

January '96

Volume 3.3

THE SENTINEL

NEWS FROM THE COURTHOUSE

JANUARY JUDGES' MEETING

On January 9, 1996, the regular monthly meeting of the Jefferson County Criminal Court Judges was held. Judge Thorn, presiding judge of the Tenth Judicial Circuit was in attendance. The thrust of the meeting was Judge Garrett and Judge Thorn's effort to establish a "crash docket" for sometime in the spring. An effort is on to bring in several out-of-county circuit court judges to hear nothing but jail cases in an effort to alleviate the over-crowding the Jefferson County Jail. At this time no date has been set nor has any mention been made of what courtrooms will be available for this docket.

The GBCDLA informed the judges of problems the membership is having in getting adequate notice of trial dates. Judge Garrett and Thorn agreed to look into this matter. Also the GBCDLA asked the judges to examine more closely cases which they have been "no bonding", especially at the District Court level.

As always the GBCDLA will be present at the judges' meetings. If you wish any matters be brought to the attention of the judges, please contact any one of the GBCDLA board of directors or write **THE SENTINEL** at P.O. Box 370282, Birmingham, AL. 35203

NEVER STAND ALONE.

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THE OFFICIAL
NEWSLETTER
OF THE
GREATER
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CRIMINAL DEFENSE
LAWYERS
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MEETING ANNOUNCEMENTS

There will be a General Membership Meeting of the GBCDLA on Thursday, February 22, 1996 at 5:00 p.m. at the Holiday-Inn Redmont Hotel. Several important matters are on the agenda for this meeting, including the announcement regarding the election of new officers. The announcement for the GBCDLA's "Outstanding lawyer of the Year" will also be discussed. Please make plans to attend.

The next General Membership Meeting will be held on Thursday, April 18, 1996 at 5:00 p.m. at the Holiday-Inn Redmont Hotel. At this meeting the membership will nominate officers, and, if necessary, written ballots will be sent out to all dues paying members for votes to be cast and returned on or before June 15th.

THE OLYMPICS IN BIRMINGHAM - LAWYERS NEEDED!

As you know Birmingham will be sponsoring portions of the Summer Olympic games in the near future. Because of concerns over the influx of foreign athletes and nationals as possible defendants or victims of crimes the U.S. Attorney's Office and the Jefferson County District Attorney's Office have developed a plan to handle such problems.

President Ginger Vinson recently met with David Barber and Bud Henry who informed her of the following:

A command post will be established a Legion Field which will be staffed by BPD, FBI, Assistant DAs and AUSAs. A list of lawyers for athlete defendants will be kept there so lawyers willing to be appointed can be immediately called. It appears that the Jefferson County DA's office intends to prosecute all crimes that occur involving foreign athletes including city violations. There also will be a list of separate interpreters available for defendants who do not speak English.

As for victims who are foreign athletes or nationals, those case will be put on a "fast track" docket which may include video preliminary hearings.

If you are interested in accepting such appointments, please contact President Ginger Vinson at #252-4959 or write her at her office address before the end of February. Please include your name, address, all phone numbers and fluency in any foreign language, if applicable.

LOCAL FBI AGENT EXPOSED FOR COERCING STATEMENT

On January 19, 1996, U.S. Magistrate T. Michael Putnam issued a stinging Order in the case of U.S. v. Glasgow where he found a local FBI agent had coerced and threatened a statement from a defendant after the accused had requested counsel.

Any member interested in obtaining a copy of the Order should contact President-Elect John Lentine at #322-7707.

ALABAMA SUPREME COURT ALLOWS "OVERHEAD EXPENSES" FOR APPOINTED LAWYERS

On December 22, 1995, the Alabama Supreme Court denied petitions for certiorari from both sides in the case of James W. May v. State, CR92-350. By doing so the Court let stand (for now) the cap on indigent fees claimed by court appointed lawyers. However, the Court also let stand the Court of Criminal Appeals decision allowing court appointed lawyers to claim overhead expenses if they are approved by the trial court. The GBCDLA board of directors has recently brought this case to the attention Jefferson County Criminal Judges because lawyers are already filing such motions. The board of directors has suggested to the judges that a "flat per hour rate" for every lawyer filing such motions be established in this county. Establishing a "fair" per hour rate for all lawyers in the county would insure that such motions would be routinely granted without the necessity of continued verification of all a lawyer's overhead expenses every time he or she should file such a motion.

The GBCDLA will be discussing this matter with the judges at the February Judges' Meeting as well as with the membership at the February Membership Meeting.

GBCDLA CONTRIBUTES TO ALABAMA COMMITTEE TO ABOLISH THE DEATH PENALTY

The Board of Directors has voted unanimously to contribute \$500.00 to the ACADP. This organization works with all aspects of the death penalty including families of defendants and victims. In appreciation of the GBCDLA's contribution the ACADP will provide its newsletter to our association.

MEMBERSHIP DRIVE

The GBCDLA is only as viable as long as its membership growth and prosperity. Since its creation three years ago, the GBCDLA has made great strides in giving criminal defense lawyers a unified voice in this county. No longer do criminal defense lawyers in this county have to stand alone. The GBCDLA is ready, willing and able to assist any member in a variety of ways. The GBCDLA appears and speaks at all criminal judges' meetings. The GBCDLA provides a monthly newsletter that updates its members as to current happenings at the Jefferson County Courthouse as well as recent decisions from various appellate courts of this State and from the Eleventh Circuit. Further, the GBCDLA stands ready to assist any member who requests help in dealing with a criminal court in this county.

Unfortunately prior members have not rejoined or fallen out of touch with the Association. We need and want these people back. If you know someone who used to be a member or who has never joined, then bring them into the fold. Strength is in numbers and the more the better. Please cultivate the young lawyers who are just starting out. These people need our help and will benefit from the experience and advice of lawyers who have been practicing for a long time.

The GBCDLA needs its membership to take a few minutes to call or write or just sit down and speak with other criminal defense lawyers in this county and let them know that they are not alone and can become a part of an Association that matters.

CLE SEMINAR UPDATE

The following is a list of CLE seminars that may be of interest:

APPELLATE PRACTICE SEMINAR - Friday,
February 23, 1996 - Birmingham Civic Center 6
MCLE Hours

MUNICIPAL COURT PRACTICE AND
PROCEDURE - Friday, February 23, 1996,
Birmingham - 6.0 CLE Hours

RECENT DECISIONS

UNITED STATES SUPREME COURT:

UNITED STATES V. BAILEY, 64 USLW 4039, 1995
WL 712269 (1995) decided December 6, 1995

Court rules for conviction under 924(c)(1) "use" of firearm during and in relation to drug trafficking offense requires evidence of "active employment" of the firearm to sustain a conviction. Court noted that where gun is concealed nearby for later activity or not disclosed or mentioned by offender then it is not "used" as contemplated by the statute.

RENO V. COREY, No. 94-790, decided June 5, 1995

In this case the Appellant had been on community confinement prior to his federal imprisonment. He sought to have this time credited towards his sentence. The Court ruled that because the confinement was in fact "release" and not "detention" under the Bail Reform Act he was not entitled to any credit.

ALABAMA COURT OF CRIMINAL APPEALS:

BEAVERS V. STATE, CR92-1973, decided June 16, 1995

The Appellant was paroled under the condition that he was "barred" from returning to the county at which the crime occurred. On appeal Judge Cobb affirmed noting that Beaver's acceptance of parole was voluntary therefore the prohibition against exile in Article I, Section 30 of the Alabama Constitution was not violated.

*** J. Taylor dissented noting the Board of Pardon and Paroles was not above the Constitution of this State and exile was prohibited.

February '96

Volume 3.4

THE SENTINEL

NEWS FROM THE COURTHOUSE

FEBRUARY JUDGES' MEETING

On February 13, 1996, the regular monthly meeting of the Jefferson County Criminal Court Judges was held. Judges Garrett and Thorn informed the GBCDLA that the Chief Justice has given approval for two out of county circuit court judges to come to Birmingham to assist in trying cases. At this time it is unknown when these judges will arrive let alone starting trying cases. It is planned that these judges will begin by handling city appeals before dockets consisting of mostly older felony jail cases can be prepared. However, our Criminal District judges may begin authority from the Alabama Supreme Court to sit as special circuit judges to hear city appeals in the near future until these out of county judges arrive.

Judge Garrett and Thorn are also working on proposed legislation to create two new circuit court judges positions for the criminal division and one new district court criminal judges position.

The Sheriff's department advised the judges that the Jefferson County is now over capacity and in violation of the federal order regarding overcrowding. The Sheriff's office asked the judges for assistance in freeing up space in the jail. Hopefully this will mean the judges will lower or recognize people on bond. However, lawyers should be aware those persons incarcerated on probation violations can be in jeopardy of being revoked sooner just to make space in the jail.

Finally, the GBCDLA recommended to the judges that they recognize an amount of \$35.00 an hour for overhead expenses pursuant to the Mays decision be presumed as prima facie reasonable when filed by lawyers in this county. This leaves a "flat rate"

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that will be granted just by filing the appropriate motion in circuit court. However, those lawyers with higher overheads who wish to file for a larger amount per hour can do so but the courts have indicated they may require lawyers to come forward with proof of such expenses prior to approval.

As always the GBCDLA is and will be present at all Criminal Judges Meetings. If you wish to have any matters brought to the judges attention, please contact any member of the Board of Directors or write **THE SENTINEL** at P.O. Box 370282, Birmingham AL 35203.

**NEVER STAND ALONE.
GET INVOLVED, STAY INVOLVED,
GET OTHERS INVOLVED!**

DRUG COURT UPDATE

Judge Pete Johnson's experimental "Drug Court" appears to be off to a good start. At a meeting on February 9th, a statistical report from TASC indicated that nearly 50 persons have applied and most are currently enrolled with only 1 failure and 7 denials. Also, several of the Circuit Court judges have expressed interest in the program and there have been 3 persons enrolled in the program on the circuit court level. On a procedural note, Judge Johnson is handing out a pleading memo to lawyers who plan on attempting to get clients into drug court. Please review the memo carefully because it does call for a total of five (5) pleadings. Finally, if you have a client that appears to be a candidate for drug court on the circuit court level, by sure to speak with Judge Johnson and Beth Early of TASC in order to get your circuit judge the proper Order and forms to insure the plea is done correctly. Remember any questions about Drug Court should be go to either Judge Johnson or Beth Early from TASC.

LEGISLATION ON SENTENCING & INDIGENT DEFENSE COMPENSATION

With the start of a new legislative session in Alabama comes new bills that could have a drastic effect on the criminal justice system in this State. attorney General Jeff Sessions is planning to introduce a bill (The Truth in Sentencing Act) which will radically change sentencing, probation, and the habitual offender act. This restructuring of Alabama sentencing laws is based specifically on the North Carolina Sentencing Guidelines. The bill itself is nearly a hundred pages long and makes significant changes that will totally alter the present system including the abolishment of parole; a new habitual offender act based on a point system which includes nolo pleas, and a substantial assistance provision (the snitch incentive). The GBCDLA will keep track on this bills progress in the legislature along with Session's second attempt to pass a Speedy Trial Act.

Also, a revamped version of the bill to increase the amount of indigent compensation is likely to be introduced this session. The bill provides for \$55.00 an hour in and out of court time with an increase in the caps depending on the classification of the

offense. This bill died early last year but it is hoped that with an adequate funding provision the bill might pass this session. The GBCDLA is planning a meeting with the Jefferson County delegation to the legislature in the near future regarding this and other issues and will report to the membership of what progress is made.

OLYMPICS NEEDS LAWYERS

As was reported in the January issue of **THE SENTINEL** because of the presence of the Olympics in Birmingham, lawyers are needed to be on call to represent defendants who are foreign nationals and/or defendants accused of criminal acts against foreign nationals. Contact President Ginger Vinson if you are interested in accepting such appointments. Please contact her before the end of February.

RECENT DECISIONS

ALABAMA COURT OF CRIMINAL APPEALS

✓ WRIGHT V. STATE, CR93-1870, 1995 WL 11468 decided 1/13/95 - Plea Agreement binds State against refilling charges dismissed in plea agreement.

In this case the State dismissed charges as part of a plea agreement. The State subsequently filed a motion to set aside the defendants guilty plea and reinstate the charges which was granted by the trial court. On appeal the Court of Criminal Appeals reversed holding that only the party pleading guilty could withdraw a plea and there could be no reinstatement of charges formally abandoned by the District Attorneys Office without a violation of double jeopardy.

NOTE:

DOUBLE JEOPARDY/ CIVIL FORFEITURE CASES TO BE HEARD BY U.S. SUPREME COURT THIS TERM.

The U.S. Supreme Court has agreed to hear and consolidated two appeals (U.S. v 405,000 and U.S. v. Ursery) regarding holdings that civil forfeitures constitute punishment under the Double Jeopardy Clause. The Courts decision is due out by the end of the term this year.

4/13/96

Volume 3.5

March/April '96

THE SENTINEL

NEWS FROM THE COURTHOUSE

MARCH / APRIL JUDGES' MEETING

The regular monthly meeting of criminal court judges was held March 12, 1996. Judge Garrett announced that Drug Court cases in Circuit Court could be turned over to Judge Johnson for supervision after acceptance in the program was granted by any Circuit Court Criminal Judge. It was also announced that on April 1st the first visiting circuit court judge will come to Jefferson County to help alleviate the docket. In May, Judge Younger from Hunstville will come to Jefferson County to assist in the handling of the municipal docket. Judge Younger will have his own separate docket taken from the oldest municipal cases still pending in the various circuit courts.

Judge Thorn instituted a jury questionnaire which was given out to the entire jury pool in March in order to assist the courts in assessing the jurors' feelings towards various aspects of the selection process. Judge Thorn is also in the process of changing the "jury cards and box" system. The idea is that all potential jurors in a given week will have their names entered into a computer and one master jury list will be created. A judge will then send word as to how many jurors he may need for a given case and the computer will randomly select that number of jurors. Those jurors will then be sent up from the jury room. The hope is to eliminate the dead time while one court waits for the box. Also, by mid-week, jurors who are not being used will be allowed to go home. However, they will be required to check-in with the jury clerk and be available to return if a case is ready to go later in the week.

It appears this system will go into place in the near future. Comments from the Membership are encouraged.

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COURTHOUSE NEWS CONT.

At the April 9th Judges' meeting, Judge Thorn indicated that Judge Laird disposed of 18 jail cases while sitting as a visiting judge. It appears Jefferson County will have visiting judges for 7 more weeks of this year. Lynn Moore of the Sheriff's Department informed the Judges that there are currently 1125 inmates in the count jail with 800-900 inmates who are at the pretrial level. The Judges still have no uniform plan for dealing with the Taylor-Hardin situation, however, they promised to address it at next month's meeting. Finally, all the Judges are seeking more lawyers to accept capital cases.

Remember, if there is any issue or matter you want brought to the attention of the Judges, then contact anyone of the Officers or Board of Directors of the GBCDLA or write **THE SENTINEL** at P.O. Box 370282, Birmingham, AL, 35203.

GET INVOLVED AND STAY INVOLVED!

THURSDAY, APRIL 25TH AT 5:00 P.M.
GENERAL MEMBERSHIP MEETING
HOLIDAY INN - REDMONT

INDIGENT COMPENSATION BILL
PASSES HOUSE JUDICIARY
COMMITTEE

House Bill #25 that would raise the hourly rate for attorney's accepting appointed cases has passed in the Judiciary Committee of the Alabama Legislature. The Bill which was originally proposed by representative Hawk was altered from its original wording in that the bill eliminates reimbursement for office overhead. This amendment to the bill appears to be a trade off by legislators to legislate out the effects of the May decision but still provide higher hourly compensation (\$55.00 an hour both for in and out of court time) and higher overall caps depending on the degree of the felony.

House Bill #25 has now been sent to the Rules Committee where the next battle begins. The bill will be discussed in more detail at the April 25th meeting. All members who are interested in contacting legislative members of the Rules Committee in hopes of garnering support should so do. To that end, a list of the members of the Rules Committee has been attached to this edition of "THE SENTINEL".

PSYCHIATRIC EVALUATION
PROCEDURES FOR INDIGENTS
UNDERGOING CHANGE

As of March of 1996, psychiatric evaluations to assess inmates' mental competency to stand trial and mental state at the time of offense, will be exclusively conducted by and through Taylor-Hardin Secured Medical Facility. In a letter to Judge

Garrett, Mr. David Gay, Jr., the director of Taylor-Hardin informed the Court that because of a realignment of patient services, Dr. Wendy Rebert who had been conducting such evaluations for the county will no longer be under contract with the facility and will only be completing those cases which were on her waiting list. From now on all orders for and evaluations will be conducted at and by Taylor-Hardin personnel. The new community/court liaison is Beverly Strong.

It appears that incarcerated defendants will now be transferred to Tuscaloosa for evaluation. However, there appears to be no set policy regarding indigent defendants who are out on bond. How these individuals are expected to get to Tuscaloosa for evaluation is currently a mystery. The GBCDLA is currently working with the judges to formulate some type of plan to rectify this situation. Members will be updated as soon as any new developments arise.

NOMINATIONS OPEN FOR NEW
GBCDLA OFFICERS AND
GBCDLA OUTSTANDING
LAWYER OF THE YEAR

Nominations will be opened for 1996-97 officers at the April 25th GBCDLA general membership meeting. The positions that are open are:

- A.) President - Elect
- B.) Executive Vice-President
- C.) Treasurer
- D.) Secretary

Nominations will be opened at this meeting. Unless a nominee is unopposed the ballots will be submitted by the membership and the winner will be announced at the next meeting. Nominations will also be taken for the first annual GBCDLA Outstanding Lawyer of the Year. The winner will be announced at our next meeting.

JUDICIAL QUOTE OF THE YEAR:

"I accept the often pronounced adage that truth is stranger than fiction. However, when sworn testimony exceeds the bounds of human experience, it takes on a fairy tale like quality and we should give very little credence to it. In a fairy tale all things are possible. Princes spring from frogs, princesses wear glass slippers and straw can be spun into gold. In life there are limits. My common sense and experience in the affairs of life tell me that there is not a grain of truth to the State's case. The trial court's findings of fact are incredulous and clearly erroneous."

Justice McCormick's (Absolutely, 100%, no relation) dissent in People v. Turnipseed, 653 N.E.2d 1258, 1261 (Ill. App. Dist. 1995)

LAWYERS NEEDED FOR INDIGENT CAPITAL CASES

The Jefferson County Judges are asking that all lawyers who qualify to accept indigent capital cases please have their names placed on the indigent defense lists. Over the last few years a handful of criminal defense lawyers have borne the brunt of representing indigents accused of capital offenses. Because of the psychological and financial burden many of these lawyers are no longer accepting these appointments. Therefore, to help plug this gap the Judges are requesting that lawyers (with a minimum 5 years experience) place their names on the appointment list as soon as possible. If you are interested, please see Sonya in District Court or go to the individual Circuit Judges bailiffs as soon as possible. The Judges are now routinely appointing 2 lawyers per capital case so as to give less experienced lawyers the opportunity to gain experience.

NEW PUBLICATION: REVIEW

PUNCH & JURISTS is a new publication offering lawyers a weekly summary of decisions (both favorable and unfavorable to the defense) from the Federal Courts. It is published and distributed by the Institute of Federal Case Studies in Maryland and

offers short, concise summaries of brand new federal decisions on a variety of federal criminal law and procedural areas. You can receive a free six week trial subscription by calling 1-800-625-6797, however a year's subscription (52 issues) is \$360. NACDL members get a special rate of \$265.00. If you're doing a great bit of federal criminal work then this may be helpful.

RECENT DECISIONS:

UNITED STATES SUPREME COURT:

Bennis v. Michigan, 1996 WL 88269 (U.S.).

The Supreme Court upheld the forfeiture of an automobile belonging to an innocent joint-owner under a Michigan abatement scheme, despite failure to prove innocent-owner defense.

This nasty little 5-4 decision allowed the forfeiture of a car jointly owned by the defendant's wife, an innocent owner, despite her inability under the law to contest the forfeiture. The Court ruled there was no due process violation nor a violation of the Takings Clause of the Fifth Amendment by the forfeiture of the defendant's and his wife's car after his conviction for seeking the company of a prostitute. Sorry Mrs. B, the State's interest in keeping its streets safe from prostitutes overrode your interest in being able to drive your Chevy!

ALABAMA SUPREME COURT:

Ex parte Ingram, S.Ct. #1950060 (February 23, 1996). Bye-Bye Ex parte Jackson.

- ✓ The Alabama Supreme Court has overruled Ex parte Jackson to the extent that it allows new counsel to move to suspend Rule 24.1(b) A.R.Crim.P.'s 30 day jurisdictional time limit for new trials. Bottom Line: Ineffective assistance of counsel must be presented in a Rule 32 motion unless it can be adequately addressed in the 30 day time limit of Rule 24.

So much for the noble purpose of dealing with such claims on the front end. Its now back where we started.

HOUSE RULES

Rep. Tommy Carter (D): S.H.: 519-C \ 334-242-7674 Occupation: Community Relations Rep.; Res.: 18216 Upper Fort Hampton Rd. Elkmont, AL 35620 \ 205-732-4433 Dist.:5 Limestone 7th Term

Rep. Joe M. Ford (D): S.H.: 518 \ 334-242-7690 Bus.: P.O. Box 227 Gadsden AL 35902 \ 205-549-8275 Occupation: Jr. College Administrator; Res.: 120 Fair Oaks Circle Gadsden, AL 35901 \ 205-547-7489 Dist.:28 Etowah 6th Term

Rep. James E. Buskey (D): S.H.: 540-C \ 334-242-7757 Bus.: 2800 Berkley \ 334-456-8416 Occupation: School Administrator; Res.: 2207 Barretts Lane Mobile, AL 36617 \ 334-457-7928 Dist.:99 Mobile 6th Term

Rep. Jim Carns (R): S.H.: 523-B \ 334-242-7764 Bus.: 3 Office Park Circle Suite 120 \ 205-870-1340; Occupation: Businessman; Res.: 3380 Spring Valley Court B'ham, AL 35223 \ 205-967-3571 Dist.:46 Jefferson 2nd Term

Rep. William "Bill" Clark (D): S.H.: 540-A \ 334-242-7756 Bus.: P.O. Box 10434 \ 334-438-1533 Occupation: School principal; Res.: 711 S. Atmore Ave. Prichard, AL 36612 \ 334-456-4281 Dist.:98 Mobile 6th Term

Rep. James Albert Hall (D): S.H.: 534-C \ 334-242-7727 Bus.: 205-539-5441; Occupation: Businessman; Res.: Route 1 P.O. Box 275 Gurley AL 35748 \ 205-776-3618 Dist.:22 Jackson Madison 2nd Term

Rep. John Hillard (D): S.H.: 539-B \ 334-242-7755 Bus.: P.O. Box 11385 \ 205-324-7575; Occupation: Real estate broker; Res.: 640 Tree Haven Drive B'ham, AL 35202 \ 205-798-4709 Dist.:60 Jefferson 2nd Term

Rep. Perry O. Hooper Jr. (R): S.H.: 519-D \ 334-242-7683 Bus.: 4121 Carmichael Rd. 3rd floor Sterling Bank Bldg. 36106 \ 334-270-0105; Occupation: Insurance; 3472 Bankhead Ave. Montgomery, AL 36111 \ 334-281-1071 Dist.: 73 Montgomery 4th Term

Rep. Ronald G. "Ron" Johnson (D): S.H.: 627-D \ 334-242-7777 Bus.: 301 S. Norton \ 205-249-3558 Occupation: Medical supply; Res.: 3770 Sylacauga Fayette Hwy Sylacauga, AL 35150 \ 205-249-9489 Dist.:33 Talladega 5th Term

Rep. Bob McKee (R): S.H.: 537-A \ 334-242-7707 Bus.: P.O. Box 424 Montgomery AL 36101 \ 334-277-9373; Occupation: Businessman; Res.: 818 Michelle Court Montgomery, AL 36109 \ 334-272-0924 Dist.:74 Montgomery 5th Term

Rep. Thomas Reed (D): S.H.: 517-B \ 334-242-7734 Bus.: 334-724-0076; Occupation: Self-employed; Res.: P.O. Box 1324 Tuskegee Institute, AL 36087 \ 334-727-4436 Dist.:82 Macon, Lee, Bullock 5th Term

Rep. Allen Sanderson (R): S.H.: 534-D \ 334-242-7681 Bus.: 205-870-1976; Occupation: Real estate broker; Res.: 126 Greenbriar Lane B'ham, AL 35213 \ 205-870-7491 Dist.:43 Jefferson 2nd Term

Rep. J.E. Turner (R): S.H.: 522-F \ 334-242-7712; Occupation: Florist Supply; Res.: P.O. Box 777 Citronelle, AL 36522 \ 334-866-7457 Dist.: 102 Mobile 5th Term

Rep. J.E. "Jimmy" Warren (D): S.H.: 528-E \ 334-242-7718 Bus.: Monsanto Corporation; Occupation: Chemical operator; Res.: P.O. Box 207 Castleberry, AL 36432 \ 334-966-5566 Dist.:64 Conecuh, Monroe, Baldwin 7th Term

Rep. Frank P. "Skippy" White (D): S.H.: 524-B \ 334-242-7705 Bus.: 334-867-0244; Occupation: Farm/Forestry managment; Res.: Route 1 Box 427 Pollard Flomaton, AL 36441 \ 334-296-4641 Dist.:66 Escambia 4th Term

May/June '96

Volume 3.6

THE SENTINEL

NEWS FROM THE COURTHOUSE

MAY / JUNE JUDGES' MEETING

No monthly Criminal Court Judges' meeting was held in the months of May or June. The GBCDLA has been told that nothing of importance has transpired in order to warrant a meeting during the last two months.

Starting in July many of the civil court judges will be holding court in the Criminal Justice Center in various temporary courtrooms. Needless to say, traffic in and out of the Criminal Justice Center will be extremely heavy this summer. Also the status of the numerous municipal appeal dockets seems uncertain with all previously vacant courtrooms in use.

The GBCDLA has yet to receive any set procedures from the judges regarding competency evaluations through Taylor-Hardin. The Association is hopeful that the judges will establish and publish a uniform procedure for evaluations soon.

Remember, if there is any issue or matter you want brought to the attention of the Judges, please contact any of the Board of Directors of the GBCDLA personally or write **THE SENTINEL** at P.O. Box 370282, Birmingham AL., 35203.

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PRESIDENT'S COLUMN

KEEPING THE FAITH

BY

JOHN A. LENTINE - PRESIDENT GBCDLA

I've spent five and a half weeks in trial since the beginning of May. Four and a half of those weeks were spent in federal court with 15 of my fellow criminal defense lawyers trying to defend federal inmates charged with rioting at the FCI in Talladega. Almost immediately after getting the verdict, I found myself in Judge Garrett's courtroom trying a week-long rape, sodomy, burglary, and robbery case involving a 13-year-old white victim and 3 young black men. Neither of these trials was a major success for the defense attorneys involved. In fact, during the rape trial one of the other lawyers, who has been practicing criminal defense work for over 20 years, turned to me and said, "Boy, I've done my share of these kinds of case. I'm not supposed to have to deal with these things anymore. You are!" Although I know he was joking with me, what he says rings true for all of us. It's called the wall, the saturation point, burn out, fried, cooked,

zombified, etc. It's that time when you've been trying case after hopeless case getting your brains knocked out just long enough for some other judge to find the case that really is the worst possible case for you to try the following week. No time for recovery. No respite. No relief. But, despite all the adversity, we keep fighting. Criminal defense lawyers are the human version of the Energizer Bunny. We just keep on going and going and going.... I am truly amazed at how resilient criminal defense lawyers are.

We are called upon every day to defend those people who are detested by society at large. We are lumped together as being responsible for the downfall of the criminal justice system and the rise of crime. Yet, despite all the BS rhetoric, we are actually the bedrock, the foundation, of a system that would come crashing down without us. Every time we fight for the rights of an accused person we breathe life into the Constitution and ratify both its purpose and our own. It is because we have the strength to keep fighting against the worst odds to protect and preserve the rights of the accused and the integrity of the system that we should be the envy of the bar rather than its red-headed stepchildren. If respect is earned, then we have earned it ten-fold.

The GBCDLA was designed to bring defense lawyers together in an effort to give us a unified voice, as well as a sense of fellowship. We exist to help each other and to better our profession. Don't surrender to saturation. Don't go along to get along. We can strive rather than just survive by keeping the faith in who we are and what we do -- together!

SUMMER SOCIAL SET FOR AUGUST 1ST AT SUMMIT CLUB

The annual summer social has been set for August 1, 1996 at the Summit Club in downtown Birmingham. The Social will run from 5:00 to 7:00 p.m. and serve as a General Membership meeting of the Association. There will be an open bar as well as food served. There is no admission fee for members of the GBCDLA. Last years social was a huge success and brought in many new members. Members should try to bring as many other lawyers interested in joining the Association to the Social.

NEW OFFICERS OF GBCDLA BEGIN 1996-97 TERMS

As of June 1st the newly elected officers of the GBCDLA began their respective terms for 1996-97. The GBCDLA officers for this term are:

PRESIDENT - John A. Lentine

PRESIDENT (ELECT) - Kenneth J. Gomany

EXECUTIVE VICE-PRESIDENT - Richard S. Jaffe

TREASURER - J. Massey Relfe, Jr.

SECRETARY - Wendy L. Williams

Virginia Vinson has become Immediate Past President of the Association. The Officers of the GBCDLA have unanimously voted that Emory Anthony, C. Tommy Nail, Thomas J. Spina be appointed to the Board of Directors from the membership at large.

The Board also unanimously agreed that the minutes of the Board of Directors and General Membership meetings will be reproduced in **THE SENTINEL** in order to keep the membership better informed.

MEMBERSHIP DIRECTORY ESTABLISHED

Thanks to the tireless efforts of Past President Virginia Vinson a new membership directory has been created and forwarded to all members of the GBCDLA. The directory is set up in alphabetical order of all the current members of the GBCDLA.

Because the membership is continually expanding, a new membership directory will be distributed after the Summer Social to reflect the newest members of the Association. Hats off to Virginia Vinson for another job well done!

**DUES ARE DUE! PLEASE FORWARD
CHECKS MADE PAYABLE TO
"GBCDLA" AT P.O. BOX 370282, B'HAM
AL 35203 TO RENEW YOUR
MEMBERSHIP FOR 1996-97**

NEED FOR APPOINTED LAWYERS FOR CAPITAL CASES CONTINUES

As was reported in the March/April '96 edition of **THE SENTINEL** there is still a dire need for lawyers to take appointments in capital cases. Judge R.O. Hughes has approached several members of the Board of Directors of the GBCDLA to request that our membership remain active in accepting such appointments.

Over the last several years a group of dedicated criminal defense lawyers in Birmingham have taken many such cases in order to help the Courts, however, by now many are simply burned out and have quite understandably refused to take any more such cases. Therefore, it's imperative that other lawyers with the requisite experience pick up the slack. The District Court Judges are now routinely appointing 2 lawyers per capital case to help ease the burdensome effect such cases have on one lawyer.

The GBCDLA strongly urges its members to add their names to the appointed list for capital case representation as soon as possible.

GBCDLA PRESIDENT TO SPEAK AT MAGIC CITY BAR LUNCHEON

The President of the Magic City Bar has invited the GBCDLA President to speak at the luncheon meeting of the Magic City Bar on June 28th. We hope that many members of the Magic City Bar who are practicing criminal defense will decide to join our membership. With the Summer Social coming up in August, now is a good time to encourage your friends and colleagues to become new members and join us now and come to the Summer Social.

CLE UPDATE: ACDLA Annual Meeting & Summer Seminar at the Beach, August 15-17, Holiday Inn Hotels & Suites, approved for 12 hrs. of CLE credit.

RECENT DECISIONS:

ELEVENTH CIRCUIT COURT OF APPEALS

UNITED STATES V. DEAN, 80 F.3d 1535 (11th Cir. 1996)(Judge Kravitch) (Court rules forfeitures under 31 U.S.C. 5317 constitute punishment)

In this case the Defendant failed to fill out a Customs Form showing he was carrying over \$10,000.00 in cash. The Defendant, a fishing boat captain, had delivered crawfish to Florida and was returning to the Bahamas to pay his employees when he was arrested. The Defendant was charged with failing to report the \$10,000+ in cash and the money was seized. As part of a guilty plea the Defendant agreed to forfeit the \$140,000.00 he was carrying in exchange for the Government's agreement not to recommend to INS that he be barred from entering the U.S. At sentencing, the District Court mitigated the forfeiture to \$5,000.00 when it learned there was no evidence other than that the money came from the sale of fish and was not intended to be used for illegal means.

The government appealed. The Eleventh Circuit miraculously agreed with the Defendant that the plea agreement was not binding because the forfeiture was unjust, finding a defendant's consent to an unjust or illegal sentence should not be ratified by a court. Significantly, the Court found that the forfeiture constituted "punishment" and the Court endorsed the Sixth Circuit's ruling in United States v. Ursery, which is currently before the Supreme Court in conjunction with United States v. \$405,089.00. A decision is expected before the end of the term.

ALABAMA COURT OF CRIMINAL APPEALS

CHILDS V. STATE, 671 So.2d 781 (Ala.Cr.App. 1995)

A *Terry* stop was held unjustified based on police officer's observation of man leaning into passenger side of Defendant's car in area of known drug activity. The Court held this evidence alone was insufficient to justify a *Terry* stop and that evidence seized from the stop and subsequent search should have been suppressed as fruit of the poisonous tree.