

January '97

Volume 4.1

The Sentinel

NEWS FROM THE COURTHOUSE:

JANUARY JUDGES' MEETING

On January 14, 1997, the monthly meeting of the Jefferson county criminal court judges took place in Judge James Garrett's court. The issue of most concern to the GBCDLA was the apparent "upfront" billing for discovery by the District Attorney's Office. Several complaints had been made by GBCDLA members to the Board of Directors that the DA's Office was now charging for copying of discovery. David Barber stated that because of costs it had become necessary for the DA's Office to recoup for copying. The GBCDLA told Mr. Barber and the judges that defense lawyers are not required to pay for discovery and that the DA's Office should make the discovery available for defense lawyers to copy themselves rather than charge for copying. Of course the DA's Office was opposed to this alternative. The judges opined that in appointed cases that a bill from the DA's Office for copying could be sent to the defense lawyer and that amount be included in a voucher. The GBCDLA suggested that the DA's office send their own bill for copying on indigent cases to the State Comptroller for reimbursement. The issue was left unresolved, however, the GBCDLA strongly urges defense lawyers to resist paying for their discovery. If the DA's Office refuses to provide discovery without first receiving payment, then it is recommended that defense lawyers immediately file Motions to Compel and/or for Sanctions. A hard-line must be taken on this issue until it is ultimately resolved.

The other issue of concern for the GBCDLA was pretrial *ex parte* bond revocations. Apparently the DA's Office has gotten several judges to revoke pretrial bonds on a variety of reasons (not including

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COURTHOUSE NEWS CONT.

a new offense charge) and then holding a hearing several days later after the defendant has been in jail. In at least one case a defendant who was subsequently released after a hearing lost his job while in jail. It was strongly recommended to the judges that such actions should not occur without an immediate hearing. The judges indicated that a hearing would be set before a pretrial bond would be revoked in an *ex parte* manner.

The next judges' meeting is scheduled for February 11, 1997. As always members of the GBCDLA's Board of Directors will be in attendance at that meeting. Members of the GBCDLA are urged to contact any of the Officers or Board of Directors of the GBCDLA to voice any concerns, problems or issues that are occurring at the courthouse so that these matters can be brought out at the judges' meetings. Members can also voice their concerns about any issue by writing **THE SENTINEL** at P.O. Box 370282, Birmingham, Alabama 35203.

GET INVOLVED, STAY INVOLVED.

PRESIDENT'S COLUMN

BY

JOHN A. LENTINE

"GIVE A POOR DOG A BONE"

Looking back over my last several columns I have noted a distinctive flavor of cynicism that seems to permeate my writings. Now do not get me wrong, I can do the up beat and peppy number as well as the next person and I sure don't want these columns sounding like Travis's last letter from the Alamo, but the reality is we are nearly all alone out here. There is no doubt that the criminal defense bar is as popular as a leper at a facial class. Take for example the recent voucher slashing in federal court I made reference to in last month's column.

Since we last left our intrepid appointed lawyers -- several had filed motions seeking the entire amount of their compensation that was originally billed along with requests for evidentiary hearings in order to perhaps explain and justify to the court the amounts billed. Then without warning came an Order from the federal judge regarding the issue. The judge after lamenting that the case was neither complex nor "extended" (he noted he wasn't sure how that term was defined) magnanimously recommended to the 11th Circuit a raise in the compensation to those lawyers who filed motions to a grand total of \$10,000.00!! Yippee son, you can get the operation now!

Now lets put this in context, most lawyers in the case billed (and earned) well over \$10,000.00 and were cut back to well under \$10,000.00. The recommended increases netted maybe \$1,000 here and there, but still several thousand dollars less than what had been originally billed. Curiously the court noted that it would not be offended if the 11th Circuit approved greater amounts to the lawyers. FYI time to the court and appointed counsel in the 11th Circuit. It is generally recognized that the Chief Judge of a Circuit may approve the full amount of excess compensation or a lesser amount, but not more than the amount that is certified. In re Baker, 693 F.2d 925 (9th Cir. 1982). Sorry, Charlie.

To make matters worse folks, in United States v. Rodriguez, 833 F.2d 1536 (11th Cir. 1987) the Court held that the determination of attorney's fees under

the CJA is simply an administrative decision on the part of the judge not a decision of a "judicial character"; and is therefore not appealable as a final order to confer appellate jurisdiction. Simply put, if a voucher in excess of the maximum fee limit is cut by the federal judge then appointed counsel has no legal recourse for the lost fee.

I think every lawyer taking appointed cases in the Northern District of Alabama should think very carefully before he or she accepts an appointment to a multi defendant case. Hopefully this was just an aberration and will not occur again, but.....

In the meantime, I have suggested to the Board of Directors a judicial liaison committee be formed to speak with the Chief Judge of the Northern Federal District about this and other issues.

So while these lawyers will receive some scraps from the table in an effort to keep them from their annoying barking, keep this thought in mind, Chief Justice Reihnquest just recently implored Congress for a pay raise for the federal judiciary. He noted that the "morale" of the federal judiciary was at stake because the base salary of \$133,000.00 and change is such a paltry amount of compensation. Well, Mr. Chief Justice, my heart just bleeds for you and your brethren, but if it's any consolation, you're not alone in the bread line.

GENERAL MEMBERSHIP MEETING SET FOR FEBRUARY

A general membership meeting is set for Wednesday, February 19th at 5:00 p.m. at the Holiday- Inn Redmont. There are a number of topics concerning the GBCDLA membership that will be discussed. Please make plans to attend this meeting.

"LOOSENING THE DEATH BELT" SEMINAR SET FOR FEBRUARY

By now almost everyone has received the brochure concerning the "Loosening the Death Belt" CLE that

is scheduled for February 20, 21 and 22nd at the Radisson Hotel here in Birmingham. This seminar which was sponsored by Alabama, Georgia, Tennessee, Louisiana and Greater Birmingham criminal defenses' associations, is the most comprehensive CLE dealing with death penalty cases offered in Alabama in years. The majority of the speakers are nationally known experts in capital litigation. The Seminar will offer practical advice and instruction on all facets of the defense of a capital case.

The total cost for this three day seminar is \$100.00 if received before January 31, 1997. After January 31, 1997, the cost is \$135.00. Whether you pre-register or register at door this is an *extremely* reasonable price for the amount of information and CLE hours involved.

The GBCDLA strongly urges its members who are actively taking capital cases to attend this seminar. Any member needing more information on the Seminar can call John A. Lentine at #322-7707 or Tommy Goggans in Montgomery at #(334) 834-2511.

RECENT DECISIONS:

Alabama Supreme Court

Ex parte Freeman, 681 So.2d 245 (Ala. 1995) (Admission of evidence from vehicle obtained from improper search harmless error) Sheriff's deputies armed with a search warrant for a home entered the home and found drugs, guns beepers, moneys, etc. Many of these items including photographs were introduced by the prosecution at trial. The deputies also searched a vehicle outside the curtilage of the house and found several shotguns and a beeper, all of which were admitted into evidence. The Freeman case was originally reversed and remanded for a new trial by the Court of Criminal Appeals. However on certiorari the Alabama Supreme Court reversed the Court of Appeals. The Supreme Court held the introduction of the evidence added nothing to the State's case nor shed any light on any disputed fact.

Therefore, the introduction of the evidence was harmless error.

Ex parte Council, 682 So.2d 501 (Ala. 1996) (C.J. Hooper states his view of Ex parte Monk) This denial of a writ or certiorari may not look like much at first glance, however, everyone should read Chief Justice Hooper's concurrence if you ever wondered what his position on discovery in capital cases might be. In his special concurrence. Hooper was quick to point out that the statement of the Criminal Court of Appeals in the Council v. State opinion that the Alabama Supreme Court had established an extensive right to discovery in capital cases in Ex parte Monk was incorrect. Hooper noted Monk merely held that a trial judge, in his discretion, *may* order discovery from the State beyond the constitution, state law or rules of criminal procedure. Hooper goes on to make it clear, in his mind, that Monk did not establish an "extensive right" to discovery for defendants in capital cases.

ALABAMA COURT OF CRIMINAL APPEALS

DAVIS V. STATE, 682 So.2d 476 (Ala.Cr.App. 1995) (Capital Defendant's plea reversed on plain error where trial court failed to give jury charge defining "reasonable doubt".)

E.T. III V. STATE, 682 So.2d 508 (Ala.Cr.App. 1996) (Juvenile did not commit offense of carrying pistol on premises not his own under 13A-11-52 by carrying pistol on public street, absent evidence that the juvenile carried pistol on any private property not his own.)

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The Sentinel

NEWS FROM THE COURTHOUSE

FEBRUARY JUDGES MEETING

On Tuesday, February 11th at 8:30 a.m., the regular monthly meeting of the Jefferson County criminal court judges was held in the juryroom of Judge James Garrett. The major topic of discussion was the issue of the placement of a new county jail facility. It appears the architects are recommending that the new facility be built in a new location because the costs of renovation and additions to the old facility would be too great. Unfortunately, the new site is located in Keytona, which is approximately 20-30 minutes from downtown. This idea met with general disapproval from the defense bar who was present. Among the problems associated with such a site are the prisoner transfer concerns, visitation problems, etc. One idea was to provide closed circuit television arraignments at this facility, however, this closed circuit idea may have constitutional problems as well as the costs involved.

The current problem is the constant overload of prisoners in the county jail which averages 1200 prisoners a day (twice its capacity). It appears that 80% of these prisoners are awaiting trial. Supposedly an effort will be made to isolate those non-violent offenders with low bonds and release them. No clear decisions were made on the new jail issue, however, the GBCDLA asked to be included in future discussions to provide input on behalf of the defense bar.

Remember if you wish to have any issues, questions or problems discussed at these judges meetings, please contact you GBCDLA officers or write **THE SENTINEL** at P.O. Box 370282, Birmingham, Alabama 35203.

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PRESIDENT'S COLUMN

"THE ABA BARKS BUT WILL IT
HAVE ANY BITE?"

BY

JOHN A. LENTINE - PRESIDENT GBCDLA

I really thought I had seen and heard it all until I heard and read that the ABA voted, by a 2 to 1 margin, for a nationwide moratorium on the imposition of the death penalty. The idea behind the vote was the apparent acknowledgment by the House of Delegates for the ABA that the current death penalty systems throughout the country are marred by unfairness and racial injustice. The basis for the moratorium was not a stance against the death penalty per se, but an effort to insure that it is administered in a just and non-racial manner. A vocal opponent of the measure was the ABA's new president N. Lee Cooper of Birmingham. It appears that Cooper felt this measure was really a referendum for or against the death penalty and he urged the Delegates not to get out of step with the

White House, the Justice Department, the nation and the general membership. His recommendations were countered in the debate by a former ABA president and former attorney general who pressed the need for the assurance of the basic rights of those accused.

No sooner than the proposal was adopted and reported did our new attorney general write ABA President Cooper calling the proposal "absurd". Mr. Pryor apparently acknowledged how glad he was that he had earlier resigned from the ABA which, he said, had "revealed its irrelevance and leftism elitism". Mr. Pryor also opined that current laws make it more likely that death row inmates will die from natural cause than by electrocution in this State. Since the vote, Mr. Cooper and Mr. Pryor seem to be getting a lot of mileage about their respective "stands" on this issue in the media.

Well, I guess I'll get my two cents worth in, so here goes. I dropped out of the ABA for two main reasons. First, it cost way too much for just a monthly magazine and, second, I found them to be out of touch with the mainstream of lawyers in America. One thing I did not find them to be was too "leftist", rather, I thought they were just too "spineless" on most major issues, especially those that were controversial in nature. But lo and behold they finally took a stand on one of the most hotly debated legal issues - the current nationwide imposition of the death penalty. Note I said "current imposition" not the legality or morality of the death penalty, just whether its current imposition is fair and just.

Boy, is the hope that fairness and racial justice be fulfilled before the ultimate punishment is inflicted not the mark of a radical leftist commie ideology!?? Oh please, grow up Mr. Pryor; expediency at the expense of fairness and justice is obscene. Name one death row inmate in Alabama who has died of natural causes since the Supreme Court upheld the constitutionality of capital punishment. Dump the political rhetoric; you're not running for Governor; yet. Perhaps it is you who needs a reality check. It is not so much to ask that if capital punishment is to be imposed that it should be done fairly with competent counsel for the accused, adequate review of capital convictions, and with serious efforts to eliminate racial discrimination. That, Mr. Pryor, is called justice for all.

I am planning to write Mr. Cooper as did Mr. Pryor. While I know that our Association members may

have differing views as to the legality and/or morality of the death penalty, I do not see this moratorium as a debate on the rightness or wrongness of the death penalty. Rather, I see it as whether the legal system owes it to society to be fair and just when it comes to the imposition of capital punishment. If it can't be fair and just then it needs to be stopped and fixed. I see this as an issue of being for justice for all rather than merely a platform to rail off another political sound bite.

While I'm still at odds with some of the ABA's policies, at least the association had the courage to stand up and be counted on a controversial issue, rather than hug the middle of the road. Heck, this is the only reason I've seen in years to actually rejoin the ABA, except, of course, for that nifty monthly magazine.

"NAME THAT SNITCH" - USING ALABAMA RULE OF EVIDENCE 509 FOR DISCLOSURE OF THE IDENTITY OF AN INFORMANT

In the past trying to get a Court to order the prosecution to disclose the identity of an informant has been anything but fruitful. However along came the Alabama Rules of Evidence and specifically Rule 509 which appears to loosen the State's grip as to the identities of their snitches.

Rule 509 acknowledges the rule of privilege as to informers and who can claim the privilege. However 509(c)(2) notes an important exception to the general rule. This exception notes in part that, "if it *appears* in the case that an informer *may* be able to give testimony relevant to *any issue in a criminal case*...and the privilege has been invoked, the court *shall give* the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony." The rule goes on to note that if the court finds there is a *reasonable probability* that the informer can give testimony, and the public entity elects not to disclose the informer's identity, in criminal cases the court on motion of the defendant or on its own motion *shall grant the appropriate relief*. This type of relief can be requiring the prosecutor to disclose the informant's identity, grant the defense a continuance, prohibiting the prosecution from

introducing specific evidence or even (God forbid) dismiss charges.

The plain language of the rule is a tremendous departure from the traditional approach that only if the informant was a percipient witness or participated in the transaction. Roviaro v. United States, 353 U.S. 53 (1957). In the Advisory Committee's notes to the Rule 509(c)(2) it notes that the policy of promoting the free flow of information to law enforcement officers, may give way, under the present exception, to an *overriding* policy of fundamental fairness in allowing litigants to prove their cases via access to material and relevant information.

Unfortunately, there have been no appellate decisions construing Rule 509 since its inception. The prosecution (at least in Jefferson county) has fallen back on caselaw *prior* to the passage of Rule 509 to support its contention they do not have to disclose the identity of an informant. It is highly questionable whether these older decisions are still controlling, however, logic would dictate they are not controlling but rather persuasive authority and the new rule has superseded them.

The board language of Rule 509(c)(2) gives defense counsel greater latitude in actively pursuing the identity of an informant. The "any issue in a criminal case" phrase opens the door to issues such as the informant's veracity and credibility, identification of the defendant, etc. Whatever issue you can come up appears to be fair game, so be creative. If you can articulate an issue and make a solid argument why disclosure and testimony is relevant, then it appears the Rule mandates the court to hold an in camera hearing. If the court simply refuses to do so, you've got a decent appellate issue preserved.

Based on the board language of the Rule and the principle behind the exception to the privilege of an informant's identity it appears in the commentary, Rule 509(c)(2) might significantly aid defendant's in snitch cases as opposed to the way things have been in the past. Remember you haven't lost anything by trying, so let's try making these rules work for us for a change.

(NOTE - The Advisory committee's notes can be found in Gamble's Alabama Rules of Evidence (1995))

CURRENT LISTINGS OF ALL ALABAMA DEPARTMENT OF CORRECTION'S INSTITUTIONS AND WORK RELEASE CENTERS

The GBCDLA has been able, with help from the membership, to compile a list of all the currently operating institutions and work release centers in Alabama. The list which is attached to the February addition to **THE SENTINEL** sets out the name, address and phone number to each facility as well as the names of the Warden, Assistant Warden, Secretary to the Warden and Business Manager at each facility. It is hoped that this list will assist GBCDLA members in contacting clients, setting up visitation times and in any other matters involving the Alabama Department of Corrections.

RECENT DEVELOPMENTS

ALABAMA SUPREME COURT:

EX PARTE TEGNER, 682 So.2d 396 (Ala. 1996) (Trial court's order based on State's motion to remove retained defense counsel for alleged conflict of interest is set aside and retained counsel reinstated.) (**KUDOS to GBCDLA member Rick Sandefer for his excellent work in representing the defense attorney John Mays in this case.)

ALABAMA COURT OF CRIMINAL APPEALS:

NETTLES V. STATE, 683 So.2d 9 (Ala.Cr.App. 1996) (Case reversed for failure of court to allow defense testimony under co-conspirator exception to hearsay rule. Court holds co-conspirator statement may be admitted against state as well as the accused.)

GRACE V. STATE, 683 So.2d 17 (Ala.Cr.App. 1996) (Case reversed and remanded on ineffective assistance of counsel claim where trial counsel's failure to file written discovery motion prejudiced the Defendant under Strickland v. Washington.)

ALABAMA DEPARTMENT OF CORRECTIONS
INSTITUTIONS

BULLOCK CORRECTIONAL FACILITY
P. O. Box 5107
Union Springs, AL 36089-5107
738-5625

WARDEN: James DeLoach
Asst. Warden: J. C. Giles
Secretary: Justine Person
Business Manager:

J. O. DAVIS CORRECTIONAL FACILITY
Fountain 4000
Atmore, AL 36503-4000
368-8122

WARDEN: JAMES CARVER
Captain: Isaac Brown
Secretary: Shirley Brown
Business Manager: Rachel Chandler

DONALDSON CORRECTIONAL FACILITY
100 Warrior Lane
Bessemer, AL 35023-7299
436-3681

WARDEN: ROY HIGHTOWER
Asst. Warden: Jim Cooke
Secretary: Pat Parsons
Business Manager: Ken May

DRAPER CORRECTIONAL FACILITY
P. O. Box 1107
Elmore, AL 36025
567-2221

WARDEN: LEONEAL DAVIS
Asst. Warden: Charles Boutwell
Secretary: Diane Sutherland
Business Manager: Faith Howell

EASTERLING CORRECTIONAL FACILITY
P. O. Box 10
Clio, AL 36017-0010
397-4471

WARDEN: DR. LESLIE THOMPSON
Asst. Warden: Darrell Parker
Secretary: Donna Eyl
Business Manager: Archer Rogers

ELMORE CORRECTIONAL FACILITY
P. O. Box 8
Elmore, AL 36025
567-1460

WARDEN: JOHN E. NAGLE
Asst. Warden: Ray Russell
Secretary: Debra Crosby
Business Manager: Carol Ward

FOUNTAIN CORRECTIONAL FACILITY
Fountain 3800
Atmore, AL 36503-3800
368-8122

WARDEN: ARNOLD HOLT
Asst. Warden: Willie Thomas
Secretary: Elaine Braddock
Business Manager: Patrick McKay

FRANK LEE YOUTH CENTER
P. O. Box 208
Deatsville, AL 36022
285-5591

WARDEN: FRANK GRISWOLD
Captain: Edwin Henry
Secretary: Debbie Bates
Business Manager: Linda Glenn

HAMILTON A & I
P. O. Box 1568
Hamilton, AL 35570-1568
921-7453

WARDEN: W. C. BERRY
Captain: Joseph Robertson
Secretary: Sherron Kemp
Business Manager: Duane Northam

HOLMAN CORRECTIONAL FACILITY
Holman 3700
Atmore, AL 36503-3700
368-8173

WARDEN: WILLIE JOHNSON
Asst. Warden: Jerry Ferrell
Secretary: Rebecca Raines
Business Manager: Katherine L. King

*12201^{es}
Wags Perry Rd
point mt*

KILBY CORRECTIONAL FACILITY
P. O. Box 150
Mt. Meigs, AL 36057
215-3300 215-6603

WARDEN: E. LYNN HARRELSON
Asst. Warden: James Ray
Secretary: Betty Carr
Business Manager: Kathern Pugh

LIMESTONE CORRECTIONAL FACILITY
P. O. Box 66
Capshaw, AL 35742-0066
233-4600

WARDEN: STEVE DEES
Asst. Warden: Billy Mitchem
Secretary: Diane Sisk
Business Manager: Pat Belue

RED EAGLE HONOR FARM
Rt. 3 Box 79
Montgomery, AL 36110
242-2510

WARDEN: RON KITZINGER
Captain: John Baulch
Secretary: Julia B. Hails
Business Manager: Carolyn Carter

ST. CLAIR CORRECTIONAL FACILITY
1000 St. Clair Road
Springville, AL 35146-9790
467-6111

WARDEN: RON SUTTON
Asst. Warden: A. L. Garrett
Secretary: Lisa Jimmerson
Business Manager: Nell Lauderdale

STATE CATTLE RANCH
Rt. 3 Box 236
Greensboro, AL 36744-9313
624-3383

WARDEN: GEORGE FREE
Secretary: Shirley Langdon
Business Manager: Joretta Wann

STATON CORRECTIONAL FACILITY
P. O. Box 56
Elmore, AL 36025
567-2221

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Asst. Warden: David Lane
Secretary: Margie Diem
Business Manager: Martha Rayburn

TUWILER PRISON FOR WOMEN
8966 U.S. Highway 231 No.
Wetumpka, AL 36092
567-4369

WARDEN: SHIRLIE LOEMILLER
Asst. Warden: Donald Spears
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Business Manager: Allen Dennis

VENTRESS CORRECTIONAL FACILITY
P. O. Box 767
Clayton, AL 36016-0767
775-3331

WARDEN: GWEN MOSLEY
Asst. Warden: Terrance McDonnell
Secretary: Fay Campbell
Business Manager: Pamela Higgins

CHILDERSBURG COMMUNITY WORK CENTER
P. O. Box 368
Childersburg, AL 35044-0368
378-3821

WARDEN: RANDAL LUCAS
Captain: Joe Griswold
Secretary: Wanda Threatt
Business Manager: Allison Morris

LIMESTONE CF (DORM 31)
P. O. Box 66
Capshaw, AL 35742
233-4600

WARDEN: - RALPH HOOKS -
Captain: David Wise
Secretary: Lynette Whitt

LOXLEY COMMUNITY WORK CENTER
P. O. Box 1030
Loxley, AL 36551-1030
964-5044

WARDEN: WALTER ALLEN
Lieutenant: William D'Andrea
Secretary: Pam McCafferty
Business Manager: Andy Henderson

WORK RELEASE CENTERS

ALEX CITY WORK RELEASE
P. O. Drawer 160
Alex City, AL 35010-0160
234-7533

ATMORE WORK RELEASE
P. O. Box 100
Huxford, AL 36543-0100
368-9115

BIRMINGHAM WORK RELEASE
1216 North 25th Street
Birmingham, AL 35234-3196
252-2994

CAMDEN WORK RELEASE
Rt. 2 Box 221
Camden, AL 36726-9542
682-4287

DECATUR WORK RELEASE
P. O. Box 5279
Decatur, AL 35601-1325
350-0876

EAST THOMAS WORK RELEASE
924 Bankhead Highway
Birmingham, AL 35204-1325
328-4176

ELBA WORK RELEASE
P. O. Drawer 427
Elba, AL 36323-0361
897-5738

HAMILTON WORK RELEASE
P. O. Box 1628
Hamilton, AL 35570-1628
921-9308

MOBILE WORK RELEASE
P. O. Box 13150
Eight Mile, AL 36663-0150
452-0098

MONTGOMERY WORK RELEASE
P. O. Box 75
Mt. Meigs, AL 36057
215-0756

WARDEN: M. J. THURMAN
Lieutenant: Larry Britton
Secretary: Shelia Holt
Business Manager: Sharon L. Harrelson

WARDEN: RONALD WEAVER
Lieutenant: James T. Sanborn
Secretary: Betty Lee
Business Manager: Dolores Oden

WARDEN: PAT HALLIDAY
Lieutenant: Cynthia E. Nettles
Secretary: Rebecca Hawkins
Business Manager: Denise Riggins

WARDEN: HOWARD A. DANIELS
Lieutenant: Odessa King
Secretary: Brenda West
Business Manager: Belinda Huff

WARDEN: WILLIAM S. STICKER
Lieutenant: Wayne Carpenter
Secretary: Sue Corum
Business Manager: David Boles

WARDEN: GLENN NEWTON
Captain: Mary Carter
Secretary: Sonja Jenkins
Business Manager: Charlie Jackson

WARDEN: EDWARD GULLION
Lieutenant: Joe Spurlin
Secretary: Debitha Harrelson
Business Manager: Annelle Hayes

WARDEN: BILLY OWEN
Captain: David Morse
Secretary: Laurie Parker
Business Manager: Max Howell

WARDEN: JAMES E. REYNOLDS
Lieutenant: Hanson Firestone
Secretary: Brenda Smith
Business Manager: Anne Scott

WARDEN: LEON FORNISS
Captain: Frank Albright
Secretary: Jennifer Blowe
Business Manager: Nonie R. Daniels

March/April '97

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The Sentinel

NEWS FROM THE COURTHOUSE:

MARCH/APRIL JUDGES' MEETING

The regular monthly Criminal Courts judges meeting was not held in March, however, the April meeting was held on Tuesday, April 15th. Several issues of concern to the GBCDLA were related to the judges. First, the issue surrounding the DA's office's policy surrounding discovery. The GBCDLA voiced its concern that the "new policy" will stymie efforts at settling cases at the District court level. After discussion of the issue at the meeting, it appears the DA's office is unwilling to back off its position that defense lawyers will not receive police reports as part of discovery. It appears that the DA's office will now include a bill for copying discovery to appointed lawyers and ask that it be submitted to the Comptroller with the voucher for separate payment. The DA's office appears to be backing off the "pay now for the copying of discovery before you receive it" attitude. The GBCDLA suggests the following to the membership:

- 1.) If the DA's office bills you for discovery *before you can get it*, then file a Motion to Compel with the Court.
- 2.) If the DA's office will not provide you with discovery in order for you to determine whether to waive or have a preliminary, then have a preliminary hearing. File discovery motions and issue subpoenas for the officers and subpoena duces tecums for police reports.

If the DA's office wants to puff and posture, then let them know what they're in store for by being aggressive on these issues. Hopefully we can convince the judges and the district attorney's office

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JUDGES' MEETING CONT.

that such policies will do nothing but cause more work and backlogs in court.

The other issue of importance that was discussed at the meeting was the adoption of an Administrative Order regarding May motions. On May 2nd the Shelby County Circuit Court judges will be holding an Administrative hearing on the May issue in order to assist them in establishing an Administrative Order for a specific amount for hourly overhead rate. The Jefferson County judges seem amiable to creating such an Order in Jefferson County. The judges have asked the GBCDLA to furnish them a copy of Shelby County's Administrative Order for their review. It is hoped that Jefferson County will have a standing Administrative May Order by this Summer.

If you have any suggestions or wish any matter brought up at the April meeting, call your GBCDLA officers or write **THE SENTINEL** at P.O. Box 370282, B'ham AL 35203.

PRESIDENT'S COLUMN:**DON'T WORRY, BE HAPPY!**

by

John A. Lentine - President GBCDLA

I've decided to take a new approach to this month's column. Instead of a caustic rant on how we as criminal defense lawyers are constantly getting screwed by the criminal justice system, I thought I'd try to bring a little ray of sunshine through the perpetual darkness that we're seemingly stuck in as part of this business by taking stock of what the GBCDLA has accomplished over the past several years.

The GBCDLA has had many accomplishments that the membership can take pride in. First and foremost the GBCDLA has provide a unified voice for criminal defense lawyers in this area. The GBCDLA actively participates in all criminal circuit and district court judges meetings and has a significant impact in molding and influencing policies such as May motions. The GBCDLA has had an active voice in the media when it has come to responding to meritless attacks on the criminal justice system, defense lawyers in particular. The GBCDLA has come to the aid of several GBCDLA members who had some difficulties with various courts in this area. I believe in nearly all the occasions that the GBCDLA has interceded on lawyers' behalves that the result has been favorable.

The GBCDLA has provided its membership with a comprehensive newsletter that updates the membership with policy changes, caselaw updates, seminar news and other valuable information designed to help the criminal defense bar. The GBCDLA has also put on informative and economical CLE programs. The GBCDLA now boasts close to 150 members which is the largest number of members since the Association's inception in 1993.

The GBCLDA has a lot to be proud of and it has been my honor and privilege to be it's President this year. Let us not forget what we've accomplished together so far and let's not be complacent. Remember, participation is the key to our continued success because the alternative is to stand alone.

"If I Wasn't So Tough I'd Be Whapped Down By Now"

by

Murray Stovall

If I wasn't so tough, I'd be whapped down by now,
If I was a mule, I'da died at the plow,
If I was a boar, I'da been squashed by the sow,
If I was suppose to be tomorrow,
I'd only be now.

they beat me, they cuss me,
they treat me like a dog,

I feel like the greasy spot that used to be the frog.

I don't get paid for all this abuse,

If them sons 'a bitches had their way

I'd be swingin' in the noose!

But I ain't gonna let em get me.

On that you can count

When the time comes for screwin',

I'm tired of being the mount.

They think that we, in this profession were in
were born last night and just walked in

Little do they know, and they think
they're so smart,

that we're the last chock on the wheels of the cart

When they kick us and use us and laugh "what the hell",

When that last chock is pulled,

They roll straight to Hell!

As the cart begins to pick up speed and the
legalisms they now wish to heed are to gone to
recover..recover indeed!

Words of "I told you" flash from the brow,

If I wasn't so tough, I'd be whapped down be now!

EXPERT ASSISTANCE FOR SEX OFFENDER CASES

Ms. LeAnn M. Brakke, a licensed professional counselor in Birmingham, has contacted the GBCDLA, in order to offer her services to those defense lawyers who may have clients charged as sex offenders. Ms. Brakke offers evaluations, case recommendations, treatment and expert testimony on a variety of areas dealing with persons accused of sexually related crimes. Ms. Brakke states that the Program for Human Sexuality will help lawyers provide better services to sex offenders. The programs goal is to stop inappropriate and/or harmful sexual behavior and help people become safe individuals in the community.

Anyone interested in speaking with Ms. Brakke regarding such issues can call her (205) 823-8670 or write her at 2310 Tanglewood Drive, Birmingham, Alabama 35216.

GENERAL MEMEBERSHIP MEETING SCHEDULED FOR MAY

A general membership is being planned for May. Once a specific date has been set announcements will be sent to the membership. This meeting is extremely important because nominations for 1997-98 Officers will be opened for the memberships consideration. At this time the open offices are President (Elect), Vice-President, Treasurer, and Secretary. Also, the Summer Social date will be announced at this meeting.

FIFTH ANNUAL ORIENTATION SEMINAR FOR FEDERAL PANEL ATTORNEYS SET FOR MAY 9TH

On Friday, May 9th from 8:40 a.m. to 12:10 p.m. the Northern Federal District is sponsoring an Orientation Seminar for Panel Attorneys. The seminar has been approved for 3.2 of CLE by the Alabama State Bar. The seminar is free to panel attorneys and will be held in the jury assembly room of the Federal Courthouse here in Birmingham. The seminar will cover topics such as Arraignment and

Pretrial Conferences, Sentencing Guidelines, and CJA Vouchers. The speakers include Judges Clemon and Putnam, John Ott and R.G. Sullivan.

For more information on the seminar, interested persons should contact Oscar Stephenson, Chief Probation Officer for the Northern District of Alabama at #731-1746, Ext. 260.

LEGISLATIVE UPDATE OR NEWS FROM DOWN UNDER

Once again the Alabama Legislature is faced with a number of bills relating to the Alabama criminal justice system. The Attorney General's Office had a number of bills in its legislative agenda for 1997. Among those bills are several designed to curtail bail. The No Bail on Appeal bill is designed to mimic the Federal Bail Reform Act by denying bail to those who receive a sentence that carries a term of imprisonment unless the trial court determines that the appeal raises an issue likely to result in reversal. Bail is eliminated for convictions for crimes of violence, life or death sentences, or controlled substances offense that constitute class "B" felonies. The other bills are the Bail Reform Enabling Act and the Bail Reform Constitutional Amendment which gut the right to bail. The GBCDLA has learned none of these bills have passed out of committee and are probably dead for this session.

One of the worst bills currently alive in the House Judiciary committee is the Truth in Sentencing Act. The Act, which is over 90 pages long, is Sessions sentencing bill of last year making an unwelcomed return. The bill basically does away with the current habitual offender act and adopts a version of the North Carolina sentencing guidelines which have all but bankrupted that State. This bill is currently in carry over status in the Judiciary Committee. If necessary GBCDLA representatives are prepared to speak at a public hearing against the bill, however, at this time the bill appears to be in limbo and may die a well deserved death by the end of the session without ever getting out of committee.

GBCDLA member Matthew S. Ellenberger reports the Alabama Judicial Systems Commission at its annual meeting in October of 1996. Apparently Judge Golden, presiding judge of the Fifteenth Judicial Circuit in Montgomery, proposed the reduction in the size of venires in criminal cases. A

panel that was appointed to review the proposal included Attorney General Pryor. In turn the AG's office submitted a bill adopting the proposal brought up by Judge Golden. The bill decreases a venire to 20 (24 in capital cases) and limits the number of peremptory strikes. It appears that this bill has stalled along with the others and probably won't make it out of committee.

The only truly good new to GBCDLA members is that House bill 692 which raise the hourly rate of court appointed attorneys to \$55.00 an hour and increases the caps on all cases has passed the Ways and Means Committee and is on the way to the House floor. The GBCDLA strongly encourages the membership to contact their local representatives in an effort to see that this bill passes through the legislature this term. This bill is extremely important because besides the rate increase there is no language in the bill that does away with the May decision.

Any updates on these bills will be reported to the membership at the next General Membership Meeting and/or in the May edition of **THE SENTINEL**.

RECENT DECISIONS:

UNITED STATES SUPREME COURT:

Old Chief v. United States, No. 95-6556, decided 1/7/97 (Rejection of stipulation in 18 U.S.C. 922(g)(1) prosecution deemed error)

In this case the Defendant offered to stipulate to his prior felony conviction in order that it not been mentioned at trial, the government and the court rejected the stipulation and the Defendant was convicted. The Supreme Court reversed the conviction noting that in this case the trial court's refusal to accept the stipulation offer and admit the name and nature of the prior offense which raised the risk of tainting the verdict by improper considerations when it's only purpose as evidence was to prove the element of prior conviction was error.

*** NOTE - Justice Souter has an excellent discussion and overview of Rule 403 and its effect in this case. Thus is a *must* read decision because it appears to be the Court's first decision that specifically addresses this very important Rule of Evidence.

Maryland v. Wilson, No.95-1268 decided 2/19/97 (Pennsylvania v. Mimms is applicable to car passengers)

The Wilson decision now allows the police to order passengers of vehicles which have lawfully be stopped to exit the vehicle. The decision appears to stop at this point in that it does not give the police a right to frisk or search the passenger without reasonable suspicion or probable cause.

ALABAMA SUPREME COURT:

Ex parte Bates, No. 1951328, decided 3/14/97 (10 years is the correct minimum sentence for Burglary (armed) in the first degree pursuant to 13A-5-6(a)(4)

The Defendant attacked his 20 year sentence by Rule 32 arguing he should not have received the sentence pursuant to 13A-5-6(a)(4) because the firearm he possessed during a Burglary first degree was part of the loot he had stolen. The Supreme Court agreed in a 7-2 decision noting that the gun would have to be used or attempted to be used in the commission of the felony. The mere taking of the gun was not enough for the sentencing enhancement.

*** NOTE - One of the 2 dissenters (without opinion) was Justice Harold See, perhaps this is an inkling of things to come.

(Thanks and Congratulations to GBCDLA member Bill Friel for his win in this case.)