

# The Sentinel

## PRESIDENT'S COLUMN

**Richard Izzi, Esq.**

It is indeed a pleasure and honor to be able to address the members of our organization for the first time in the President's Column, as we go to press for the fall 2000 issue of The Sentinel. A variety of challenges and opportunities will demand the attention of our membership in the months ahead. While space and time limitations preclude an exhaustive discussion of all of them here, I would like to highlight a few that have arisen as I begin my term of office.

On the downside, concern from the bench has been expressed about a relatively small number of criminal defense lawyers who apparently are accessible only by their voice mail or beepers. When these lawyers have cases set for trial and have been excused after the initial calling of the docket, certain judges have been hindered in disposing of their cases because these lawyers cannot be reached when they are called for trial later during a particular week. Although it does not appear to have reached a chronic level, my hope is that by simply getting the word out about this problem, at least none of our members will be guilty of this practice.

Also, as I am sure most of you know by now, Larry Sheffield, one of our more distinguished and prominent colleagues recently died. A memorial service is being planned for Friday, November 3, 2000, in Room 307 of the Jefferson County Courthouse at 1:00 p.m. We hope all of you, especially those who were unable to attend the funeral, will be there, and we expect to have more details at our November 1st general meeting.

On a more positive note, I have learned the Jefferson County District Attorney's Office is trying to get the state association of district attorneys to propose legislation amending the penalty provisions related to the distribution of controlled substances

## THE OFFICIAL NEWSLETTER OF THE GREATER BIRMINGHAM CRIMINAL DEFENSE LAWYERS' ASSOCIATION

within 3 miles of a school or housing project which impose consecutive five-year mandatory minimums, respectively. The proposed legislation would reportedly, if enacted, reduce the radius from 3 miles to 1,000 feet.

On another front, it appears that our local indigent defense commission is putting together a proposal for the establishment of a public defender's office that would assume the primary responsibility for representation of the accused indigents in Jefferson County's district and circuit courts. While the good faith of that body is not in question, there is cause for concern about how well funded that office would be should it be created. Moreover, while dollar for dollar parity with the District Attorney's Office may be unachievable, we need to do everything possible to ensure such an office would be adequately staffed and funded if it is eventually determined that its creation is warranted. In any event, I encourage all our members to familiarize themselves with Chapter 12 of Title 15 of the Alabama Code, 1975, so that we can be in a position to respond effectively to any formal proposal that may be advanced.

Finally, as you may also have been reading or hearing about lately, a mental health court is being established with grant money that was secured by TASC. Foster Cook and Ralph Hendrix have been invited from that organization to speak about this

subject at our November 1st meeting which is set for at 5:30 p.m. in the newly renovated Redmont Crowne Plaza. It promises to be an informative meeting, and I hope all of you will be there. If you have not already received an invoice for renewal of your membership, please see our treasurer, Don Colee, at that meeting at the Redmont. I look forward to a good turnout.

## RESPONSE TO CAPITAL CASE LETTER

The following letter was sent by John A. Lentine, a past president, in response to a letter that appeared in the Birmingham News:

September 8, 2000

Dear Sirs:

As President of Alabama Criminal Defense Lawyers Association and, more importantly, a criminal defense lawyer who has and does represent people who face the possibility of electrocution, I felt compelled to respond to a letter in your Thursday, September 7th edition of *The Birmingham News* editorial section.

The letter dealt with the Crawford capital murder trial. Unfortunately, the tenor of the letter was to denigrate the criminal defense lawyers in the case as being only concerned with the "very large paycheck" that they would receive in the future. I'd like to take a moment to dispel that myth. The lawyers on the case were court-appointed. This means that the State of Alabama asked them to represent Ms. Crawford at one of the lowest hourly rates for a capital defense in the country. It wasn't until 1999 that the hourly rate for court-appointed attorneys was raised from \$20 for work done out of court and \$40 for work done in court to \$30 and \$50, respectively. These rates are still some of the lowest in the country. Further, before an appointed lawyer receives any money the judge presiding over the case must approve all such payments. Appointed criminal defense lawyers' compensation is not based on the verdict of any given case. When all is said and done, the defense lawyers in the Crawford case will in no way profit monetarily. In fact, the

overwhelming majority of criminal defense lawyers in Alabama who take court-appointed capital cases rarely, if ever, earn what could be considered a profit. Such lawyers' do not take these types of cases for financial gain. Lawyers such as these only interest is to see that their clients are competently and zealously represented despite the tremendous financial hardship this type of case can cause on the individual lawyers' practices. I suggest that anyone who will actually take the time to review what the State of Alabama pays outside attorneys to do non-criminal work for the State will find that fees can range well past \$200 an hour. The financial disparity of what this State pays for legal representation in civil matters compared to what is paid in the defense of a person's life is staggering.

Those involved in prosecuting or defending a capital case are placed under the greatest and most extreme emotional strain imaginable and most on the outside looking in can scarcely comprehend the psychological and physical pressures on all sides. The defense lawyers in the Crawford case showed the natural emotion of relief that their client was spared one of the most heinous methods of execution in this country. These lawyers and other lawyers who defend capital cases do so out of their sense of justice for their clients and the system as a whole. It's not about a buck.

John A. Lentine  
President, Alabama Criminal Defense Lawyers Association

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## THE QUESTION OF A PUBLIC DEFENDER SYSTEM

BY: RICHARD S. JAFFE, ESQ.

Over the past few months I have had numerous phone calls from attorneys regarding whether Jefferson County will obtain a public defender office and, if so, when, what, and how? The purpose of this article is to attempt to address some of these questions with the information developed thus far.

First, let me address the historical aspects of this process. As a result of jail overcrowding, a consultant by the name of Alan Kalmanoff was hired by the Jefferson County Commission to study the criminal justice system and follow it with a report. The report contained much criticism, some of which was directed toward the indigent defense system as it presently exists. Many of us, including myself, did not agree with many aspects of this report. We were especially concerned about the remarks made about the indigent defense system to the extent that it suggested that the majority of lawyers who do appointed work were ineffective. This is simply not true, and to my mind, it was a typical, easy, politically motivated way of dumping on the criminal defense bar. In response to the report, the Jefferson County Commission formulated a committee chaired by Bill Clark to address the various issues which arose in the Kalmanoff report. One of their issues was the indigent defense system, and Bill Clark and the Jefferson County Commission asked that I chair that sub-committee.

I have heard rumblings from several lawyers upset with those of us in the criminal defense bar that are on that sub-committee and who are in favor of a public defender system. My only response is that those of us, including myself, who agreed to serve on the Indigent Defense Committee, went into it open-mindedly, without preconceptions as to which recommendations to make. The only preconception I personally had was that a contract system would be the worst of all solutions and, fortunately, most members of the sub-committee agreed. It was only after receiving overwhelming information and statistics from public defender systems across the Country, and especially in Tuscaloosa, Alabama, that the sub-committee voted in favor of it. The simple fact is that a properly funded, and independently run, public defender systems across the United States produce a higher quality of justice than any other indigent defense system, and it can

be done at a reasonable cost. The model proposed has been studied by numerous individuals, including judges and criminal defense lawyers, as well as by the most nationally recognized consultants in the area of indigent defense.

If we do get a public defender's office, it is probably at least a year and a half or more away. The proposed model still has some deficiencies that need to be addressed. It needs more investigators for one thing, and the salaries need to be more in line with those of the District Attorney's Office. It is not in final form, but it does contemplate a first-year operating and start-up cost to be over three million dollars, and an estimated second-year operating cost in excess of two million dollars for the Birmingham Division. The Bessemer Division will fund seven attorneys and a staff which includes investigators and support staff as well. The Birmingham Division contemplates a staff of forty-two, including twenty-seven attorneys.

Again, the proposed model is just a beginning. There still needs to be adjustments made as set out above and others as well.

It is further contemplated that the public defender will be selected by the indigent defense committee, and will be independent. The public defender will then hire the rest of his or her staff. It is contemplated that the office space will be donated by the County and located in the 2121 Building.

These are just a few highlights of the current status of the proposed public defender system as I understand it. It is clear to me, and to many others, that getting it was a matter of inevitability. It was only a question of when and whether it would be adequately funded and appropriately run. If we, as criminal defense practitioners, stood completely on the sideline, we were in great danger of receiving a contract system, which would have been a real disaster. A number of prominent individuals are still pushing for it anyway.

There will still be appointed cases whenever there are multi-defendant cases, which includes many capital and drug cases. Simply put, the majority of routine cases, and all those that do not present conflicts, will be handled by the public defender system. The public defenders will not do criminal appeals or juvenile cases.

I hope this answers some of the questions that many of you have asked. There is still much work to be done formulating the proposed public defender

system. Jefferson County Commission employees Joe Curtin and Doug Mackey have done an exceptionally thorough and extensive job in research in formulating the current proposal which is still being shaped.

## JEFFERSON COUNTY INDIGENT DEFENSE

By: Wilson Myers, Esq.

How much money should a private attorney voucher in a criminal case? Due to the steadily increasing cost of indigent defense in Jefferson County criminal cases, there has been a growing interest in creating a Public Defender system here. A number of judges have expressed concerns about how the voucher system is working. The purpose of this article is to discuss the Alabama voucher payment system and what is appropriate to voucher as well as what is not.

While Jefferson County indigent defense cost approximately \$4,000,000 last year, well in line with figures from other urban counties, many have criticized this amount as too much and want to establish a Public Defender's office. In the first nine months of FY 2000, 5,704 claim forms were submitted from the Birmingham division of Jefferson County. The average claim form was \$647.71. State-wide, in FY 1999, the average claim was \$700.88 based on 51,413 forms submitted.

Ours is a largely self-policing system, but there is (and should be), a significant role for judicial oversight. The current system, however, is disjointed and/or lacking structurally. So the integrity of the criminal defense bar is the primary safeguard. The vast majority of attorneys have traditionally done a good job of representing indigent defendants and billing appropriately, but what is authoritatively recognized by the Administrative Office of Courts for billing purposes?

The State has published a memorandum that discusses the indigent voucher process. In summary, the following are highlights of the "Uniform Guidelines for Attorney Fee Declarations." These guidelines are the "self-policing mechanism for questionable fee practices."

- All itemized time records must be maintained and submitted.
- Billing is in increments of six minutes (.1).
- Purpose of phone calls should be shown on time sheet.
- Mileage IS reimbursable at the rate of \$.32 1/2 per mile.
- Certain expenses must be approved by a judge before they are incurred
  - Private investigator
  - Expert witnesses
  - Transcripts of trials or hearings
  - Interpreters
  - Scientific tests
- Invoices with the approval motions must be submitted with the voucher.
- Travel to and from court may be billed as out of court time IF attorney already has a client. Travel to docket call in hopes of getting a case is NOT compensable.
- If more than one client is represented, the time is to be divided among the clients.
- Law clerks and paralegal may be billed at \$10.00 per hour. Put name of person on itemized time record.
- Cases consolidated must be billed as one case.
- Double billing is not permitted under any circumstances.
- Motions for new trial and sentencing are treated as trial billing, not post-convictions.
- Any fees paid by the client to the attorney must be reported and subtracted.
- Waiting time in court is compensable if wait is not the fault of attorney.
- Attendance at co-defendant hearing is compensable as out-of-court time AND attendance must be justified by an attachment to the voucher.
- Preliminary Hearings are in-court even if offered DA's evidence and case is waived.

Various judges have shared the following observations and recommendations:

1. Always try to settle criminal cases in District Court. There is a suspicion among some judges that some cases are waived just to get a higher fee.
2. Judges look for time inconsistencies on certain tasks, i.e. Discovery Motions, letter/phone calls to client, etc.. If you submit a "standard" motion, don't voucher as if you created it and researched it from scratch.

3. There is an issue of the timeliness of submission of vouchers. Some judges believe that lawyers hold vouchers too long before they are submitted for payment. Despite thriving new businesses such as Integrity Capital or Daniels Capital, which pay submitted voucher up front (for a small fee).

4. More established attorneys don't voucher as much as new attorneys. New attorneys need to follow the example of more established attorneys as the guide for amounts to voucher in appointed cases. Training is needed for new attorneys. Young lawyers often heavily rely on indigent work and most judges understand this. However, attorneys will not get appointments if they abuse the system. Routine cases should never be over \$800.00, but basic work on a case must be done. Meeting with an incarcerated client before their court date is very important. Some judges have observed that even after a lawyer has been appointed for over four weeks, the defendant has never seen the lawyer until they meet in court. Go see your client, talk to the DA before the first court appearance, and conduct at least a basic investigation.

5. All appointed lawyers should be mindful that a false claim by Attorney is an ethical violation since the voucher submitted is a sworn voucher.

Billing for capital cases has distinctive considerations we hope to address in a later issue.

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## JEFFERSON COUNTY ADOPTS A NEW DEFERRED PROSECUTION PROGRAM FOR MINORS IN POSSESSION OF ALCOHOL

By: W. Barry Alvis, Esq.

Jefferson County has a new deferred prosecution program administered through the Hon. Robert Cahill's court. As many of you are aware the Alabama Alcoholic Beverages Control Board has stepped up the enforcement and prosecution of underage possession and consumption of alcoholic beverages. Generally, the minors are charged with

violating Title 28-3A-25 (19), (22), Code of Alabama (1975). In addition to the fine and court cost, a conviction created under this section causes a mandatory suspension of the driving privileges for the minor. That duration of the suspension is for not less than ninety nor more than one hundred eighty days. That suspension is placed into effect regardless of if the conviction is a juvenile conviction or a conviction as a youthful offender.

Judge Cahill approved a deferred prosecution program that involves the minor being referred to designated alcohol counselor for two sessions of alcohol education. The minor is responsible for the very nominal costs of the counseling and in addition must perform five hours of community service.

Cases are then reset about six months later to be dismissed upon completion of all of the requirements. In addition, the judge has said that he plans to expunge the records of the offenders.

This program is only for the first time offenders that do not resist arrest or cause any problems for the arresting officers.

It appears to be working very well and saving a lot of young people and their families a lot of problems resulting from the license suspension and automobile insurance problems that creates.

G.B.C.D.L.A. member John Robbins participated with me in getting everyone in agreement with setting this program up. Judge Cahill was also very instrumental and supportive in its being instituted.

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## NEXT GBCDLA MEETING...

NOVEMBER 1, 2000 at 5:30  
p.m. REDMONT CROWNE  
PLAZA

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