

February '95

Volume 2.2

# THE SENTINEL

JEFF. CTNY COURT NEWS

THE OFFICIAL  
NEWSLETTER

REMEMBERING JUDGE COLE

January, '95

Volume 2.1

# THE SENTINEL

## COURTHOUSE SECURITY

### RUNNING THE GAUNTLET

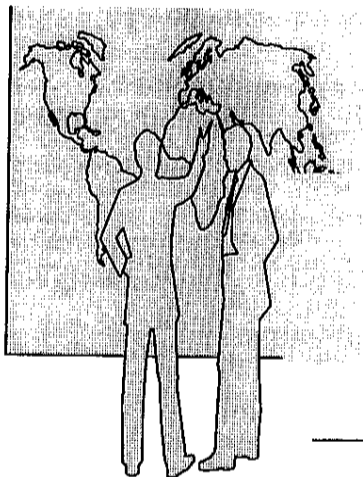
**B**y now all lawyers who practice at the Criminal Justice Building are aware that they are no longer exempt from the metal detector and scanner line. This is because a defendant mistakenly thought to be a lawyer by deputies was allowed to bypass the line and ended up possessing a knife in one of the Circuit courts. Subsequently all persons but county employees and deputy district attorneys have had to cross through checkpoint Charlie to get to court.

At a recent Judge's meeting held on Tuesday, January 24th, attended by all Jefferson County Criminal Division Judges, members of the Sheriff's department and the GBCDLA, it was decided a panel was to be formed to establish a security policy. Al Bowen, president of the GBCDLA was appointed as the Association's representative on the panel.

In the meantime, defense lawyers are asked to bear with the temporary security measures that require going through the security line which we all know on Mondays of a trial week is more hectic than the lines at Disney World. However, we are assured this is temporary and that procedures will be established so that defense lawyers are not singled out as non-exempt persons.

Also, defense lawyers are asked not to bring firearms into court until adequate measures are established for their safekeeping.

Any suggestions should be presented to Al Bowen as soon as possible.



## BAILEY'S NEW VENUE IDEA

"Some how F. Lee I don't think Judge Ito will buy it!"

## OTHER NEWS AROUND THE COURT

### ALTERNATIVE SENTENCING PROGRAM IS AXED.

Sources inform the GBCDLA that the funding for the Alternative Sentencing program have been terminated by the Department of Corrections. No thing is known whether funding will be re-established but as for now the program is no more. The Sentinel will post any new updates in February.

## CLE NEWS

### FORENSIC EVIDENCE SEMINAR SET FOR FEBRUARY IN BIRMINGHAM

The ACDLA has announced that a seminar has been set for February 24 and 25th at the Radison Hotel in Birmingham that will focus solely on issues of Forensic evidence. The two day seminar will include topics concerning firearm testing, drug testing procedures, forensic pathology and DNA evidence. The speakers are all experts in their particular field and will offer practical information regarding many areas of forensic evidence that defense lawyers encounter everyday.

Also, Elaine Scott and John Hicks of the Alabama Department of Forensic Science will be speaking on February 25th about Alabama's DNA testing procedures and laboratory. Because DNA evidence is becoming more prevalent in criminal cases, this information alone will be invaluable for understanding and preparing for cases in which the State intends to use DNA evidence.

All members of the GBCDLA are encouraged to attend this seminar. The ACDLA will be mailing out pamphlets soon, however, those wanting more information should contact the seminar coordinators, Tommy Goggans in Montgomery #834-2511 and John A. Lentine in Birmingham at #322-7707 for more information.

THE SENTINEL IS THE OFFICIAL  
NEWSLETTER OF THE GREATER  
BIRMINGHAM CRIMINAL DEFENSE  
LAWYERS ASSOCIATION.

March '95

Volume 2.3

# THE SENTINEL

## NEW FROM THE COURTHOUSE

### February Judges' Meeting

On February 14, 1995, the regular monthly Judges' meeting was held. A security firm from Atlanta was invited to the meeting by Judge Johnson to give a presentation regarding equipment that can be utilized for home detention in lieu of incarceration. This equipment consisted a photographic phone monitor which sends a still photo of the subject back to the monitoring station at various times of the day. Also there is equipment for an in-home breathalyzer test and ankle bracelet monitoring. It appears that several counties in Georgia (the home base of this security company) have used these devices as part of home detention.

Judge Garrett stated he was submit the the company's (Chewning & Fry Security) proposal to the County for consideration. Unfortunately for Defendant's the cost can run as high as \$17.00 dollars a day which the Defendant would have to bear. Further, most of the judges seemed to agree if adopted it would be the rare defendant who would receive such a sentence.

Judge Garrett has circulated a memo to the Clerk's Office regarding the filing of consolidation motions by the DA's office. It appears after filing these motions lay in the file and fail to come to the attention of the circuit court judges. the judges are requesting such motions by brought to the attention of the court as soon as possible.

Another are of concern is the lag time concerning probation revocations. It appears the judges will be striving to expedite those incarcerated in the county

THE OFFICIAL  
NEWSLETTER  
OF THE  
GREATER BIRMINGHAM  
CRIMINAL DEFENSE  
LAWYERS  
ASSOCIATION

## JUDGES' MEETING CONT.

on such violations to ease the overcrowding.

The question of security is still being tackled. Judge Garret has suggested security ID cards for lawyers to facilitate entrance into the criminal justice building. There is a question as to whether there will be a cost involved for these cards, however, no decisions have been made at this time.

Finally, the Criminal Justice Building will be temporary home to some of the civil courts in the near future. The old courthouse will soon begin remodeling and it appears that during such time various civil judges may move into the Criminal Justice Building. Most probably it appears the Domestic court will be arriving in the future.

GBCDLA GENERAL MEMBERSHIP  
MEETING IS SET FOR APRIL 6, 1995,  
AT 5:30 P.M. AT THE REDMONT HOTEL

## BEST WISHES TO BILL NEUMANN

For those of you GBCDLA members who have not heard, F.W. "Bill" Neumann, III, is no longer with the Jefferson County District Attorney's Office. It is the understanding of THE SENTINEL that Bill was dismissed after twenty-two years of prosecuting cases for the Jefferson County District Attorney's Office

Bill was a fine prosecutor. Most of us will remember his silent and reserved demeanor which disguised a quick wit and good sense of humor. Bill was a skilled trial lawyer and his methodical approach to prosecutions combined with his no nonsense appearance before juries won him more than his fair share cases over his long career. While we will miss Bill's unique humor, common sense in prosecuting cases and all round cordiality in a system which seems to be fostering less and less of such an atmosphere, we will not miss his ability to win cases.

Good Luck, Bill.

## P.O. BOX PROBLEMS ON THE MEND

It has come to the GBCDLA board of directors attention that many members are having problems in sending mail to the Association. There have been some difficulties with the P.O. Box but the Board is in the process of correcting the problem. In the meantime, please send your dues checks to Don Colee, 604 38th Street South, B'ham, 35222, any other correspondence can be forwarded to any other member of the Board of Directors, Al Bowen, Virginia Vinson, John Robbins or John Lentine. Thanks for your patience.

April '95

Volume 2.4

# THE SENTINEL

4/6/95 June 8 - next meeting  
- dues due

## NEWS FROM THE COURTHOUSE

### March Judges' Meeting

**O**n March 14, 1995, the regular monthly meeting of the criminal court judges was held. The question of ID cards for attorneys was raised again regarding easier access through the metal detector, however, no policy has been set as of yet. Judge Garrett announced that as of the date of the meeting there were 49 pending capital murder cases. Because of the costs of sequestration (estimated at up to \$20,000.00 for one jury through one week) it appears the circuit court judges will be raising the issue of sequestration with the D.A.'s office and defense lawyers involved in capital cases. There is no policy regarding sequestration, rather the judges will be examining the issue on a case by case method. There census seems that in the not so distant future there could be up to 3 capital case tried during the same week due to the sheer number of pending capital cases. Finally the judges discussed the rule changes regarding bonds. The next meeting will be in April, the GBCDLA will be there and its members will be informed.

#### ALABAMA SUPREME COURT ISSUES RULE CHANGES

GBCDLA members are advised the Alabama Supreme Court has issues several important changes to the Rules of Criminal Procedure, Judicial Administration and Appellate Rules that will go into effect on April 1, 1995. These rule changes can be found in the Court Rules section of 649 So.2d pgs. CXIV-CXIX, CXX-CXXI, CXXII-CXIV, CXXV, CXXVIII-CXXXI, CXXXII, CXXXIII-CL. The Supreme Court library will also send copies of these orders to any lawyer for a nominal fee.

Most significantly to GBCDLA members are the changes in Rule 7.2 of the Alabama Rules of Criminal Procedure which deals with an accused's right to release on one's personal recognizance or on bond. Rule 7.2 now contains a new bond schedule which was formerly contained in Rule 2(b) of the Alabama Rules of Judicial Administration. However, the Supreme Court has now rescinded that rule. Rule 7.2 (a) response to the problems created by the Bail Reform Act) now acknowledges that the right to bond is not primarily to insure an accused's presence in court but now includes the question of whether the individual constitutes a "real and present" danger to others or to the public at large. In that vein there are now numerous listed factors that a court may consider (#1-14) in

THE OFFICIAL  
NEWSLETTER  
OF THE  
GREATER  
BIRMINGHAM  
CRIMINAL DEFENSE  
LAWYERS  
ASSOCIATION

#### RULE CHANGES. CONT.

setting bonds. These include a defendant's reputation, character, prior criminal record, enhancement statutes relating to charged offense and in drug cases, the selling or pusher activity, "should indicate a substantial increase in the amount of bond." So much for the presumption of innocence. The wording of many of these factors appears to invite mini-trials when bond is objected to or higher bonds sought by the prosecution.

Further, the bail schedule has been re-written and most significantly bail in drug trafficking cases ranges from \$3,000.00 to \$1,000,000.00.

Rule 31(b) of the Alabama Rules of Appellate Procedure has been changed to increase the number of briefs to be filed in the Civil Court of appeals from 3 to 6 because of the increase of judges.

Rule 20 of the Alabama Rules of Judicial Administration has been changed regarding the magistrate's fine schedule and procedure where a defendant elects to plead guilty. The Court lists the fine amounts for Traffic Infractions. Please examine this rule because it also makes an extended fine schedule for various offenses regarding marine safety, conservation, etc.

Rule 4 of the Alabama Rules of Judicial Administration makes changes regarding the duties of Clerks and Registers.

## RECENT DECISIONS

### UNITED STATES SUPREME COURT:

#### Harris v. Alabama, #93-7659, 63 LW 4147 (2/22/95)

In Harris the Supreme Court upheld Alabama power of trial judges to override the sentencing recommendations of juries in death penalty cases without a specific standard for the override. In an 8-1 decision the majority noted that the states may give all sentencing power to judges in capital cases and that the 8th Amendment was not violated by such overrides of life without parole verdicts. Justice Stevens the lone dissenter (in my opinion the new "conscience of the court") stressed by upholding the unfettered override power the Court had severed death penalty cases from its only legitimate mooring- the expression of outrage by the community. Without such a "rudder" on a judge's "free floating power to negate the community's will" render the capital sentencing scheme in Alabama fundamentally unfair and volatile of the 8th Amendment.

**NOTE**- One of J. Stevens concerns was political pressures on Judges to override life without parole sentences. Stevens noted that Alabama judges have vetoed only 5 jury recommendations for death but overrode 47 jury recommendations for life between 1972 and early 1992. Res Ipsa Loquitur.

#### Arizona v. Hicks, #93-1660, 63 LW 4179 (3/1/95)

In Hicks the Supreme Court held the exclusionary rule did not require the suppression of evidence gained during an arrest which had been made on the basis of a computer record that was the erroneous result of clerical mistakes by court employees. Before prosecutors do hand stands over this opinion they better read it carefully. Five justices expressed the opinion that just because the police were innocent of the court employee's mistake their reliance on the recordkeeping system may be unreliable noting that such recordkeeping systems deserves no less scrutiny than that of informants. Looks like they won the battle but the war is still up for grabs.

**NOTE** - Since 1971 the government has won 93 of 112 criminal arrest or search cases before the Supreme Court. 85 outright wins and 8 others substantially decided in the government's favor. Don't let any prosecutor give you any lip about the Court being soft in this area.

### ALABAMA SUPREME COURT:

#### EX PARTE PEEPLES, #1930966 (2/3/95)

This is probably the worse decision out of the Court so far this year (and it was only February). The defendant was charged with sexual abuse and attempted to prove the alleged victim had previously accused her step-brother of the same thing on a previous occasion but later denied making the accusation. The trial court would not permit the evidence and the Court of Criminal Appeals reversed the conviction ruling that her prior inconsistent statements went in essence to her credibility. The

Supreme Court reversed the Court of Criminal Appeals holding that the Defendant must prove the prior alleged acts are in fact false not merely that the victim gave inconsistent statements. The apparent linchpin to the Court's reasoning was a review of "public policy" (the chic phrase for cop out) in protecting alleged victims. So now, despite the Court's lip service to the contrary, the Defendant has to try to cases at once, defending himself and proving the falsity of the charge against the third party.

Unfortunately only Justices Almon and Cook recognized that such prior inconsistent statements went directly to the victim's credibility and were admissible to impeach.

**NOTE** - Perhaps Justice Maddox and the other justices ought to re-read McElroy on prior inconsistent statements and self-contradiction because this decision is totally out of left field.

### ALABAMA COURT OF CRIMINAL APPEALS

#### ROWELL v. STATE, CR90-1669, 1993 WL 381483 (9/30/93) on return from remand from Ala. Sup. Ct.

Rowell was convicted of unlawful possession of cocaine found in a car he jointly owned. The State offered evidence of a beeper and \$800 in cash found in a boot in the trunk. defense counsel objected to the admission as the items were irrelevant, immaterial and unduly prejudicial. The trial court allowed the items in evidence.

The Court of Criminal Appeals ruled the beeper and cash were immaterial to the charge of possession noting the State's theory of "possession with intent to sell" does not exist and is not recognized in this State and evidence relating to that theory was not admissible relating to the issue of possession. Further, because the Defendant was not in actual possession of the drugs (found under the floorboard of the car he was driving) and it was incumbent on the State to prove other factors to support knowledge, the admission while not probative was highly prejudicial because it implied to the jury the Defendant might be guilty of another uncharged offense.

**NOTE** - The two judges who dissented in this case are no longer sitting on the Court.

## GBCDLA MEETING

**P**lease remember the General Membership meeting of the GBCDLA will be held on April 6, 1995 at 5:30 PM at the Redmont Hotel. Nominations for officers for next years board will be taken at this meeting so please make plans to attend.

June '95

Volume 2.6

# THE SENTINEL

## NEWS FROM THE COURTHOUSE

### May Judges' Meeting

**T**here was not regular monthly judges' meeting held in May. However, the Board of Directors of the GBCDLA would like the membership to know that the Association

attends each and every judges meeting to air your concerns and problems. If any member of the Association wishes to have a matter brought up at the next Judges' meeting, please contact any of the Board of Directors or write **THE SENTINEL** at P.O. Box 370282, B'ham, AL., 35203, with your concerns, problems or suggestions. Your representative will bring these matters to the attention of the Judges at the next meeting. Remember this is your Association. Getting things done means getting involved.

### HOUSE BILL TO RAISE INDIGENT DEFENSE COMPENSATION IN THE WORKS

A house bill that would significantly change the existing rate of compensation for attorneys representing indigents has been written by Representative Howard Hawk, an attorney for Guntersville. The bill would increase the hourly rate to \$50.00 per hour for both in and out of court time, eliminate the cap for capital cases and those cases which carries a possible sentence of life without parole, and provide maximum fees of \$2,500 for Class A felonies, \$2,000 for Class B felonies and \$1,500 for Class C felonies. Funding for such an increase will come from an increase in docket fees in certain drug related cases which will be deposited in the Fair Trial Tax Fund and used solely for the compensation of fees and expenses of the representation of indigent criminal defendants in Alabama.

GBCDLA representatives are currently in contact with Mr. Hawk and **THE SENTINEL** will update the membership with the status of the bill as it proceeds in the State House.

THE OFFICIAL  
NEWSLETTER  
OF THE  
GREATER  
BIRMINGHAM  
CRIMINAL  
DEFENSE  
LAWYERS  
ASSOCIATION

### RECENT DECISIONS

#### ALABAMA SUPREME COURT:

Ex parte DeBruce, 651 So.2d 624 (Ala. 1994)

Defendant's absence from suppression hearing and in forma pauperis hearing did not violate Defendant's constitutional rights

The defendant in this case was not present for a motion to suppress hearing; an in forma pauperis hearing, and another hearing dealing with pretrial motions. The Supreme Court interpreting Rule 9.1 of the A.R.Crim.P. in conjunction with rule 43 F.R.Crim.P. and Article I, Section 6 of the Alabama Constitution found no infringement of the defendant's rights.

Justice Almon (with Justice Shores concurring) blasted the majority's ruling as changing 120 years of precedent by relying on inapplicable federal law.

Ex parte McReynolds, 1994 WL 503362 (Ala. 1994)

✓ No "custody" no escape.

The Defendant after a Terry search struggled with officer and fled. Justice Almon writing for the majority ruled because no lawful arrest was completed there could be no escape and the mere utterance of the words "You're under arrest" were insufficient under the facts of the case to support finding of custody.

securing one of the rooms at the Summit Club for a get together and reaffirmation of our Association. The date has been set for **THURSDAY, JULY 27TH, AT 5:30 P.M.** There is no cost for members of the Association other than the Board would like you to bring a potential new member with you. The social is open to anyone who may wish to join the Association or learn more about it. (NO PROSECUTORS PLEASE). There will be an open bar and hors d'oeuvres. This is an excellent opportunity for the members (and those wishing to be) to get together for to re-establish our commitment to each and the Association. So mark your calendars, bring a friend or two, and plan to enjoy yourself and your Association on July 27th at the Summit Club.

## GRAND JURY STATISTICS RELEASED BY DA'S OFFICE

At the June Judges' meeting, David Barber released statistics for the first six months of this years grand jury. In the first three months of this year there were 1,131 cases presented resulting in 1,007 true bills and 50 no bills. In the last three months there were 1,126 cases presented resulting in 995 true bills and 41 no bills. It is estimated that between 4-6 cases that are true billed each month are capital cases. According to Judge Garrett there are approximately 60 capital cases pending at the Circuit Court level.

## ACDLA SUMMER CLE IN PENSACOLA JULY 7TH & 8TH

The Alabama Criminal Defense Lawyers Association has scheduled it Summer CLE and Annual Meeting for July 7 & 8th at the Clarion Suites Resort and Convention center on Pensacola Beach, Florida. The CLE is a 6 hour seminar with a variety of topics and includes several out of state speakers.

Apparently, the Clarion Hotel has now booked out, however, there are several fine hotels in the area, including the Best Western that may still have rooms available. If you are interested in attending call Tommy Goggans the ACDLA's executive director at (334) 834-2511 for details.

Also in the fall of this year several CLE seminars devoted entirely to the practice of criminal defense are in the works. The Cumberland CLE program is earmarking a 6 hour seminar devoted entirely to recent developments in criminal law and procedure for late September at the Pickwick center in Birmingham. Speakers will include Judge William Acker, Judge Sue Bell Cobb, Justice Mark Kennedy and Judge Michael Putnam. Bryan Stevenson from the Capital Resource center will also speak in the area of capital punishment.

In October the ABICLE will present a 6 hour Criminal Law seminar at the Civic Center with a variety of subjects and speakers including topics of Search and Seizure, Opposing the Federal Guidelines and the New Rules of Evidence impact on criminal practice.

More details will be provided in future SENTINELS.

## RECENT DECISIONS

### United States Supreme Court:

Purkett v. Elem, #94-802 decided May 15, 1995

Bye-Bye Batson.

In a per curiam decision, the Court reversed the 8th circuit court of appeals decision grant habeas corpus relief from a state robbery conviction on a Batson violation. In a 7-2 decision the Court ruled that the prosecutor's explanation for striking jurors with beards and long hair who looked "suspicious" and that he "didn't like the way they looked" was race neutral. The court noted that unless a discriminatory intent is inherent in the explanation there is no violation. The Court noted that it is not until the 3 steps of Batson (whether the opponent of the strike has proved purposeful racial discrimination) that the persuasiveness of the justification becomes relevant.

Justice Stevens dissenting with Justice Breyer accused the majority of overruling a portion of Batson that dealt with reason for the strike as being related to the circumstances of the trial. J. Stevens noted that to accept an implausible or fantastic explanation as neutral unless a separate "3 step" inquiry lead to the conclusion of impropriety replaced the true Batson standard.

Note - This is an extremely strange decision destined to create more Batson problems in the future watch for it because the State will be using it left and right to justify their groundless strikes.

### Alabama Supreme Court:

Ex parte Rowell, 1995 WL 11434, decided 1/13/95

Beeper and cash found in possession of defendant are admissible in drug possession case.

In this case the Supreme Court of Alabama reversed the Court of Criminal Appeals and held that a beeper the Defendant was wearing and a sum of cash found in the trunk of a car in which drugs were found was admissible in a drug possession case against the Defendant.

Note - A legitimate argument can be made that unless the defendant is in actual possession of large amounts of cash or related items that it should not be admissible.

### Alabama Court of Criminal Appeals:

Pierson v. State, 1994 WL 717044, decided 12/29/94

Demand Reduction Assessment Act ruled to be discretionary.

In this case the Court of Criminal Appeals was requested by the State to remand the case for the circuit court to assess a fine in accordance with the Demand Reduction Assessment Act, 13A-12-280 Code of Alabama (1975), however, the Court ruled that the statute was permissive and that 13A-12-284 provided for suspension and reduction of the penalties, therefore the implication of the penalties under the act were discretionary with the trial court.

July '95

Volume 2.7

# THE SENTINEL

## NEWS FROM THE COURTHOUSE

### JUNE JUDGES' MEETING

**O**n June 13, 1995, the regular monthly meeting of the Jefferson county criminal division judges took place. There were only a few matters on the agenda. Judge Garrett informed the group that there is currently a bill that has been passed and is awaiting the governor's signature that would give Circuit court judges the discretion as to whether or not to sequester juries in capital cases. David Barber brought up the fact that Attorney General Jeff Sessions' bill for a Speedy Trial Act in Alabama was introduced into the legislature despite the fact that it would take millions of dollars to implement. David Barber also distributed a statistics sheet for the first six months of the grand jury in 1995. Your GBCDLA representative was present, and will continue to be present at every such meeting.

Remember, if you have any concerns, problems, or suggestions you wish to have aired at these meetings please contact any member of the Board of Directors or write **THE SENTINEL** at P.O. Box 370282, B'ham, AL. 35203. Your representative will make these matters known at the next judges' meeting.

**GET INVOLVED.**

### NEW BOARD OF DIRECTORS MEET

On June 14, 1995, the new Board of Directors had its first of many meetings in order to set the agenda and work out goals for the Association. The meeting was extremely productive and included the following that will lead to a productive year for our group:

- 1.) The following members were named to the Board of Directors, Buddy Armstrong, Richard Jaffe, Clyde Jones and Tommy Nail.
- 2.) General Membership meetings will now occur on a quarterly basis with other special meetings to be set at the Board's discretion.
- 3.) After July, '95, **THE SENTINEL** will no longer be available to non-members. Only members will receive the newsletter either by Fax or mail.

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

4.) A CLE seminar will be forthcoming in January of 1996.

5.) ID badges for members to be approved by the court to bypass the security line is being planned.

Numerous other goals were discussed and will be brought to the attention of the membership in upcoming newsletters.

## SUMMER SOCIAL MEETING SET FOR JULY 27TH AT THE SUMMIT CLUB

The Board of Directors have decided it is high time for a social gathering of the membership. The Board is in the process of

# THE SENTINEL

## NEWS FROM THE COURTHOUSE

### November Judges' Meeting

**O**n November 15, 1995, the regular monthly meeting of the Jefferson County Criminal Judges took place in Judge Garrett's court. The sole issue on the agenda was "Drug Court" which will officially begin operation on January 2, 1996. Judge Johnson, who will be in charge of "Drug Court" gave an overview of how it will operate and those individuals who will qualify for the program. The specifics of "Drug Court" are set out below.

The next Judges' meeting will be in December and as always your GBCDLA representatives will be present. If you have any matters you wish to have raised at the meeting, please contact any of the GBCDLA officers (Ginger Vinson, John Lentine, Ken Gomany, Massey Relfe or Tommy Spina) or write **THE SENTINEL** at P.O. Box 370282, Birmingham AL 35203.

**NEVER STAND ALONE.**

**GET INVOLVED, BE INVOLVED, STAY INVOLVED!**

### "DRUG COURT IS HERE"

On January 2, 1996, Jefferson County will begin an alternative method of dealing with drug crime at the District and Circuit Court levels with the creation of "Drug Court". Based on a grant received by the TASC program the "Drug Court" will operate in the Family Court of Jefferson County as well in the Circuit and primarily the District Court. Judge O.L. "Pete" Johnson will preside over the "Drug Court" and coordinate the program. The goal of the program is to use intense drug treatment and counseling to help cure a defendant of drug addiction and dependence by offering an opportunity to escape a criminal conviction by successful completion of the program. The following is a synopsis of how "Drug Court" will run.

**CRITERIA:** As of this date no final criteria has been set for admission into this program. However, the basic criteria for admission is that a defendant who is charged with a drug

## THE GREATER BIRMINGHAM CRIMINAL DEFENSE LAWYERS ASSOCIATION

possession case or a forged proscription case who has a minimal criminal history (specifically no prior violent crime arrests or convictions) is eligible. Such defendants will include those who possess amounts that are too much for consideration in the deferred prosecution program. However, no sale cases or search warrant case (i.e. if target of the warrant) will be accepted. The DA's office through screening will inform counsel if it appears a client is eligible. However, the Court can exercise a judicial "override" of the DA's office and allow a defendant to whom the DA's office objects into the program.

**OPERATION:** If a defendant is eligible and wishes to be admitted into the program, he or she must first enter a plea of guilty to felony possession. While a plea will be taken by the Court, sentencing will be deferred while the defendant is in the program. The program will last from a year to 18 months. During this time the defendant will receive intense counseling, treatment and therapy through TASC. The defendant will be required to report to the Court once a week at the beginning of the program for the Court to review each defendant's progress through TASC. Those defendants who have dirty urine or minor failures could receive "shock incarceration" (i.e. jail for a weekend) in an effort to convince them to stay with the program. Unemployed defendant's will be required to get employment and complete their education. (i.e. GED for high school dropouts).

As a defendant progresses in the program reviews will be cut back to 2 or 3 times a month. Upon successful completion of the program a ceremony will be held and the graduates will receive diplomas and their plea will be set aside and the case dismissed along with any fines and court costs.

The program will primarily run in Judge Johnson's Court with hearings, pleas and reviews taking place on Thursdays. The other District Courts will funnel such cases to Judge Johnson. Further, the program will be available, on a more limited basis with the Circuit Court judges for those defendants who have already been indicted but who still might meet the criteria for admittance. A full time Drug Court Coordinator will be assigned through Judge Johnson's Court to assist in the coordination of the program with TASC. Preliminary reports indicate it will be Beth Early or Ralph Hendrix. There is no provision or contemplation of probation in Drug Court so the probation office will not be involved. An individual who fails the program will be sentenced and sent to prison. Also, Y.O.'s can be done through Drug Court.

Referrals for "Drug Court" are now being accepted. If you have any questions about a client's eligibility, you should see or call Judge Johnson as soon as possible.

**THE BOTTOM LINE:** This program sounds good and may help those defendants who are willing to work hard to beat their drug problems. However, because of the current criteria for eligibility it appears only a limited number could be eligible especially with the possibility of an objection from the DA's office. The judicial "override" is a pleasant check but how and when it will be used is anyone's guess. There is also the question of an "upfront" felony plea. Once the plea is taken failure in the program will mean jail. There is no withdrawal of the plea with the ability to fight the case through the system. As Judge Johnson put it, "lawyers will have to learn to be less adversarial in this program" ostensibly for the goal that their client's drug problem be treated. It appears the program is an all or nothing proposition. Lawyers will also be required to appear at reviews which in all probability will increase the number of times a lawyer will have to appear in court.

The grant for this program allows funding for 18 months. Interestingly, that is all the funding the program has and at the end of this time new moneys must be found for its continued existence.

If you have any questions regarding "Drug Court", please contact Judge Johnson, Ralph Hendrix or your GBCDLA officers.

## GBCDLA'S CLE RECEIVES STATE ACCREDITATION

The first CLE organized and sponsored by the GBCDLA has received State accreditation for a total of 3.0 hours worth of CLE credit. The CLE entitled "Application of the New Alabama Rules of Evidence from a Criminal Defense Perspective" will take place on Friday, December 1st from 1-4 p.m. at the Holiday-Inn Redmont in downtown Birmingham. The speaker for the seminar will be Professor Jerry Hoffman, Professor of Law at the University of Alabama Law School. Professor Hoffman will discuss topics including Rules 404(b) (Other crimes and bad act evidence), 607, 608 and 609 (Impeachment evidence) and 801, 803, and 804 (hearsay and the exceptions) as well as explain how the new rules will impact on the criminal law practitioner.

Brochures have been sent out to GBCDLA members and members will receive a discounted charge for admission so mail in those checks early. Registration will take place at 12:45 p.m.

and the CLE will begin promptly at 1:00 p.m. Light refreshments will also be available.

Do not miss this opportunity to pick up 3 hours of CLE credit at a reduced price while gaining some valuable insight on how the New Rules of Evidence will impact your cases starting January 1, 1996.

## GBCDLA'S PRESIDENT NAMED TO TASC/DRUG ADVISORY COMMITTEE

President Ginger Vinson was requested and named to the Jefferson County TASC/Drug Advisory Committee. She will join the various other representatives and have input on behalf of the GBCDLA. President Vinson has been informed that relatively few lawyers are using the Pretrial Release Program currently in place in Jefferson County. The Program allows defendants to be released on bond with the assistance of the TASC program.

## RECENT DECISIONS:

Hobbs v. State, CR-94-1234, decided 10/20/95 (Ala.Cr.App. 1995) - Improper Impeachment

In Hobbs, the defendant presented an alibi defense to a charge of unlawful distribution. The State was allowed to impeach his chief witness with a copy of Hobb's prior for drug possession for the purpose of showing Hobb's was in jail when he and the witness met. The Court of Appeals reversed his conviction noting the evidence was improper impeachment on a collateral matter. When the Hobbs met the witness years earlier was simply irrelevant as to whether she was with him at the time the sale took place.

Demming v. City of Mobile, CR94-1453, decided 10/20/95 (Ala.Cr.App. 1995) - Trial Court cannot direct a guilty verdict no matter what.

Demming was convicted of DUI and driving while license revoked in a city appeal in Mobile County. He admitted on cross his license had been revoked when he was stopped and arrested for the DUI. The trial court, believing that because of the acknowledgment there was no question of guilt on the driving charge, directed the jury to reach a guilty verdict. The Court of Appeals reversed, holding no matter how conclusive the evidence, a trial court that directs a guilty verdict has denied a defendant his or her right to a trial by jury on the charge.

**COMING IN THE DECEMBER ISSUE OF  
"THE SENTINEL" - AMENDMENTS TO  
THE RULES OF CRIMINAL PROCEDURE  
- DEPOSITIONS !!!!!!!**