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May '97

Volume 4.4

The Sentinel

NEWS FROM THE COURTHOUSE

MAY JUDGES' MEETING

Tuesday 8AM

There was no monthly Criminal Court judges meeting held in May. The next meeting is scheduled for the second week in June. Several issues of importance to the GBCDLA membership will be addressed at this meeting. Specifically issues concerning DA judge-shopping for bond revocations, the language of DA's victim/witness letter's concerning defense lawyers, *ex parte* continuances for the State and the creation of an Administrative Order setting a standard hourly amount for overhead expenses. These issues, plus any other issue the membership wishes to have discussed, should be brought to the attention of the GBCDLA's board of directors or should be sent in to **THE SENTINEL** at P.O. Box 370282.

PRESIDENT'S COLUMN

"CALLING ELVIS, IS ANYBODY HOME?"

by

JOHN A. LENTINE - GBCDLA PRESIDENT

I find it hard to believe that my year as president of this association is coming to an end. In several weeks I'll pass the reins to Ken Gommany and he will know the joys and sorrows of getting what you wish for. I hope this last year has proven to be productive and informative for the membership. We've taken great strides together in strengthening an already formidable association that serves as the

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PRESIDENT'S COLUMN CONT.

advocate for advocates. However, despite the progress we've made, I am concerned for our future because of a distinct lack of activism among the membership.

It never ceases to amaze and disappoint me that many members of this association seem to have little interest in getting involved in the operation of the association. It speaks little of our group when less than 1/3 of our members show up at general membership meetings. We all have other commitments, business and personal, however, these meetings are usually bi-monthly, so I say, change your other plans and attend the freaking meetings. Don't gripe that the association isn't doing enough if you're only contact with the group stems from reading *The Sentinel* in the office every other month because if that's your attitude, then you are not part of the solution; you're part of the problem. I flatly refuse to listen to other lawyers gripe about the association not doing enough when they sit on their collective butts and expect everything to be done for them.

The number of members who actively contribute to this association's upkeep barely adds up to a

*Cahill will not let you move case to drug court. Has deferred prosecution.
2nd Tuesday of each month - Judge's meeting.
D.L. 24*

respectable earthquake on the Richter scale. Its time to shed this self obsessed me-monkey attitude many of us seem to have and get involved. Now I know there is a fine line between being an activist and being a pain in the ass. Obviously I've assumed the role of the later and I just want some more of the former to step forward.

Before I rail on let me define the term "activist". My definition denotes a dues paying member who comes to the meetings and the association sponsored CLEs. A member who occasionally submits an article for publication in the newsletter or contacts the board about problems or issues that effect the membership. A lawyer who is willing to help the board out by serving on a special committee or even serving on the board of directors or as an officer. Basically I referring to a lawyer who talks the talk and walks the walk.

Now I know not everyone is a pompous blow hard like me. Activism is relative but it shouldn't be stagnate. If the membership wants a strong association it needs to get off its collective butt and kick in. The results of complacency was one of the leading factors involved in the formation of this association. If you want to sit on your butt and complain, fine- just do it elsewhere. If you want the association to continue its quest at being the hammer for the local defense bar, then get active!! Here are a few suggestions for the future:

- 1.) Elect officers who give are willing to work for the Association. Without strong leadership we might as well disband.
- 2.) Get more "baby" lawyers and minority lawyers in the Association. Diversity increases power and creativity and can only strengthen the group.
- 3.) Establish a small number of committees to get the membership active. Its time to put up or shut up for the leadership and the membership.
- 4.) Try to establish an inroad to the federal judges such as attendance at their meetings. If it works at the state level, we might as well go after the feds.
- 5.) Establish a yearly scholarship for a GBCDLA member to go to the National Criminal Defense College in Macon. Lets give back to our members and strengthen the defense bar, too.

2 weeks

- 6.) Create a "mentor program" to help the new defense lawyers. Its obscene to hear they're getting advice from prosecutors.
- 7.) Re-examine lengthening and staggering the terms of officers. I think continuity is plus.
- 8.) Have bi-monthly general membership meetings and socials in the summer and at Christmas.
- 9.) Commit to at least two affordable CLE programs a year.
- 10.) Commit to 200 members by 1998.

I believe these are all attainable goals that can be reached with the collective determination and effort of the entire membership.

The life blood of this association is its membership. The Board of Directors needs to re-evaluate its efforts to serve the membership. There should be monthly meetings of the board and all members of the Board should attend the judges' meetings. If Board members can't fulfill their obligations to the membership, they should resign.

This association must survive and continue to gain momentum or soon we'll be back where we started with no voice in a system that would crumble without us. Your membership in this association must mean more than another certificate on the wall. Your membership is a badge of honor, a pledge that you'll stand with others to defend the defenders and the rights of those whose voices have been all but silenced by a system that grows more repressive and draconian each day.

It has been my privilege to serve the association over the last year. I wish Ken all the best this coming year and I look forward to working with the new officers and board members in serving this fine association.

THEY'RE BACK!! JUNE MEANS DUES

Just a friendly reminder that June means that its time to pays dues. Regular membership is \$25.00, Sustaining membership is \$100.00 and a Charter membership of \$250.00 includes free GBCDLA CLE admission during the year.

THE EJI PUBLISHES ITS "REPORT ON ALABAMA'S INDIGENT DEFENSE SYSTEM - CAPITAL CASES"

In March the Equal Justice Initiative (formerly known as the Alabama Capital Resource Center) issued a report on the current state of the Alabama Indigent Defense System - Capital Cases. The report paints an extremely unflattering picture of the what awaits defendants and defense lawyers in capital cases in Alabama. Presently, Alabama has the third largest death row population per capita in the nation and, as of 1995, more than 200 people await capital murder trials. On the other end of the scale, Alabama's \$20 per hour out-of-court rate is the lowest in the nation. In the 1996-97 State Budget, \$40 million was earmarked for Alabama's District Attorneys while the indigent defense allocation from the Fair Trial Tax was \$10.7 million. Out of this money came payment of court reporters, expert fees and expenses and compensation for attorneys representing indigent defendants. (NOTE: In 1995, \$1 million of the \$10 million available for indigent defense went to court reporters.)

The report recommends the elimination of the existing statutory limits on compensation for appointed attorneys in capital cases, an increase in the rates of compensation for attorneys in capital cases and the creation of a statewide public defender office for capital cases for consultation services and direct representation.

The GBCDLA highly recommends that members obtain copies of the report for use in current capital representation. A report can be obtained by writing or calling The Equal Justice Initiative of Alabama at 114 North Hull Street, Montgomery, Alabama 36104. Phone number #(334) 269-1803

CLE NEWS:

The Alabama Criminal Defense Lawyers Association (ACDLA) has announced its Summer Seminar and Annual Meeting will take place July 31st through August 2nd at the new Hilton Beachfront Garden Inn in Orange Beach. The cost of the seminar is \$150.00 for members and \$175.00 for non-members. The exact amount of CLE hourly credit has yet to be set, however in the past the

seminar has carried between 9 and 12 hours of credit. The Summer seminar has always been the highlight of the ACDLA's CLE programs and this year should be no exception.

Anyone with questions can contact the ACDLA's Executive Director, Tommy Goggins, at #(334) 834-2511.

RECENT DEVELOPMENTS:

UNITED STATES SUPREME COURT:

RICHARDS V. WISCONSIN, No: 96-5955, 65 LW 4283 (4/28/97) (Supreme Court acknowledges no blanket drug exception to the "Knock and Announce" Rule)

In Richards, the Supreme Court 9-0, rejected the Wisconsin's Supreme Court's holding that police did not have to knock and announce while executing search warrants in drug cases. The Court noted that creating a *per se* exception would insulate from judicial review cases where there were no specific risks involved (i.e. threat of physical violence or advance notice of destruction of evidence) and that the creation of one exception could lead to the creation of others, thereby rendering the knock and announce rule meaningless.

(NOTE - Optimistically this case enshrines the knock and announce rule into American Legal jurisprudence. Pessimistically the case has some scary dicta noting a no-knock entry can be justified if police have a reasonable suspicion that the "K&A" under particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime, by allowing destruction of evidence.

ALABAMA SUPREME COURT

EX PARTE BRADLEY ALLEN SMITH, 1996 WL 506238 (Ala. 1996) (Defendant's prior traffic citations for speeding, running red light, etc., were irrelevant to demonstrate disregard for probable consequences of defendant's actions for safety of others in DUI reckless murder prosecution.)

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The Sentinel

NEWS FROM THE COURTHOUSE

JUNE / JULY JUDGES' MEETINGS

On June 10, 1997, the regular monthly criminal court judges' meeting was held in the court of Presiding criminal court judge James Garrett. The only topic addressed at this meeting concerned the procedures for the release of pretrial prisoners at the Jefferson County jail. A new procedure was implemented in June in which retired judge Robert Gwin was specially appointed by the Alabama Supreme Court to act in a supernumerary fashion to review cases in which TASC's pretrial release program was willing to assist in the release of inmates on bond. The goal was to help the jail's continued overcrowding problem by releasing non-violent offenders with drug problems on bond to receive treatment. The GBCDLA became active when it appeared that the DA's office had representatives at the review proceedings voicing objections to certain inmates being released. The GBCDLA opined that these activities made the proceedings *adversarial* for those inmates subjected to objections but who were not being represented by counsel.

The discussion between the judges, the GBCDLA representatives and the DA's office was intense and heated. The GBCDLA made it clear to all that it was in favor of this procedure in theory, however, if it became *adversarial* because of the DA's office then these inmates had the absolute right to counsel to be present and speak in their behalf. The consensus of the meeting was that the DA's office would no longer be present at these hearings and could submit any objections in writing to Judge

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COURTHOUSE NEWS CONT.

Gwin. If there were objections the lawyer for that defendant would be notified and could pursue the matter further. The GBCDLA was satisfied with this procedure.

The GBCDLA has been notified that there will not be a judges' meeting held during the month of July of this year. The next meeting will likely be held during the second week of August.

If any GBCDLA member has any questions, suggestions or matters they wish to have addressed at the August meeting, please contact your GBCDLA officers and/or board members or write **THE SENTINEL** at P.O. Box 370282, Birmingham, Alabama 35203.

**ANNUAL MEMBERSHIP DUES FOR
1997-98 WERE DUE IN JUNE! \$25.00
regular member, \$100.00 sustaining
member, and \$250.00 for Charter
membership.**

ALABAMA'S JUDICIAL POLITICS AS USUAL???

With all the rhetoric being tossed around about calling for an end to partisan elections for State court judges, it appears that until that day actually comes it will be politics as usual for judges eyeing upcoming election. For example, the Committee to re-elect the incumbent presiding Judge of Jefferson County, Wayne Thorn, is circulating a letter regarding a fundraising reception for his honor this month. The letter, if you have not received it, contains the following passage:

"Judge Thorn is tough on crime. From February 1996 through May 1997, Judge Thorn disposed of more than 879 drug cases in which he condemned property owned by drug dealers. Over \$775,000.00 of illegal drug money has been condemned and sent back to police agencies, creating more savings to the taxpayers. More than 600 guns were taken from these drug lords and were destroyed or returned to the owners from whom they were stolen."

It is truly a shame that judges running for re-election cannot do so without the need to appeal to the electorates' perceived need of being reassured that the judge in question is a crime fighter. Judges are not elected to be crime fighters, they are elected to be neutral arbiters of the law and that's it. If Judges want to fight crime then they should run for District Attorney, or Attorney General or wait and see if George Clooney gets the boot for the next movie installment of Batman. Its time judicial candidates draw a line in the sand and have the courage to run on their legal merits rather than as a rainmaker for law enforcement.

Judges should not be beholden to political pressures to the extent that they are forced compromise their impartial adjudicatory functions to insure a continued paycheck. It is the duty of the bench and the bar to explain to the public the difference between the functions of the executive and judicial branches of government. If not, then the highest authority for the judiciary in this State will be that of the mob rather than the law.

For an excellent discussion of judicial politics and the death penalty, see *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, by Stephen Bright

and Patrick Keenan, Volume 75 Boston University Law Review, Number #3, May 1995.

GBCDLA ELECTS NEW OFFICERS FOR 1997-98 TERM

A the GBCDLA's June General Membership meeting, the membership elected the following individuals as Officers of the GBCDLA for 1997-98

J. KENNETH GOMANY - PRESIDENT (#322-1904)

RICHARD S. JAFFE - PRESIDENT (ELECT) (#930-9800)

J. MASSEY RELFE, JR. - VICE PRESIDENT (#870-1138)

RICHARD IZZI - TREASURER (#252-2783)

WENDY WILLIAMS - SECRETARY (#320-1800)

JOHN A. LENTINE - IMMEDIATE PAST PRESIDENT (#322-7707)

The new officers subsequently met in late June and unanimously retained the four GBCDLA members from last term who served on the Board of Directors.

EMORY ANTHONY - (#939-0000)

TOMMY NAIL - (#595-3888)

TOMMY SPINA - (#939-1330)

VIRGINIA VINSON - (#252-4959)

**GBCDLA SUMMER SOCIAL
SET FOR THURSDAY, JULY
24, 1998 - 5:00 TO 7:00 P.M.
AT THE SUMMIT CLUB!!!!!!**

NEW "DRUG COURT" PROGRAMS SLATED FOR JEFFERSON COUNTY DISTRICT COURTS

The GBCDLA has been informed that Judges Cahill and Hughes will be implementing their own versions of "Drug Court" courtesy of the Break the Cycle Program instituted by TASC pursuant to a Federal Grant from the Department of Justice. It appears these new programs will differ somewhat from Judge Johnson's Drug Court and may replace the Deferred Prosecution programs. Specific details are not yet known, however, we hope more detailed information will be provided to the GBCDLA membership at the August Judges meeting.

CRIMINAL DEFENSE CLE SEMINAR UPDATE

For those GBCDLA members currently on the prowl for more CLE hours in 1997, there are several noteworthy seminars slated in the near future.

The ACDLA's Summer Seminar on the Beach is set for July 30th thru August 2nd at the Orange Beach Hilton Beachfront Garden Inn. This 2 ½ day seminar carries 9.5 CLE hours and costs \$150.00 for members and \$175.00 for non-members. For more information call 1-334-834-2511.

On Friday September 19th, the ABICLE has schedule a Criminal Defense Lawyers Seminar entitled "Authoritative Guidance for Defense Attorneys". This seminar carries 6 CLE hours and will be held at the Jefferson County Civic Center East Meeting rooms. The cost has not been set but call ABICLE at 1-800-627-6514 for more information.

Cumberland School of Law is offering two CLE seminars in the fall that GBCDLA members may find worthwhile.

On Friday, September 26th the Cumberland CLE program is offering "Lawyering Skills 101" designed to help new lawyers on a variety of topics including criminal defense of indigents. Neither the cost or the number of CLE hours has been set.

On Friday, December 19th the Cumberland CLE program is offering a "Scientific Evidence Seminar".

This seminar is geared to both criminal and civil lawyers. Scheduled to speak is Professor Imwinklereid on the topic of *Daubert*. No cost or number of CLE hours has been set as of this date.

Inquiries into these seminars can be made to the Cumberland CLE program at 1-800-888-7454 or (205) 870-2865

THE ELEVENTH CIRCUIT WANTS APPELLATE LAWYERS!!

Past GBCDLA President John Lentine received a phone call recently from Judge Edward E. Carnes of the 11th Circuit Court of Appeals. Judge Carnes requested that the GBCDLA to provide the Court with a list of its membership in the hopes that the Court can locate more lawyers to take indigent appeals. It appears the ranks of appellate lawyers for indigents has declined rapidly over the last few years and the Court is desperate to replenish the number of lawyers for indigent appeals. If any GBCDLA member is specifically interested in volunteering for such appointments, please call John Lentine at #322-7707 for more information.
Montgomery (334) 223-7132

7/25
9:17,

RECENT DECISIONS:

ALABAMA SUPREME COURT:

Ex parte State: In re Meininger, 1997 WL 272425 (Ala. 1997) (Trooper's testimony regarding DUI defendant's physical condition at scene of stop and arrest admissible in 32-5A-191(a)(1) prosecution despite defendant's statutory preclusion to rebut this evidence.)

✓ Ex parte State: State v. Simpson, 675 So.2d 548 (Ala. 1996) (State is precluded from seeking death penalty on retrial of capital case where defendant was previously sentenced by trial court to life without parole.)



"Circumstantial. You haven't proved linkage."