ruled upon by the district judge who presided at trial, who
> should have an advantageous perspective for determining the
> effectiveness of counsel's conduct and whether any deficiencies
> were prejudicial. This Court does not hold that
> ineffective-assistance claims must be reserved for collateral
> review, as there may be cases in which trial counsel's
> ineffectiveness is so apparent from the record that appellate
> counsel will raise the issue on direct appeal or in which
> obvious deficiencies in representation will be addressed by an
> appellate court sua sponte. In such cases, certain questions
> may arise in subsequent sect. 2255 proceedings concerning the
> conclusiveness of determinations made on the claims raised on
> direct appeal; but these implementation matters are not before
> the Court. Pp. 3-9.
>
> 27 Fed. Appx. 26, reversed and remanded.
>
> Kennedy, J., delivered the opinion for a unanimous Court.
>
>

> FRANCHISE TAX BD. OF CAL. V. HYATT (02-42)
> Web-accessible at:
>
http://supct.law.cornell.edu/supct/html/02-42.ZS.html
>
> Argued February 24, 2003 -- Decided April 23, 2003
> Opinion author: O'Connor

>
>

> Respondent's "part-year" 1991 California income-tax return
> represented that he had ceased to be a California resident and
> had become a Nevada resident in October 1991, shortly before he
> received substantial licensing fees. Petitioner California
> Franchise Tax Board (CFTB) determined that he was a California
> resident until April 1992, and accordingly issued notices of
> proposed assessments for 1991 and 1992 and imposed substantial
> civil fraud penalties. Respondent filed suit against CFTB in a
> Nevada state court, alleging that CFTB had directed numerous
> contacts at Nevada and had committed negligence and intentional
> torts during the course of its audit of respondent. In its
> motion for summary judgment or dismissal, CFTB argued that the
> state court lacked subject matter jurisdiction because full
> faith and credit and other legal principles required that the
> court apply California law immunizing CFTB from suit. Upon
> denial of that motion, CFTB petitioned the Nevada Supreme Court
> for a writ of mandamus ordering dismissal. The latter court
> ultimately granted the petition in part and denied it in part,
> holding that the lower court should have declined to exercise
> its jurisdiction over the underlying negligence claim under
> comity principles, but that the intentional tort claims could
> proceed to trial. Among other things, the court noted that
> Nevada immunizes its state agencies from suits for
> discretionary acts but not for intentional torts committed
> within the course and scope of employment and held that
> affording CFTB statutory immunity with respect to intentional
> torts would contravene Nevada's interest in protecting its

> citizens from injurious intentional torts and bad faith acts
> committed by sister States' government employees.
>
> Held: The Full Faith and Credit Clause, U.S. Const., Art. IV,
> sect. 1, does not require Nevada to give full faith and credit
> to California's statutes providing its tax agency with immunity
> from suit. The full faith and credit command "is exacting"
> with respect to a final judgment rendered by a court with
> adjudicatory authority over the subject matter and persons
> governed by the judgment, Baker v. General Motors Corp., 522
> U.S. 222, 233, but is less demanding with respect to choice of
> laws. The Clause does not compel a State to substitute the
> statutes of other States for its own statues dealing with a
> subject matter concerning which it is competent to legislate.
> E.g., Sun Oil Co. v. Wortman, 486 U.S. 717, 722. Nevada is
> undoubtedly competent to legislate with respect to the subject
> matter of the alleged intentional torts here, which, it is
> claimed, have injured one of its citizens within its borders.
> CFTB argues unpersuasively that this Court should adopt a "new
> rule" mandating that a state court extend full faith and credit
> to a sister State's statutorily recaptured sovereign immunity
> from suit when a refusal to do so would interfere with the
> State's capacity to fulfill its own sovereign responsibilities.
> The Court has, in the past, appraised and balanced state
> interests when invoking the Full Faith and Credit Clause to
> resolve conflicts between overlapping laws of coordinate
> States. See, e.g., Bradford Elec. Light Co. v. Clapper, 286
> U.S. 145. However, this balancing-of-interests approach
> quickly proved unsatisfactory and the Court abandoned it,
> Allstate Ins. Co. v. Hague, 449 U.S. 302, 308, n. 10, 322, n.
> 6, 339, n. 6, recognizing, instead, that it is frequently the
> case under the Clause that a court can lawfully apply either
> the law of one State or the contrary law of another, Sun Oil
> Co. v. Wortman, supra, at 727. The Court has already ruled
> that the Full Faith and Credit Clause does not require a forum
> State to apply a sister State's sovereign immunity statutes
> where such application would violate the forum State's own
> legitimate public policy. Nevada v. Hall, 440 U.S. 410, 424.
> There is no constitutionally significant distinction between
> the degree to which the allegedly tortious acts here and in
> Hall are related to a core sovereign function. States'
> sovereignty interests are not foreign to the full faith and
> credit command, but the Court is not presented here with a case
> in which a State has exhibited a "policy of hostility to the
> public Acts" of a sister State. Carroll v. Lanza, 349 U.S.
> 408, 413. The Nevada Supreme Court sensitively applied comity
> principles with a healthy regard for California's sovereign
> status, relying on the contours of Nevada's own sovereign
> immunity from suit as a benchmark for its analysis. Pp. 5-11.
>
> Affirmed.
>
> O'Connor, J., delivered the opinion for a unanimous Court.
>
> ----------
> These and all other recent Supreme Court decisions are
> archived in full text at http://supct.law.cornell.edu/supct/
> (in hypertext versions prepared by the LII and the original PDF
> files received from the Court)
>

John Lentine sent this message out to the Alabama Criminal Defense Bar notifying them of the changes in disbursements of payments for the CJA Panel for the upcoming months. This is being forwarded as a courtesy to the members of the Greater Birmingham Criminal Defense Lawyers Association.

To: All CJA Panel Representatives
From: CJA Panel Representatives on the Defender Services Advisory Group

July 30, 2003

Dear Panel Representative:

We expect that because of a shortfall in the Defender Services Program's budget, no payments will be made to CJA panel attorneys in September, 2003. Further, it is possible that no payments will be made to panel attorneys during the last three months of fiscal year 2004: July, August and September. In short, there is an impending budget crisis in the federal defender system.

This fiscal year's budget deficit will be $12-$14 million, **unless** Congress passes a bill for addition funding. While a bill has been requested, passage of the request for supplemental appropriations appears unlikely. Consequently, this year's $12-$14 million deficit will be carried into fiscal year 2004, and added to the $50 million deficit that is expected during that fiscal year. Because payments to panel attorneys are the most vulnerable item in the Defender Services Account, panel attorneys will likely again bear the brunt of the shortfall.

As your representatives on the Defender Services Advisory Group, we are asking you to do the following two things:

(1) Contact the chief judge in your district, and ask him or her to take every step possible in support of full funding for the defender program in fiscal year 2004; and

(2) Write the attorneys on your CJA panel, and ask them to contact their Senators and Representatives, to urge them to support full funding for the program for this year, and for the next.

These budget deficits are the result of under funding by Congress, not overspending. Thus, it is Congress that needs to act.

At a minimum, you should forward a copy of this letter to all your panel members. We will keep you informed of any developments regarding these very serious problems. In the interim, you should continue submitting your CJA vouchers as you have in the past.