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The Sentinel

NEWS FROM THE COURTHOUSE

SEPTEMBER/OCTOBER JUDGES' MEETING

While there was no Criminal Courts Judges' Meeting in September, the October meeting was held on the 15th in Judge Garrett's Court. The GBDCLA presented several issues of concern to the judges at the meeting. First, some members complained that lawyers representing capital defendants had multiple capital trial settings during the same trial week without notice from the Courts indicating which case would actually be tried. The judges said that this problem should not re-occur and a better effort will be made in scheduling such cases to avoid similar conflicts. The second issue concerned several complaints from lawyers about unauthorized communications between certain bailiffs and juries during deliberations. The judges assured the GBCDLA that bailiffs are under strict instructions not to communicate unnecessarily with deliberating juries and that they would rectify this situation. GBCDLA members are encouraged to monitor this situation and contact the Board or Officers of the GBCDLA if this situation continues.

The District Attorney's Office informed the judges that there have been problems regarding trial conflicts with some lawyers who have been sitting as special judges. The judges indicated they will try to avoid trial conflicts when designating special judges for the municipal docket.

Also, the Coroner's Office has objected to paying the costs for reproducing photos in indigent cases. The judges appear to advocate lawyers paying for such expenses out-of-pocket and then waiting to be reimbursed by the State for those costs as expenses. NOTE- lawyers should include a request for photographs in any expense motion.

THE OFFICIAL

NEWSLETTER

OF THE

GREATER BIRMINGHAM

CRIMINAL DEFENSE

LAWYERS

ASSOCIATION

PRESIDENT'S COLUMN

THE 1996 ALABAMA JUDICIAL RACES

"PANDERING TO PUBLIC PARANOIA"

by

John A. Lentine - President GBDLA

With less then one month away from elections the candidates for this years appellate court races have begun to pull out all the stops in that last ditch effort to garner votes. Unfortunately for criminal defense lawyers, toughness on crime is tops on their hit parade. Now, I don't begrudge candidates for taking advantage of the political system that exists, but aren't judicial offices supposed to be a bit more dignified? For example, incumbent Alabama Supreme Court Justice Ingram is in a tough race with University of Alabama Law School professor, Harold See. It seems to me that this is a fertile area for Justice Ingram to utilize his opponent's lack of practical experience as either a judge or a practicing lawyer (3 years in a huge Chicago firm).

Unfortunately Ingram's TV ad runs depicts him meting out a death sentence while a victim's daughter sings his praises.

This approach is most prevalent in the Court of Criminal Appeals races where the candidates are apparently horrified at being thought of as soft on crime. They seem to have a contest going on who really can be the Dirty Harry or Roy Bean of the Criminal Court of Appeals. Pamela Baschab, a circuit court judge who is running for the Court told the Birmingham News, " It has been my experience on the bench that all too frequently the Criminal Court Appeals reverses or sends cases back to the trial judges on technicalities that protect the interest of the criminal at the expense of his victims." B'ham News, 10/16/96, pg. 4B (Emphasis added).

I'm not sure which Criminal Court of Appeals this judge is referring to, but, it's darn sure not the one in Alabama. I'd be surprised if even 10% of appeals to that Court are reversed on any grounds, even those pesky legal "technicalities" (like due process, fair trial, etc.). Criminal Court of Appeals Incumbent Bucky McMillan has a street sign that proudly displays the message to re-elect him and "Help Fight Crime". Well, that would be great if he was running for Attorney General, but he is supposed to be a judge -- you know, that impartial arbiter of the criminal justice system ... remember ... Hello?? Houston we have a problem.

What's next? "Vote for me because I never reversed a case and promise I never will. How about, "Vote for me and I'll personally carry out the electrocution!" Or better yet, "Help me take a bite outta crime!".

Canon #1 of the Canons of Judicial Ethics states, "An independent and honorable judiciary is indispensable to justice in our society. (Sounds great so far) A judge should participate in establishing, maintaining, and enforcing, and should observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved." (I guess there needs to be an election exception. Oh well, its just a canon isn't it?)

So what's the solution? How about incorporating these Canons into the Code of Ethics so judges and judicial candidates will quit pandering to the public's paranoia that the Courts are letting criminals run free. Let candidates for judicial office run on their individual merits and qualifications rather than who can raise the most public furor by promising a higher body count. As much as I hate to say it, if we don't clean up our election ethics for judges we might as well go to an appointment system such as a modified "Missouri Plan" with simple retention elections. Could it be that much worse then what we've got now?

THE SENTINEL NEEDS ARTICLES!!!!

The Sentinel is the Association's newsletter. Any articles on areas of criminal defense work will gladly be received and printed. If you have information that would be help to the whole Membership, then share by putting it down on paper and submitting it for publication. Send any articles to **THE SENTINEL**, P.O. Box 370282, Birmingham, Alabama 35203.

INOVATIONS ON THE WAY AT JEFFERSON COUNTY JAIL

Lynn Miller of the Jefferson County Sheriff's Department recently announced to the Jefferson County Criminal judges that the County jail is in the process of implementing new procedures in dealing with the influx of more and more prisoners. The Jefferson County jail was originally designed to house 620 prisoners it now houses approximately 1254 prisoners.

The major area of concern is space. The county is in the process of deciding whether to break ground on a new facility (estimated at 3 years to complete) and/or re-work the current space to handle the increased number of inmates. A grant to the TASC program will allow the county to hire several more medics and all prisoners will undergo drug testing on their arrival to the jail in the hopes of allowing more individuals out on bond through the TASC pretrial release program.

Also, the county will begin a "prisoner work program" designed to get those non-violent offenders who are serving county or state time to work by picking up trash and other such jobs in the county. The program will be voluntary with inmates receiving some type of credit on their county sentence and acknowledged to the State parole board. The idea is the inmates will be paid for their work and then be charged for jail related matters.

Another feature will be the changing of uniforms. Prisoners in the near future will have uniforms that designated their status (i.e. pretrial, county prisoner, state prisoner, maximum security, etc.). The jail also plans on providing a uniform type of clothing (suit jacket, pants, etc.) for indigents at trial. The jail will still take clothes from lawyers or the inmates family for Court if requested to do so.

The County is also exploring electronic monitoring for pretrial, non-violent county prisoners in an effort to release these individuals while still monitoring their movements.

Lynn Miller asked the GBCDLA to inform its members that inmate trips to out-of-county funerals can be handled by the Sheriffs office if ordered by the Court and paid for by the defendant. The cost is approximately $70.00 for 2 off duty deputies and can be paid for by certified check. No fee is charged to transport inmates to in-county funerals. In both cases the inmate will be brought to the funeral home the day before the funeral to pay his or her respects.

GBCDLA'S WINTER CLE IS SET FOR DECEMBER

The GBCDLA's CLE committee is in the process of finalizing the Winter CLE program. The tentative date is Thursday, December 5th from 1-4:30 p.m. at the Redmont Hotel. One confirmed speaker is Ms, Betty Teague, Director of Classifications at the Alabama Department of Corrections. She is scheduled to speak on state prisoner classifications, good time, work release programs, and various other topics about which criminal defense lawyers are often questioned but generally have no source for answers. The seminar will probably carry a total of 3 hours of CLE credit and will cost $35.00 for GBCDLA members and $55.00 for non-members who wish to join the GBCDLA.

More information on the seminar will be provided at the next General Membership Meeting and in future copies of **THE SENTINEL**.

NEW OUTPATIENT PYSYCHIATRIC EVALUATION PROCEDURES IN PLACE IN JEFFERSON COUNTY

Several months ago **THE SENTINEL** reported that the procedures for obtaining outpatient competency evaluations of defendants had changed and that Taylor-Hardin had taken over the evaluations. Just when you got accustomed to the rules they've changed again.

Once again Taylor-Hardin has contracted with Certified Forensic Examiner Dr. Kimberly Ackerson to conduct psychiatric evaluations of defendants in Jefferson County. Dr. Ackerson's office is located at 1027 23rd Street, Birmingham, AL, 34205. Her phone number is (205) 324-8499.

The procedure is for Defense Attorney's to prepare a written motion and order for psychiatric evaluation. There are form orders for various types of competency issues such as mental state at time of offense, competency to stand trial, waive Miranda etc. These form orders can be obtained at the various circuit courts or by calling Donna Click at (205) 325-5708.

Once the judge has signed the Order, the lawyer must send a copy to the Clerk and to the District Attorney. The lawyer must do this or no evaluation will take place! The lawyer must also complete a cover sheet attached to the Order forms, a Defense Attorney Information sheet and a consent form (if applicable) from a past treating agency. An original consent form must be sent to each identified treating agency. Copies of consent forms, along with the Motion, Court Order, Cover Sheet and Defense Attorney Information form should be forwarded to Dr. Ackerson.

GENERAL MEMBERSHIP MEETING SCHEDULED

A general membership meeting of the GBCDLA is scheduled for November 13, 1996 at 5:00 p.m. at the Redmont Holiday-Inn Hotel on 5th Avenue North. There are several topics on the agenda for the meeting. If you have any new business you wish discuss at the meeting, please contact any of the GBCDLA officers or Board members.

RECENT DECISIONS:

Alabama Supreme Court

EX PARTE HUTCHERSON, 677 So.2d 1205 (Ala. 1996). Admitting DNA evidence without proper foundation can never be harmless error.

The Defendant was convicted of capital murder and sentenced to death. On appeal he argued the trial court erred in admitting DNA evidence without a proper foundation being laid indicating that the testing laboratory performed generally accepted techniques without error. The Supreme Court reversed the Court of Criminal Appeals which affirmed the Defendant's conviction. The Court found that the trial court failed to conduct a hearing consistent with its decision in Ex parte Perry, 586 So.2d 242 (Ala. 1991). The Court noted that Perry predicate must be followed to ensure reliability and trustworthiness of DNA evidence. The Court went on to hold that DNA "matching" evidence and DNA population frequency statistics create a possibility for prejudicial impact on a jury and that failure to comply with Perry can never be harmless error.

EX PARTE WALTER LEROY MOODY, JR., 1996 WL 197209, ___So.2d _____ (Ala. 1996) (Experts and indigents)

They say bad cases make bad law. They are right.

I will not attempt to summarize the history of the Moody case, however, this decision deals with his writ of mandamus for appointment and payment of experts for his defense. The Supreme Court summarized their opinion as follows:

"Once a defendant is found to be indigent, in order to be entitled to the assistance of an expert he must show a reasonable probability that expert assistance would aid in his defense and the denial of an expert to assist at trial would result in a fundamentally unfair trial. The indigent defendant is entitled to an *ex parte* hearing on whether expert assistance is necessary under the aforementioned standard. No indigent defendant is entitled, at public expense, to an expert of the defendant's choice. Last, pursuant to Section 12-15-21, no expert is entitled to payment before trial."

Alabama Court of Criminal Appeals

SCHAEFER V. STATE, 676 So.2d 947 (Ala.Cr.App. 1995). In camera hearing required to examine victim's psychiatric records for discovery of material relevant to issue of victim's credibility. **Kudos to GBCDLA member Dan Turberville.

SHUMATE V. STATE, 676 So.2d 1345 (Ala.Cr.App. 1995). Facsimile copy of certified copy of prior felony conviction is insufficient proof of prior felony for sentence enhancement under Alabama Habitual Offender Act.

CONKLE V. STATE, 677 So.2d 1211 (Ala.Cr.App. 1995). A verbal threat made by a defendant without any accompanying physical conduct and which did not constitute "fighting words" did not constitute harassment.

DELATO V. STATE, 677 So.2d 1236 (Ala.Cr.App. 1995). Trial court reversed for allowing defendant's tape recorded statement revealing prior drug use into evidence during murder trial. ** Kudos to GBCDLA member John Robbins.

JONES V. CITY OF SUMMERDALE, 677 So.2d 1289 (Ala.Cr.App. 1996). DUI case reversed. Reception of certified copy of blood test given at hospital was error where no foundation was laid to indicate reliability of test and that test was taken in conformity with state statute governing chemical tests of blood specimens.

HUFF V. STATE, 678 So.2d 293 (Ala.Cr.App. 1995). Trial court's allowing State to call as a

witness in a retrial a codefendant who had twice previously invoked the Fifth and refused to testify was prejudicial error not cured by trial court's instruction to disregard codefendant's presence.

SHABAZZ V. STATE, 677 So.2d 812 (Ala.Cr.App. 1995). Murder conviction reversed where trial court allowed evidence in State's case-in-chief, that on 3 prior occasions, 7 to 8 years before the charged offense, he engaged in violent conduct towards other persons. Such evidence is impermissible to rebut a self-defense claim when the other acts are not connected between the accused and the specific victim or specific offense charged.

M.T. V. STATE, 677 So.2d 1223 (Ala.Cr.App. 1995). Defendant was charged with sodomy and sexual abuse of his sons. The acts were alleged to have occurred following the parents' separation. One son who testified later recanted. The convictions were affirmed. In a 3-2 decision.

During the trial defense counsel asked a social worker a question that the trial judge thought was improper. The trial judge had the witness step down and ended the examination over objection. The Court went on to berate counsel at various times during the trial in the presence of the jury by threatening him with jail, telling him to "shut up" and by referring to social worker as "dear" after admonishing counsel. Judge Long found the trial judge's termination of cross was "harsh," but not error and that even if it was error it was "harmless" error under Rule 45 because the scope of cross is discretionary. The Criminal Court of Appeals found it to be "somewhat brusque," but not prejudicial because the trial judge had instructed the jury at various times to disregard the remarks between counsel and the court.

Dissenting, Judge Taylor (with Judge Cobb) noted that the scope of cross-examination is not in the sound discretion of the trial court but is controlled by law.

Judge Taylor noted that because the cross-examination of the social worker dealt directly with the credibility and reliability of the victims' testimony, the limitation of cross-examination was reversible error. Interestingly, Judge Taylor noted there was another separate ground for reversal, but he noted that he would refrain from addressing it because it was unlikely to recur upon a retrial. Unfortunately, for the Defendant there was no "retrial" because his convictions were affirmed and certiorari was denied by the Alabama Supreme Court.

GRIER V. STATE, 677 So.2d 824 (Ala.Cr.App. 1996). Proper procedure to test whether State has properly calculated amount of time an inmate must serve in prison.

OFFICER AND BOARD OF DIRECTORS OF GBCDLA

The Officers and Board of Directors of the GBCDLA are:

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You may contact these members regarding any matter connected with the GBCDLA.

12/20/96

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The Sentinel

NEWS FROM THE COURTHOUSE

NOVEMBER/DECEMBER JUDGES' MEETING

Although there was no criminal courts judges' meeting held in November, one was held on Tuesday, December 10th 1996. The meeting focused on a presentation from the administrators and doctors of Taylor-Hardin Secured Medical Facility. Their presentation offered ideas and materials to expedite the defendant evaluation process. The GBCDLA president has copies of the materials that were distributed and will make them available to the membership.

A complaint was made about the slow response time of defense counsel regarding written material submitted regarding evaluations. The GBCDLA president suggested that a specific, uniform procedure for handling these matters should be established and that lawyers should be made aware of any subsequent changes so that they may respond more quickly. The GBCDLA president suggested a Spring CLE on this topic. The Judges and the Taylor-Hardin staff agreed that a CLE might help.

Persistent problems like continually late court notices will be addressed at the January meeting. Remember any comments, issues or problems regarding the criminal courts in Jefferson County, should be brought to the attention of the GBCDLA by speaking with any Officer of Board Member or by writing ***THE SENTINEL***, at P.0. Box 370282, Birmingham, AL 35203

THE OFFICIAL

NEWSLETTER

OF THE

GREATER BIRMINGHAM

CRIMINAL DEFENSE LAWYERS ASSOCIATION

PRESIDENT'S COLUMN

BY

JOHN A. LENTINE

"R-E-S-P-E-C-T, TELL YOU WHAT IT MEANS TO ME."

Fifteen lawyers from the Northern Federal District were appointed to represent inmate defendants charged with rioting at the FCI Talladega this year. The trial lasted over 4 weeks with months spent in preparation. Twelve of the Fifteen lawyers received news from the 11th Circuit this month that the Grinch was trying to steal their Christmas. Thirteen lawyers found that their fee vouchers had been reduced by thousands of dollars. There was no prior notice of the reductions. Only an acknowledgment of the fee reduction without explanation, other than the trial judge's approval, was given.

Several of these lawyers who are members of the GBDCLA have asked the group for help. A Board

of Directors meeting has been called and this issue will be acted on.

The arbitrary reduction of fee vouchers without any notice or glint of due process to the appointed attorneys who have sacrificed their practice to work for the pittance the government promises to pay is insulting and reprehensible conduct which should not and will not go unchallenged. To subject lawyers who agree to represent the poor at extremely low compensation rates to a spin on the judge's roulette wheel of voucher slicing amounts to utter disrespect at best and fraud at worst. I wonder what would happen if the Bar respectfully told the judges of the Northern District of Alabama it was declining to accept federal appointments because of the lack of assurance that lawyers will actually receive compensation for the work they do on a given case. Let me guess, refusal-reprisal, contempt, grievance, suspension of practice in this district. Step right up folks, spin the judicial wheel of reprisal.

If I sound too caustic, I really don't care. Its obvious, as it has been for a long time, that any respect for the defense bar and our obligation to represent the poor in a zealous and professional manner is back, back, back, back, back, - gone. What else are we to make of the arbitrary slicing of vouchers. What message are the courts sending us? Do less work to ensure pay? Defend your client zealously but not too zealously or expect a pay cut for your effort?

I sincerely hope this matter is an aberration and will be resolved favorably for these lawyers. Unless we draw a line in the sand now, we will be perpetually at the mercy of those who have no regard or consideration for us personally or professionally. Longfellow wrote," In this world, man must either be anvil or hammer." I say to hell with being pounded on, be the damn hammer!

CLE UPDATE: Pickens are slim at the end of the year, however if you only need an hour or so, check out Cumberland's CLE by the hour on 12/30-31. For more information on topics and costs, call Cumberland's CLE program at # 870-2391

REMEMBERING LOUIS

On November 16, 1996, GBCDLA member J. Louis Wilkinson passed away at his home in Mountain Brook. The GBCDLA was honored to take part in a Memorial Tribute to Louis on November 21, 1996.

Louis was a consummate lawyer and simply a wonderful person. His loss to the defense bar is immeasurable. It is fitting that his memorial tribute brought out hundreds of people from all walks of life to pay their respects. Louis was a quiet man of humility and respect. He epitomized the role of a defense lawyer by defending all comers no matter what their circumstances. Louis was a teacher, not just to those students who were fortunate enough to have him as a professor in law school, but to any lawyer who need help or advice. His door was always open and he always found time to sit, listen and give advice when asked. Our small circle of the bar will be a profoundly emptier place without him, but our lives will be forever enriched by our love for him and that is something even death cannot take away.

THE ALABAMA COMMUNITY NOTIFICATION ACT FOR SEX OFFENDERS

The Alabama legislature passed this Act (Section 15-20-20 thru 24) in its last session. It applies to most sexual felony offenses where the client is over 20 and the victim is under 18.

The felony list includes, Rape 1 & 2, Sodomy 1 & 2, Sexual Torture, Sexual Abuse, Incest and one misdemeanor, Sexual Abuse 2. If these acts are committed by a defendant over 20 against a person under 18 the Act applies. The Act does not apply to Youthful Offenders.

The Act provides in substance that prior to release an incarcerated offender must tell the warden where he'll reside and the warden in turn notifies law enforcement (AG's office, DA, Sheriff, etc.) so that the police can notify all persons residing in the area. The requirements vary somewhat based on the population of the particular area. If the offender wishes to change residences, he must give written

notice to the sheriff of the county of residence and new county of desired residence.

Such an offender can *never* establish a residence within a 1000 feet of a public or private school, day care facility, any other child care facility or any former victim. Such an offender can *never* come within 100 feet of a former victim or make a visible or audible sexually suggestive or obscene gesture, sound or communication to such a victim. To do so constitutes a Class A misdemeanor. Furthermore, no such offender can establish a legal residence where a person under 18 resides. The failure to carry out the notification provisions of this act constitute a Class A misdemeanor.

This Act has yet to be challenged in part or in total in any Alabama court as of yet. The Act is unclear as to the treatment of an offender who is given probation and not incarcerated. Whether the notice provision is applicable is arguable. However the residence and contact with a former victim would still apply. The GBCDLA strongly urges all its members to copy and read this Act. Any defendant meeting the criteria of this Act must be informed of its ramifications before pleading guilty. Otherwise, a new storm of Rule 32's will be on the horizon.

The GBCDLA thanks John Mays of the ACDLA for the use of his handout on this topic for the writing of this article

BOOK REVIEW: Professional Responsibility of the Criminal Lawyer (2nd Ed.) by John Wesley Hall, Jr., published by Clark, Boardman, Callagan

Professional Responsibility of the Criminal Lawyer is a comprehensive, well written book designed specifically to address ethical issues that concern the criminal defense bar. Mr. Hall, the NACDLA's Director of the Ethics Hotline and frequent CLE lecturer, has written the definitive book on ethics and professional responsibility of the criminal defense lawyer. The book is approximately 1500 pages in length and divided into 34 chapters ranging from 6th Amendment Right to Counsel, Lawyer-Client Relationship, Attorney's Fees and Currency Transaction Reporting, Conflicts of Interest and even Ethical Duties of Prosecutors. The book is fully annotated with federal and state cases, statutes, and ALR cites and contains a yearly supplement. The books sells for approximately $175.00, excluding yearly supplements. It is informative, concise and answers many of the questions that plague the defense bar. Most books on legal ethics scarcely touch on the unique problems of the defense bar, however, Hall's book is dedicated to resolving ethical issues for both the defense and prosecution. It is a must for every criminal defense lawyer's library.

GBCDLA & TAYLOR-HARDIN TO COLABORATE ON A SPRING CLE

Following the December Judge's meeting representatives of Taylor-Hardin indicated a willingness to speak at a CLE program designed specifically to deal with issues of evaluations, commitments, treatment and release of criminal defendants. The primary difficulty between the defense bar and Taylor-Hardin is one of procedure. Because Taylor-Hardin has changed their procedural methods on filing of Orders and documentation numerous times, it is often difficult for the defense bar to keep pace with these changes. Hopefully a CLE on these subjects will help streamline the process. Judge Garrett has offered to help coordinate the program. A projected date is March of 1997. At this time, in an effort to help expedite these procedures, the GBCDLA has attached to this month's edition of ***THE SENTINEL*** a copy of the "Defense Attorney's Instructions" for review by the membership. Any questions regarding procedure can be addressed to Ms. Donna Click, the psychiatric social worker at the Jefferson County Jail, by calling #325-5708.

GBCDLA'S WINTER CLE DRAWS RECORD ATTENDANCE

The December 5th GBCDLA's Winter CLE was a huge success, breaking last year's record for attendance. The Winter CLE consisted of two topics. The first topic dealt with issues concerning the State prison system. Ms Betty Teague, the Director of Central Records with the Alabama Board of Corrections, gave a very informative lecture and offered pointers for lawyers in navigating such

issues like correctional incentive time, good time on parole and community placement.

The second topic dealt with the new DUI laws and was presented by Ms. Linda Flynt, a staff attorney with the Administrative Office of Courts. Ms. Flynt provide handouts concerning DUI legislation, attorney general's opinions and recent decisions.

Seminar attendees received 3.0 of CLE credit for only $35.00. Over 55 lawyers attended the seminar at the Redmont Hotel. The seminar received high marks from those who attended. The GBCDLA is committed to offer its membership informative seminars at reasonable rates as another benefit of membership in the Association.

THE PROTECTION FROM ABUSE ACT & 18 U.S.C. 922(g)(8) - Does an Order of Protection Create a Federal Crime for Firearm Possession?

18 U.S.C. Section 922(g) sets out a list of persons who cannot ship, transport, possess or receive in or affecting commerce, any firearm or ammunition. Subsection (g)(8) includes a person who is subject to court order which restrains them from harassing, stalking or threatening an intimate partner or child of such a person. 18 U.S.C. 922(g)(8)(A-C). Defense lawyers should be aware that a variety of Alabama laws allowing for such type of orders may well create a federal gun violation if a person under such an order is found to be in possession of a firearm or ammunition.

Alabama now has an Protection from Abuse Act (Section 30-5-1 thru 30-5-10) which ostensibly protects victims of domestic violence, but could very well create a federal crime for those under its Orders. Because an Order from the Court pursuant to the act can enjoin and prohibit any threats to the plaintiff or minor children, it appears such an Order meets the criteria of 922(g)(8) and a person enjoined and/or restrained by the Act caught in possession of a firearm or ammunition could be charged federally.

The GBCDLA strongly recommends its members to read over the Protection From Abuse Act as well as Family Violence Protection Order Enforcement Act (Section 30-5A-1 thru 30-5A-7). Whether such a federal charge based on a State court order could withstand a Lopez challenge is unknown, however, criminal defense lawyers should be prepared for the possibility of such a charge and this new wrinkle in federal criminal law.

RECENT DECISIONS:

UNITED STATES SUPREME COURT:

WHREN V. UNITED STATES, 116 S.Ct. 1769 (1996) (PRETEXTUAL STOP ARGUMENT IS NIXED BY COURT)

In Whren the Supreme Court held that the subjective intent on the part of police officers who have probable cause to temporarily detain a vehicle nullify an otherwise justifiable 4th Amendment seizure is irrelevant. The defense argued that the initial stop to give a warning for a minor traffic violation was a pretext the officers used to search for drugs. The Supreme Court nixed the argument holding the subjective intentions play no role ordinarily in probable cause 4th Amendment analysis.

ALABAMA COURT OF CRIMINAL APPEALS:

FORD V. STATE, 680 So.2d 948 (Ala.Cr.App. 1995) (Police officer's ordering defendant to empty pockets exceeds *Terry*)

MCTERRY V. STATE, 680 So.2d 953 (Ala.Cr.App. 1995) (Denial of Defendant's motion for "instanter" subpoena to secure presence of sole witness to shooting of the victim held to violate right to compulsory process)

SHEIELDS V. STATE, 680 So.2d 969 (Ala.Cr.App. 1995) (*Brady* due process violation where State failed to disclose alleged victim's prior assault conviction. Such a violation is constitutional error and no need for harmless error review)