

# The Guardian

The Newsletter of the Alabama Criminal Defense Lawyers Association

April/May/June 2006

## “Celebrating 25 Years of Defending Justice”

**THE ALABAMA  
CRIMINAL DEFENSE  
LAWYERS  
ASSOCIATION  
PRESENTS...**

*“Justice Must Be Won IX”*

**2006 SUMMER SEMINAR  
AND ANNUAL MEETING**

**June 22-24, 2006**

**Hilton Garden Inn,  
Pensacola Beach, Florida**

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Alabama.*



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## THOMAS A. MESEREAU, JR. – FEATURED SUMMER SEMINAR KEYNOTE



Thomas A. Mesereau, Jr.

2005 was an incredible year for *Attorney Thomas A. Mesereau, Jr.*

On June 13, 2005, Mr. Mesereau heard a jury in Santa Maria, California repeat “Not Guilty” 14 times (10 felonies and 4 lesser-included misdemeanors) in the case of the *People of the State of California vs. Michael Joe Jackson*. This capped a 5-month trial, which received more media coverage around the world than the O.J. Simpson and Scott Peterson trials combined.

Tom’s life was turned upside down. Interview requests were endless. He appeared on the *Larry King Live* and *Jay Leno* shows. *Barbara Walters* named him one of her “*10 Most Fascinating People*.” Even *GQ Magazine* called him one of the “Top Men of the Year.”

Attorney Thomas A. Mesereau, Jr. specializes in criminal defense (state and federal court) and civil trials. He is a partner with the firm of Mesereau & Yu, LLP in Los Angeles. Tom was educated at *Harvard University*, *The London School of Economics and The University of California’s Hastings College of Law*.

For the last three years, the *Los Angeles Daily Journal* has named Tom Mesereau one of the “*100 Most Influential Lawyers*” in the State of California. The *Criminal Courts Bar Association* of Los Angeles has named Mr. Mesereau its top criminal defense lawyer. The *Century City Bar Association* has previously honored Tom with its *Criminal Defense Lawyer of the Year Award*.

Last year, the Criminal Courts Bar Association of Los Angeles presented Mr. Mesereau with the “*Morton Herbert Service Award*” for “his generous and noble service in furtherance of social justice.” **California Lawyer**

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# President's Column

By Joseph Van Heest, Montgomery, AL



ACDLA President  
Joe Van Heest

As I reflect back, I am gratified by the accomplishments of our organization over the past year, and am warmed by the many great memories during my year as president of this organization. Last summer, I took over the helm as president at one of our more successful summer seminars.

Because of the excellent leadership which preceded me, and the terrific insight and organization of our then part-time executive director, Ann Cooper, we were successful in locking in a long-term contract with the Hilton Garden Inn at Pensacola Beach for our annual meetings. As a result, we were paying less than one-half what we would have been paying for lodging there if we had not locked in. After Hurricane Ivan and the others that have followed, many other organizations were not so lucky.

ACDLA now offers higher quality seminars than ever before, and we hope this will attract greater attendance in future years. This year, our keynote speaker is Tom Mesereau, attorney for Michael Jackson during his child molestation trial in California in 2005. Rodger Dodd, who co-wrote the book **Cross Examination: Science & Techniques**, along with Larry Pozner, will be speaking on cross examination this year. John Wesley Hall, who authored **Professional Responsibility in Criminal Defense**, the preeminent book on ethics for the criminal defense lawyer, will be presenting our annual ethics hour at the seminar. We will also be offering nuts and bolts topics including motions and discovery and our annual case law update, with two board members as presenters – John Beck and Bruce Gardner, respectively. For those many questions on the listserv over the recent months concerning sex offender notification and registration, former board member and long time director of the Tuscaloosa County Public Defender's Office Bobby Wooldridge of Tuscaloosa will address our group. Other speakers include experts on brain development and DNA, as well as Joe Saloom, a firearms expert with the Department of Forensic Sciences turned criminal defense lawyer– ACDLA member. Member Wilson Myers will be discussing his experiences with the criminal defense system in Iraq following his return from the Middle East last year. All in all, this year's summer seminar and annual meeting looks poised to be our best ever – and that means rising above some excellent past seminars.

The Four Corners Seminar program in December 2005 offered four free hours to members in six (rather than four)

“corners” throughout the state. All were well attended, and resulted in excellent performance evaluations. Our death penalty seminar continues to be one of the best in the country, and this year attracted over 150 attendees, including lawyers from states as far away as Indiana and Arkansas. Our death penalty seminar committee, chaired by Richard Jaffe and John Mays, continues to put together one of the finest programs anywhere. We may still become the organization certifying qualification to represent defendants in death penalty cases in this state.

Additionally, our Board will be considering a proposal to establish an Alabama Criminal Defense College, modeled after the National Criminal Defense College in Macon, Georgia, but offered on a smaller scale. This project, if it is deemed feasible, would offer intensive training over three or four days, on the nuts and bolts of a criminal trial, for all levels of criminal defense lawyers – from beginner to experienced litigator. We will be working with lawyers in other states who have already established such a program, such as Tennessee and Georgia, and seek any input you may have as well.

Our legislative program has continued to grow by leaps and bounds since it was thrust into existence unexpectedly but by necessity after Attorney General Troy King's February 1, 2005 opinion doing away with overhead expenses. While that issue remains unresolved, we are now active participants with the Administrative Office of Courts committees such as the Chief Justices' Indigent Defense Commission Task Force, the committee on pattern criminal jury instructions, and the Sentencing Commission. This legislative term, recognized the establishment of the Commission for Women and Girls in the Criminal Justice System, a committee established to address the problems which go with a larger population of women and girls being prosecuted and incarcerated in the State. The legislation includes a clause calling for one member of the commission who is appointed by the president of the Alabama Criminal Defense Lawyers Association. I appointed our incoming president – Melinda Morgan Austin. We are a recognized presence at the statehouse, and members again met with and addressed the legislature. Past President Jim Roberts, Board Member Don Colee, and member Linda Coats addressed the House Judiciary Committee regarding why we were not ready to support the Indigent Defense Commission without the assurances of fair pay for the lawyers appointed to represent those charged with crimes across this state. Eric Guster made a presentation the

*Continued on page 12*

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The ACDLA welcomes articles of interest from qualified professionals. Submit articles by email to:

[anncooper@hotmail.com](mailto:anncooper@hotmail.com) or on 3.5" diskettes. Typewritten double-spaced hard-copy should accompany any submission on disk. ACDLA will also consider for publication articles which have appeared elsewhere. ACDLA reserves the right to select and edit material for publication.

The views expressed by authors are not necessarily the views of the ACDLA nor is the printing of advertising meant to imply an endorsement of those services or products.

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**Guardian Deadlines**

January 15, 2006  
March 15, 2006  
May 15, 2006  
July 15, 2006  
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Send camera-ready copy with payment to the ACDLA office.

To order resources, send a note on your letterhead describing the specific item you would like to order with your check to:

ACDLA  
PO Box 1147  
Montgomery, AL 36101

Please notify the ACDLA office immediately of any changes in your contact information.

If you are not on the ACDLA email discussion group and you would like to be, please send your name and email address to [anncooper@bellsouth.net](mailto:anncooper@bellsouth.net)

## FROM MY PERSPECTIVE

*By Ann S. Cooper, Executive Director*

### SUMMER SEMINAR NEARLY HERE

One of the best ACDLA seminars ever is set for June 22-24, 2006 on beautiful Pensacola Beach, Florida. I hope you will make every effort to join your fellow ACDLA members for sun, fun and CLEs. This issue of *The Guardian* features highlights of the seminar program. If you have not already registered and still need to book your room, better hurry! You can save money on the registration fee and your hotel room, but you must book both by May 28.

**Hotel Accommodations** – Ask for the ACDLA Rate of \$200-221. Call Hilton Garden Inn at 1-866-916-2999 no later than May 28 for discounts. The seminar is June 22-24, 2006.

**Seminar Registration** – Save \$50 by registering for the seminar by May 28. Complete registration details on included in this issue of *The Guardian*. Simply phone, fax or mail in your registration.

**Case Conferencing** - The ACDLA Death Penalty Assistance Committee will offer capital case conferencing on-site at the seminar. If you are interested in participating in a case conference opportunity, please contact the ACDLA office no later than May 28. Call Ann Cooper at 334/272-0064 or use the form included in this issue of *The Guardian*.

### LEGISLATIVE SESSION NOW OVER

The 2006 Legislative Session of the Alabama Legislature adjourned *sine die* on April 18, 2006. For a comprehensive look at what happened at the Statehouse this session, please review the wrap-up article submitted this issue by Bill Blanchard, ACDLA's Legislative Chairman.

### CRIMINAL DEFENSE COLLEGE – STUDY UNDERWAY

President Joe Van Heest has called together a committee of ACDLA members to study the possibility of an Alabama Criminal Defense College. The program would be patterned after our sister state programs in Georgia and Tennessee. Watch for more news about this program later this summer. Special thanks to John Mays, Richard Jaffe, John Lentine and Steve Glassroth for their time and talents in putting together the initial planning phase of this study.

### NEW BOOK AVAILABLE AT SEMINAR

John Mays of Decatur has donated another publication to ACDLA. **Drug Crimes, Drug Searches and Forfeitures in Alabama** will be available for sale at the Summer Seminar. The book features an exhaustive discussion of search and seizure issues. All proceeds from the sale of this publication will go to ACDLA. Watch for details on the listserv. The book is not available until late June. Its price will be announced at that time. Thanks John for your efforts in putting together this book.

### SPECIAL THANKS TO OUR CONTRIBUTING WRITERS

ACDLA sends a big thanks to Bill Blanchard of Montgomery, Bruce Gardner of Huntsville, Paul Young of Enterprise, Don Colee of Birmingham and Jeff Duffey of Montgomery for their contributions this issue of *The Guardian*. Don't forget to check out President Van Heest's final President's Column. If you would like to submit an article for publication, please contact Kesa Johnston, Publications Committee Chairperson at [kesa@oliverkitchens.com](mailto:kesa@oliverkitchens.com)

Looking forward to seeing you all in Pensacola Beach!

Ann Cooper, Executive Director  
[anncooper@bellsouth.net](mailto:anncooper@bellsouth.net)

# TO FOLLOW YOUR BLISS (Or, That Was Zen, This Is Now!)

By Bruce Gardner, Huntsville, AL

**A**nn Cooper, our wonderful Executive Director, is constantly seeking people to write articles for The Guardian. At our most recent Board meeting, I volunteered to write this article.

I started out to write another kind of article. I was going to write one on some new case, or statute, or trial technique. That is the traditional type of stuff that goes into a publication such as this one. Along the way, I changed courses and decided to write one that is more personal.

We all have mentors, gurus, teachers and others in our lives who speak to us on a more profound level. My personal “guru”, if you will, was (and is) Joseph Campbell. For those of you not familiar with Campbell, I can only tell you he was perhaps the leading scholar on the study of mythology and comparative religion. He taught at Sarah Lawrence College for thirty-eight years, and became more famous after his death in 1987. In 1988, PBS aired the incredible conversations recorded with Bill Moyers which became a huge success.

I personally had the privilege of attending a seminar by Campbell while I was an undergraduate student at Wake Forest University. At the risk of being overly simplistic, I would say that the major theme of Joseph Campbell’s work was the encouragement to each of us to “follow our bliss”. By following our bliss, we become constantly in touch with those aspects of life that make us truly happy, participating in what Campbell called “the rapture of being alive.”

I have thought about this theme many times and have attempted to live my life by following my bliss. I am now in my twenty-seventh year as a lawyer, and there have been many times when I

have questioned whether practicing law was the right path. I write this on occasion of turning fifty-two years of age. After much reflection, I can honestly say that being a criminal defense lawyer is a large aspect of my bliss.

That is not to say that I haven’t had the same difficulties as others in this very demanding profession. Like many of you, I practice by myself. To be sure, I get frustrated at times with the “business side” of running a practice. I get tired of having to put up with a cantankerous judge, who is usually just counting time before hitting the retirement gravy train. There have been some prosecutors who got on my nerves along the way. And I continue to marvel as the Alabama Legislature convenes to enact more “crime-fighting” legislation, and to attempt to do indigent defense on the cheap.

I have come to realize, though, that I am truly doing the good work in being a criminal defense lawyer. When I get the chance to save someone from Alabama’s death chamber, I know that I am on the right road. When I get an acquittal for a client, I know I am on the right road. When I get my brains beat out in defending a totally hopeless case, something inside me tells me I am on the right road. When I gather with you, my colleagues, for a drink of gin at the end of a busy day, or gather with you at a seminar, I know I am on the right road.

I hope that each of you finds, as I have, that you are truly following your bliss. I have found that in doing so, doors have opened for me that weren’t there before, and wouldn’t be open for anyone else. I became a member of the ACDLA Board in 1996, and have served as president of this great organization. My time on the Board will end at this

year’s annual meeting. I can assure you that serving on this Board has been a blissful experience as well, and I encourage all of you to become more active in this organization and, of course, to follow your bliss!

Happy Trails,  
Bruce A. Gardner  
bruce@gardnerlaw.org

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## NEW BOOK AVAILABLE AT SUMMER SEMINAR

Attorney and author John Mays of Decatur has donated the sell of another publication to ACDLA. *Drug Crimes, Drug Searches and Drug Forfeitures in Alabama* will go on sale in late June. The book contains some little known secrets and is an exhaustive discussion of search and seizure issues. If you handle drug cases, you need this book. Watch for more details concerning price and publication ship date.

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## MORGAN AUSTIN NAMED TO COMMITTEE

The Commission on Girls and Women in the Criminal Justice System was recently created pursuant to Act 2006-63. ACDLA President-Elect Melinda Morgan Austin of Florence has been named to the Commission. The announcement was made recently by Alabama House Speaker Seth Hammett.

# PLEA AGREEMENTS

*By Jeff Duffey, Montgomery, AL*

In Santobello v. New York, 404 U.S. 257, 260 (1971), it was stated that:

The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea bargaining', is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge was subjected to a full-scale trial, the State and the Federal Government would need to multiply by many times the number of judges and court facilities.

Plea negotiations and agreements in state court are governed by Rule 14.3 of the Alabama Rules of Criminal Procedure. Pursuant to Rule 14.3:

- The prosecution and the defense may engage in plea negotiations.
- The prosecution and defense may enter into an agreement to plea to a particular offense, a lesser offense, a dismissal, a recommended sentence or suspension or to not oppose a particular sentence.
- The plea agreement must be disclosed in open court prior to the time the plea is offered.
- The court may accept or reject the agreement or defer decision to a later time.
- If the court accepts the agreement the parties must be informed that the agreement will be embodied in the judgment and sentence or disposition.
- If the court rejects the plea agreement the court must inform the parties that the court is not bound by the agreement; advise the defendant that upon a plea of guilty the disposition may either be more or less favorable than contemplated by the agreement; afford the defendant the opportunity to withdraw the offer to plead guilty; afford the prosecutor the opportunity to change its recommendations; and afford the parties the opportunity to submit further plea agreements.
- Plea discussions are not admissible in any criminal or civil action or administrative proceeding.

The Alabama Supreme Court has stated the following regarding plea agreements:

We have stated regarding plea agreements that, if the district attorney makes an offer and that offer is accepted by the accused, either by entering a guilty plea or by taking action to his detriment in reliance on the offer, the plea agreement becomes binding and enforceable ... The State does not have to enter into a plea agreement. However, if it chooses to do so, it should not be allowed to repudiate

the agreement with impunity ... Our position is supported by the United States Supreme Court, which has held that when a guilty plea rests in any significant degree on a promise or agreement of the prosecutor, so that the promise or agreement can be said to be part of the inducement or consideration leading to the plea, the promise or agreement must be fulfilled ....

Ex Parte Richardson, 678 So. 2d 1046, 1047 (Ala.1995).  
In Blackwell v. State, 556 So. 2d 1091, 1093 (Ala.Crim.App.1988) it was stated that:

If there is a plea agreement between a defendant and the State and a breach thereof which is made known to the trial court, and if the trial court does not sentence the defendant pursuant to the terms of the plea agreement (or as alleged in the instant case, that the state makes a sentence recommendation contrary to the plea agreement), then the defendant must be given an opportunity, upon proper, timely, and specific motion, to withdraw his guilty plea. At that point, the trial court must review the circumstances surrounding the making of the plea agreement and determine whether ... a breach occurred. Further, it must decide if the guilty plea rested in any significant degree upon the agreement of the State, so that such can be said to be part of the inducement or consideration and, thus, must be fulfilled. The trial court may hold a hearing and receive testimony to determine the above. Once it makes its findings, the trial court then determines the appropriate remedy, if any ....

It has also been held that:

If a breach of a plea agreement by the state is demonstrated, the trial court has the discretion to cure the breach by allowing withdrawal of the plea, or, under some circumstances, by ordering specific performance of the agreement.

Alford v. State, 651 So. 2d 1109, 1112 (Ala.Crim.App.1994).

There is no requirement that a plea agreement be reduced to writing. Ex Parte Yarber, 437 So. 2d 1330, 1336 (Ala.1983).

The great majority of appeals involving plea agreements arise out of cases where the agreement has not been reduced to writing. Therefore, it is recommended that all plea agreements be reduced to writing. There is no particular form that is required for a plea agreement. It can be done by letter to/from the prosecutor and filed with the court or by formal motion.

A sample plea agreement form can be downloaded at [www.alacourt.gov](http://www.alacourt.gov). Scroll down to EForms, click on sample forms and go to SAM-21. ●

**Jeff Duffey**  
jcduffey@aol.com

# LEGISLATIVE WRAP-UP

*By Bill Blanchard, ACDLA Legislative Committee Chair, Montgomery, AL*

The 2006 Regular Session of the Alabama Legislature is now in the books. Out of a grand total of 1,431 bills that were introduced in the House and Senate combined, only 376 achieved passage, and many of those were awaiting the Governor's signature when the session ended on April 18th. For better or worse, very few bills of statewide application impacting the criminal justice system passed. Those that have now become acts are very briefly summarized and described below. Readers wishing to know more about a specific act are encouraged to consult the Alabama Legislative System Online (ALISON) at <http://alisdb.legislature.state.al.us/acas/ACASLogin.asp>, where the full text of the act will be available for you to read.

**Act 06—419** – Defines “person” to include an unborn child for the purposes of Alabama’s Criminal Homicide Statutes. Effective Date: July 1, 2006

**Act 06—197** – Updates and increases fines for Class A & B misdemeanors and for all classes of felonies as follows:

- Class A Felony— \$20,000 to \$60,000
- Class B Felony— \$10,000 to \$30,000
- Class C Felony— \$5,000 to \$15,000
- Class A Misdemeanor— \$2,000 to \$6,000
- Class B Misdemeanor— \$1,000 to \$3,000

Effective Date: June 1, 2006

**Act 06—198** – Amends §§ 13A-7-5 and 13A-7-6 of the Code (Burglary in the 1<sup>st</sup> and 2<sup>nd</sup> Degrees) to require that an offender either be armed with a deadly weapon upon entry into a building or dwelling, or use or threaten the use of a deadly weapon to be convicted of the higher offense. The crime does not involve the “use” or “threatened use” of a deadly weapon or a dangerous instrument if it is stolen in the burglary. Effective Date: June 1, 2006

**Act 06—218** – Requires the filing of post-sentence or pre-sentence reports in electronic format for every felony conviction after the effective date of the Act. Effective Date: March 10, 2006

**Act 06—204** – Created the new crime of Chemical Endangerment of a Child, graduated into Felony Class C, B, and A levels, depending upon the harm which results from the

knowing, reckless or intentional exposure of the child to a controlled substance, chemical substance, or drug paraphernalia. The punishment provided in this Act controls, unless another provision of law provides a greater punishment. Effective Date: June 1, 2006

**Act 06—112** – Each “visual depiction” of a person less than 17 years of age constitutes a separate violation of Alabama’s Child Pornography statutes. “Visual depiction” is defined. Effective Date: June 1, 2006

**Act 06—148** – Amends § 13A-9-102 to eliminate limitation that identity theft must result in a loss of greater than \$500.00. Establishes a seven (7) year statute of limitations, as well as an exception for obtaining the identity of another for the sole purpose of obtaining alcoholic beverages, tobacco, or another privilege denied to minors. Effective Date: April 5, 2006

**Act 06—353** – Establishes the crime of hog and canine fighting. A first violation will result in conviction for a Class A Misdemeanor. Second or subsequent violations are to be prosecuted as Class C Felonies. Effective Date: July 1, 2006

**Act 06—423** – Includes volunteer firemen in the definition of “Firemen” and the fire control activities of volunteer fire departments in the definition of “governmental function” in order to criminalize certain actions obstructing volunteer firefighters. Effective Date: July 1, 2006

**Act 06—427** – Provides that a person shall be guilty of murder if he or she commits the crime of arson and a qualified governmental or volunteer firefighter or public safety officer dies while performing his or her duty resulting from the arson. Effective Date: July 1, 2006

**Act 06—297** – Relating to Theft of Property in the 2<sup>nd</sup> Degree; amends § 13A-8-4 of the Code, as last amended by Act 2004-627, to adjust the monetary range of the offense to conform with the other Theft of Property offenses. This Act restores the alternative element concerning a defendant previously convicted of receiving stolen property in the first or second degree. Effective Date: April 4, 2006

**Act 06—303** – Provides for the justified use of defensive force and deadly physical force against a person intruding in a dwelling, residence, or vehicle; removes the duty to retreat in certain circumstances; establishes legal presumptions concern-

# LEGISLATIVE WRAP-UP

(Continued)

ing persons justified to use force and deadly physical force against intruders; provides immunity for persons justified in using lawful force and deadly physical force in self-protection and the protection of others. Effective Date: June 1, 2006

**Act 06—312** – Adopts the initial voluntary sentencing standards of the Alabama Sentencing Commission; extends the time for presentation of additional truth-in-sentencing standards. Effective Date: October 1, 2006

**Act 06—531** – Amends § 26-15-3 of the Code to provide that the offense of child abuse shall be classified as a Class C Felony. Effective Date: July 1, 2006

**Act 06—572** – Requires the District Attorney, upon request of an alleged victim of a sexual assault, to file a motion with the Court for an order requiring the Defendant to submit to a test for any sexually transmitted disease. Test results are not public record, and are deemed confidential, with certain exceptions listed in the statute. Violations of the statute will constitute a Class C Misdemeanor. Effective Date: July 1, 2006

**Act 06—654** – Amends the DUI Statutes to provide that a prior conviction within a five (5) year period for driving under the influence of alcohol or drugs from this state, a municipality within this state, or another state or territory may be considered by a court for enhancement of the sentence of a person who is convicted of DUI. Effective Date: July 1, 2006

**Act 06—539** – Establishes the crime of shooting or discharging a firearm into a school bus or school building. Effective Date: July 1, 2006

**Act 06—580** – Establishes the crime of home repair fraud and provides that a second or subsequent conviction shall be a Class C Felony. Effective Date: July 1, 2006

**Act 06—561** – Expands the definition of Theft of Property in the First Degree so as to include a theft resulting from a common plan or scheme by one or more persons, where the object of the plan or scheme is to sell or transfer the property to another person or business who knows that the property is stolen, and the cumulative value of the property is not less than \$1,000.00 within a 180 day period. Effective Date: July 1, 2006

**Act 06—565** – Establishes the intentional physical assault of a

health care worker as Assault in the 2<sup>nd</sup> Degree, a Class C Felony. Effective Date: July 1, 2006

**Act 06—575** – Establishes the crime of sexual abuse of a child less than 12 years old, a Class B Felony. Effective Date: July 1, 2006

**Act 06—585** – Establishes the crime of disrupting a funeral or a memorial service. Second and subsequent convictions treated as Class C Felonies. Effective Date: July 1, 2006

This report would not be complete without at least a mention of the fact that the much-debated Indigent Defense Commission Bill (HB 490) failed to achieve passage. All parties involved, including the ACDLA, worked long and hard to hammer out a compromise, but the ACDLA leadership eventually withdrew any support for the measure when efforts to agree on funding levels proved impossible to attain. The bill never got out of the House Judiciary Committee. The issue of indigent defense reform and restructure is far from dead, however. Look for legislation similar to HB 490 to appear in the 2007 Regular Session.

The efforts and financial sacrifices of members too numerous to mention have thus far been the key to our ability to stave off indigent defense legislation which does not adequately and realistically equip and pay the defenders of the poor and underprivileged. My personal thanks go out to all who have been so generous with their time and resources. If we can continue to count on you, and gain active support of the membership as a whole, our chances of having a positive impact on coming indigent defense reforms is excellent. Beyond that, the credibility we have built and are building through this program will enable us to seek reforms through positive legislation in such areas as requiring the mandatory recording of confessions, reforming eye witness identification procedures, and ensuring access to DNA and other scientific testing needed to establish the innocence of those wrongfully accused and convicted. Over the last two years, we have taken our first faltering steps in building for this organization a truly effective legislative mechanism. Many more steps will be required in the coming years, but the results, I am convinced, will be more worth the effort and expense. Please resolve to join in and continue the fight from here on out. We need the broadest possible base of support in order to succeed, but succeed we can. ●

**Bill Blanchard**  
bill@blanchardlaw.com

# The A, B, Cs of D.U.I.'s

By Paul Young, *Enterprise, AL*

[The following is not meant to be a treatise on the defense of driving under the influence. Rather, it is an examination of the more mundane areas of D.U.I. defense that have resulted, in the author's experience, in numerous acquittals, nolle prosses and outright dismissals of such charges, together with providing quite a few belly laughs at the expense of the prosecutors and police.]

**A:** Often clients want to provide the lawyer with more information than needed and, just as often, clients fail to provide the lawyer with information that might prove critical to the defense of a charge of D.U.I. I have found over the last twenty-seven years that a brief inquiry into areas of the client's life which he or she takes for granted to the extent they do not realize the significance as related to his or her defense, often yields dividends for the defense.

For example, basic inquiries related to the client's health often aid in the explanation of the reportedly "failed" field sobriety tests. Previous injuries to the legs, feet and back may have prevented the client from performing the tests to the standard required by the officer for a "passing" grade. Inner ear problems can affect balance and result in a "failed" grade on the one-legged stand. With regard to the always "I smelled a strong odor of alcohol" assertion by the officer, it is well known that breath from a diabetic can mimic such an odor. The alleged failure to provide a sufficient breath sample for the Draeger can easily be explained if the client suffers from asthma or other similar respiratory problem. [One way to handle this circumstance is to get a letter from the client's treating physician wherein he states that he has been advised as to the volume of air required by the Draeger and that in his professional medical opinion, due to the client's respiratory impairment, he could not have delivered air in the volume required by the machine. Attach this as an exhibit to a motion to dismiss, as well as offer it at the administrative hearing before the representative of the Department of Public Safety.] Insofar as horizontal gaze nystagmus is concerned, while an objection is concerned, while an objection to their admissibility is certainly

due to be sustained under present case law, I have, at times, not objected because I wanted to demonstrate to the court fallacy of the test and the fact that the officers did not know how to administer or interpret them. Two such occasions occurred with clients who had lost eyes in accidents and had them replaced with glass substitutes. The arresting officers who administered the horizontal gaze nystagmus test did not realize this and, when I did not object to the introduction of the H.G.N. results at trial and, on cross-examination, proceeded to inquire of them whether a one-eyed man could possibly have both eyes "track smoothly", the officers were caught with the deer in the headlights look and the cases just "went away." The same holds true for clients with dentures and Draeger results. There can be no more fun for a D.U.I. defense lawyer than asking the officer who gave the Draeger if the client had any foreign substance in his or her mouth at the time of the administration of the breath test and being told emphatically, "No", and then having the client drop his teeth out before the judge. I did this once in a municipal trial and the judge nearly fell off the bench laughing. The same with a one-legged client with a prosthetic leg and the "one-legged stand" and the "walk and turn" tests. Yes, I have had the one-legged man too, charged with D.U.I. and arrested because he "failed" the field sobriety tests. You will find that many officers simply do not ask the defendant if he or she has a physical problem which may impact their ability to perform the f.s.t.'s or the Draeger and, even more unbelievable, the client, not aware of its importance, will not volunteer this information to you, the defense lawyer. This is fertile ground for the D.U.I. practitioner.

**B:** Examine the documentation the officers gave your client at the time of the arrest. This typically consists of the UTTC, the print-out from the Draeger breath testing machine and the AST-60 ("Goldenrod Copy" of the Official Notice of Intended Suspension of Driving Privileges and Affidavit). These, together with a review of the court file before trial and the documents supplied through the discovery

process, can be a virtual gold mine of material for the defense. The following are by no means exhaustive of the gems you may find, but they are illustrative:

Always check the date and time blocks in each of the documents listed above. Many times I have encountered a glaring discrepancy between the date/time of the arrest and the date/time of the breath test. Remember, many times the officer administering the Draeger is different than the arresting officer and I have encountered more such datelime discrepancies when two different officers are involved in the arrest and Draeger test. Moreover, at least two of these documents, the UTTC and the AST-60 require the officer[s] to swear as to their correctness. Cross-examination can be a lot of fun when you have two documents, both sworn to, whose material elements are completely different.

The same discrepancies may also be found in the different dates and/or times being reflected between the documents and the date and time on the video tapes from the patrol car and/or the Draeger room camera.

If you can obtain a copy of the uniform arrest report, examine it closely for the same type errors. I once represented a gentleman charged with D.U.I. who, under the old Intoxilizer, had blown a .12. When I reviewed the uniform arrest report I noted that the arresting officer, in block 36 "condition of arrestee", had checked block number 3, "sober." Much fun was had by all, well almost all, after I asked the officer to review his arrest report and he assured me that it was "100% accurate."

**C:** As mentioned before, examine any videotape involved in your case. Many departments have their patrol cars equipped with video cameras and body microphones. Likewise, many departments videotape the administration of the Draeger test. Policemen are just like the rest of us, as they use these instruments frequently they become desensitized to them and, more often than not, forget they are on and are recording everything, not just the incriminating stuff. Example:

Several years ago I represented a young

## The A, B, Cs of D.U.I.'s

(Continued from page 8)

lady whose mother had called the police to tell them that her daughter, with whom she was involved in a family custody dispute, was driving around drunk. The officers located the girl's car parked at a local convenience store. After waiting a few minutes, the officers observed her leave the store and open the door to her car. One of the officers then approached her car and told her he had received a complaint that she was operating a motor vehicle while under the influence. He took her to the back of her automobile and positioned her in front of the patrol car, in full view of the dash-mounted camera. While his partner sat in the car, the officer proceeded to administer the field sobriety tests. After giving her the standard, recognized battery [walk & turn, one-legged stand and horizontal gaze nystagmus], he came back to his car, stuck his head inside and said to his partner, "I don't think she's drunk." Whereupon his partner stated, "Oh hell, if we don't go ahead and arrest her now, her mother will just keep calling and we'll have to come back out here." The officer went back out to the front of his car and in full view of the video camera and with body mike working wonderfully, proceeded to administer eleven, yes eleven, more of what he termed field sobriety tests, all of which she apparently passed except for the last one, at which time she was arrested. Of course, at trial in the municipal court, with a full compliment of his police buddies in attendance, the poor officer was humiliated, battered and beaten with his own piece of technology and the judge said simply, "Not quite guilty this time."

If the police in your area have video cameras in their squad cars, the videotape can be your best friend, capturing the all the blunders, failures and mistakes of the police.

Conclusion: So, the moral of these stories for the D.U.I. practitioner is to simply do what all of us in my generation, the baby boomers, learned in first grade with the old *Dick and Jane* books: "LOOK." Look at the documents and look at the videos. You might just be surprised what you will find. ●

Paul Young  
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## THOMAS A. MESEREAU, JR.

(Continued from page 1)

*Magazine* has also awarded Tom its highest award for excellence in criminal law.

Mr. Mesereau actively sponsors and participates in various free legal clinics throughout Los Angeles. For example, he participates in the free legal clinic at **Crenshaw United Methodist Church** in Los Angeles, which is sponsored by the "Save Our Sons," an organization founded by African American women.

**Brookins AME Church**, Los Angeles, has recently announced that it will name its new legal clinic for the poor after Mr. Mesereau. Once a year, Mr. Mesereau travels to Alabama to defend a death penalty trial without charging any legal fees. He has represented an indigent defendant in a death penalty case in Mississippi (pro bono) which resulted in a successful plea bargain on the eve of trial.

Mr. Mesereau recently received a *Community Service Award* from the **Honorable Antonio Villaraigosa**, the Mayor of Los Angeles, for his years of contributions to the City. Mayor Villaraigosa specifically noted Mr. Mesereau's willingness to represent unpopular defendants and his commitment to the poor citizens of Los Angeles. This ceremony occurred at the **Brookins Community African Methodist Episcopal Church** in Los Angeles, where Mr. Mesereau also received a *Service Award* from **Dr. Frederick Ormonde Murph**, Senior Minister.

Mr. Mesereau was previously awarded a "*Certificate of Appreciation*" from Los Angeles County Supervisor Yvonne Brathwaite Burke due to his dedicated service to the citizens of Los Angeles County. Mr. Mesereau has received an award from the **Reverend Cecil Murray**, formerly Senior Minister of the **First African Methodist Episcopal Church** for the many hours of volunteer time he had devoted to the church's free legal clinic. Mr. Mesereau also has received the *Sarah Allen Women's Missionary Society of First A.M.E. Church, Los Angeles Award* for his contributions to the African-American and other minority communities.

He has also received a formal commendation from the *Compton Seventh-Day Adventist Church* for the time and effort he has given to pro-bono legal services in Los Angeles. Mr. Mesereau has received a *Certificate of Appreciation from the African-American Community Empowerment Organization*, a Los Angeles-based group devoted to assisting "at-risk" youth and developing their skills and goals. He previously received the *Compton, California School Board President's Award* for "Outstanding Contributions to the Children of the Compton Unified School District." He has also received an award from **The State Bar of California Board of Governors** for providing pro bono legal services to low income Californians.

Tom Mesereau serves on the *Advisory Board* of the **Salvation Army of Compton**, California. Mr. Mesereau has received the "*Humanitarian Award*" from **The National Association of Blacks in Criminal Justice (NABCJ)**, "*In Recognition Of Your Ongoing Commitment To Justice for All.*" Mr. Mesereau has conducted seminars for NABCJ on various aspects of the criminal justice system. He has received the *Annual Service Award* from **n-Action Family Network** for his efforts on behalf of women in recovery from drugs and incarceration. He also serves on the Advisory Board of this civil rights group. Mr. Mesereau regularly marches with the "Mothers of Watts" against gang violence.

Don't miss this opportunity to meet a interesting fellow practitioner! Sign up now of the 2006 Summer Seminar and Annual Meeting set for June 22-24, 2006 in Pensacola Beach. ●

# CONFLICT OF INTEREST

## When to Say No To Money

By Don Colee, Birmingham, AL

This is a constant dilemma of the criminal practitioner. It is Friday afternoon and you have not made any money. The rent is due, behind on the power, phone, etc.... Your secretary wants to get paid and you would like to actually take the wife and/or girlfriend out to dinner. Two brothers show up at your office. They are both charged with possession of drugs. They tell you that they have a two bedroom apartment which the police came to search with a search warrant. The search warrant names one of the brothers specifically as having sold drugs in the apartment and the drugs are found in that brother's bedroom. The other brother works long hours and is rarely at the apartment, traveling out of town. However, he was present at the apartment where as the brother whose room had the drugs in it was not. Brother one says he wants to hire you to represent him and brother #2. Brother # 2 has no money but he, Brother # 1, has plenty of money. He proceeds to pull out a large wad of cash. Brother #1 tells you he is on probation and can not afford to go to jail. He tells you Brother #2 will claim the drugs are his. Brother # 2 sits quietly and says that he will do anything he can to help Brother #1.

The dilemma arises, do I accept representation of both, do I send the brother with no money out the door and represent the Brother with the money, or do I send them both out the door. Criminal defense lawyers are constantly saddled with the question of when is there a conflict of interest in representing co-defendants. Rule 1.7, Alabama Rules of Ethical Conduct, states simply that a lawyer "shall not represent a client if the representation of that client would be directly adverse to another client." There are certain excep-

tions, when a lawyer believes his representation would not effect the other client, and each client consents to the representation. Most importantly Rule 1.7 states a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibility to another client, or to a third person, or by the lawyer's own interest.

The Alabama Courts have spoken often to the questions of conflicts lawyers face in representing defendants in Criminal Court. The most frequently quoted case is the decision of Pinkerton v. State, 395 So. 2d. 1080 (Ala. Cr. App. 1981). In Pinkerton the attorney had previously represented an individual who turned police informant. The attorney was later retained by a second defendant only to find that his former client, who had turned informant, was going to be testifying against his new client. The Court of Criminal Appeals held that there was a clear conflict of interest stating that when an attorney owes duties to a party who interest are adverse to those of the person he is representing, an actual conflict exists. Pinkerton speaks directly to the problem of when you are representing one client and a second client is on the witness stand testifying against you. More recently the Court of Criminal Appeals faced a similar fact situation in Wynn v. State, 804 So.2d. 1122 (Ala. Cr. App. 2000). In Wynn the attorney had a similar situation where he represented a witness in matters only to find himself representing a defendant the witness was going to be testifying as to material matters against his present client. The attorney followed every possible action in trying to resolve the conflict. The attorney first requested an opinion from the Bar Association as to what he should do. The

Bar Association said it was a clear conflict of interest and could not be waived and as a result he should withdraw. The attorney filed a motion to withdraw with the trial court citing the reasons as well as the directions he had received from the State Bar Association. The trial court found differently and would not let the attorney withdraw. The trial went on and the defendant was convicted. One of the grounds obviously was the conflict of interest. The Court in Wynn noted that even though there may have been a conflict of interest, both defendant and witness waived that conflict and as a result there was no prejudice to the defendant. The Court of Appeal's decision was directly contrary to the opinion of the State Bar which found the conflict was unwaivable. Another recent example of a conflict waiver situation was seen in the Court of Criminal Appeal's decision of M.S. v. State, 822 So. 2d. 449 (Ala. Cr. App. 2000). The Court stated that the mere proof an attorney had previously represented a prosecution witness is insufficient to establish an inconsistent interest arising to a conflict. A defendant must show either his counsel's representation of the witness was substantially related to the later representation of the defendant or that the counsel actually learned confidential information during the prior representation of the witness that was relevant to the defendant's case. The Court went on to state a defendant even under those circumstances may waive his right to conflict free counsel where a waiver is knowingly and intelligently made. The trial court is under a duty to show the defendant is aware the conflict existed and realized the consequences in continuing with his present attorney even though a conflict may exist and he, the defen-

## CONFLICT OF INTEREST – When to Say No To Money

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dant, had the right to retain other counsel.

Obviously the above fact situation is fraught with problems. It is clear there is very little evidence to tie Brother #2 to the drugs found in the apartment. They were not in his bedroom, the apartment was not in his name, and he was rarely present at the apartment. Finally it becomes more complicated if the prosecution contacts you about cutting a deal with Brother #2 to testify against Brother #1. Unfortunately there is no rule that says there is no conflict of interest if both clients pay you.

Obviously the wiser although less economically profitable decision is to not place yourself in the position of representing potential co-defendants regardless of monetary and other considerations. One always thinks that things will eventually “work themselves out” only to find himself in a true dilemma in wishing he had simply given the money back and told both Brothers they each need to get their own counsel. We all agree no amount of money is worth sitting on a witness stand in a Rule 32 Hearing, or trying to explain to the Bar Association why you think your actions were not in violation of Rule 1.7. ●

Don Colee  
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## CAPITAL CORNER

By John E. Mays, Decatur, Alabama

### Victim Impact Evidence and Procedure

(Grissendanner v. State 2006 WL 510505)

Since the holding in a United States Supreme Court case Alabama has allowed the introduction of victim impact evidence at the penalty phase of a capital trial. See: *Payne v. Tennessee* 501 US 808 (1991). In the Grissendanner case a niece of the deceased was called by the state to read a short two-paragraph statement to the jury. When she was called the defendant objected and asked to take a matter up outside of the presence of the jury. When the jury retired the defendant requested that the witness read the statement to the court to determine if anything objectionable (irrelevant or highly emotional) was contained in the statement.

On appeal the defendant claimed that the entire victim impact statement was irrelevant but at trial his only objection was to several sentences about the witness having to drive over 100 miles once a week to take care to the victim's mental ill nephew because the victim had cared for him during her lifetime.

The general rule in Alabama is that victim impact statements are admissible in the penalty phase of capital cases if, and only if:

1. The witness does not recommend what they believe to be an appropriate punishment.
2. The witness does not characterize the defendant (“animal”, “butcher”, worse than Hitler”, etc.).
3. The witness does not characterize the crime (“worse crime ever committed in this county”, “cold blooded and totally unprovoked”) (the witness cannot make part of the prosecutor's closing argument).

Prior to a victim impact statement being presented before the jury an objection should be made and the defendant should be able to hear its sum and substance outside the presence of the jury. A *motion in limine* should contemporaneously be filed outlining for the trial judge what sort of statements in the victim impact statement would be improper and inadmissible. The trial judge will need your *motion in limine* so that the witness can be properly instructed as to what statements would be deemed improper and illegal. After the witness has outlined the proposed testimony for the court the defendant should then make any specific objections to the testimony for the record. *Motions in limine* are more for the education of the court as to the legal authority for the defendant's position. They are not favored in the law for preserving error although they certainly can be used to preserve error. Just to be sure you have preserved the issue you should also make objections to evidence you feel is inadmissible when it comes into evidence.

The case of Grissendanner v. State 2006 WL 510505 attenuates to come extent one possible objection. A mere objection that the victim impact statement is too emotional, when it does not violate any of the three rules above is not a good objection except in extreme cases:

“[A] State may properly conclude that for the jury to assess meaningfully the defendant's moral culpability and blameworthiness, it should have before it at the sentencing phase evidence of the specific harm caused by the defendant. ‘[T]he State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.’ *Booth* 482 US at 517 (White J., dissenting) (citation omitted). By turning the victim into a ‘faceless stranger at the penalty phase of a capital trial,’ *Gathers* 490 US at 821 (O'Connor, J., dissenting), *Booth* deprives the State of the full moral force of its evidence and may prevent the jury from having before it all the information necessary to determine the proper punishment for a first-degree murder.” ●

## PRESIDENT'S COLUMN *Continued from page 2*

day before to the Black Legislative Caucus, and we took that opportunity to lobby our African American legislators, particularly those who serve on the House Judiciary Committee. I had the privilege of appearing on Alabama Public Television's *For The Record* on three occasions, including one time across from House Judiciary Chair Rep. Marcel Black. All of these face-to-face appearances by our membership added to the many, many telephone communications by members to various representatives in fighting for a fair and effective plan for quality indigent defense in this state.

While I believe we have come a long way over the past eighteen months, there is much more work to be done. We helped prevent legislation which would have been adverse to our clients and ourselves, but the status quo remains unacceptable. Our legislative program must be funded fully in order to hold the ground we have held, and to gain future ground on behalf of our clients. This program must be about the defendants, not simply the lawyers. We must keep abreast of other legislation which effects the administration of criminal justice and be prepared to either support its passage or defeat it. This will continue to cost time, energy, and, sadly, money.

Throughout the year, we filed several amicus briefs including one at the Montgomery County Circuit Court which helped lead to a circuit court order directing the comptroller to pay office overhead expenses, and overruling the Attorney General's February 1, 2005 opinion to the contrary. Following the plaintiff's appeal of that positive ruling because he was denied attorneys fees, the Attorney General appealed on behalf of Governor Riley, and we again filed an amicus brief with the Alabama Supreme Court. That case remains pending before the Court. I believe that the result will be based upon the rationale: if the Supreme Court rules based upon the law, we win easily; if the opinion is based upon politics we will lose. Plain and simple. However, the outcome of that case will have a huge impact on the shape of next legislative session's version of an Indigent Defense Commission bill.

We had anticipated conducting a number of Town Meetings throughout the state during this year. The primary purpose was to educate our members and the criminal defense bar about the Indigent Defense Commission bill and aspects about which we supported or opposed. A secondary purpose was to serve as a membership drive to recruit new members to our organization. Unfortunately, because of the winding path the legislation took, including drastic changes in content from one day to the next, we were unable to establish such a pro-

gram. Hopefully, that opportunity will arise over the next year, and perhaps we can use our Four Corners seminars to address those and other issues, to educate our members, and to grow the membership more in the coming year than in the past year.

This past summer the Board of Directors voted to make our executive director, Ann Cooper, a full-time executive director. This meant paying her salary as a full-time executive director, and recognizing that she had in fact been working full-time for the past several years. For all she has done for our organization, this decision was easy.

This year saw increased attendance from non-Board members at Board meetings. This was particularly satisfying since we have continued to advertise and invite the membership to Board meetings. Those who attend meetings and serve on committees are the lifeblood and the future of this organization. They are likely to compose the future board.

What I have truly enjoyed about being president is the warm greeting I have received virtually everywhere I have gone. Back in December, I had court appearance in Morgan County and was greeted warmly by member Don Chapman in the cafeteria of the Morgan County Courthouse. Don, I owe you a lunch. My friend John Mays was also quite helpful in the courtroom showing me the local ropes. A week earlier, I had to go to Enterprise to speak at the Four Corners Seminar. Joe Saloom literally flew me down in a single-engine Cessna, and I had the opportunity to meet and speak with a number of the local lawyers in that area – including Paul Young, Dwain Hartwick and Joe Paul – all of whom had kind words of encouragement for me, and who represent our organization well. It was a pleasure working with Eric Guster and Tiffany McCord, Linda Coats, Don Colee and Jim Roberts, Bill Blanchard, and the crew from Tuscaloosa including Angie Walker, Paul Whitehurst and Andy Ward – all, who attended the meetings of the legislature. In our business, we need as many friends as we can get. It is great knowing you are all out there, and knowing that you are there to help whenever called upon.

I hope that in the years to come, I can continue to provide the same leadership and assistance when I become past-president as our most recent past-president, Jim Roberts, provided to the organization and to me. For now, it's time to count the days until the baton is handed off. I am confident that the organization will remain in strong hands when Melinda Morgan Austin takes over in June. Hope to see all of you in Pensacola Beach. ●

**Joe Van Heest**

[jpvaneestllc@bellsouth.net](mailto:jpvaneestllc@bellsouth.net)

## “JUSTICE MUST BE WON IX”

THURSDAY, JUNE 22, 2006

- Noon - 1:00 p.m. Registration  
 1:00 p.m. - 2:00 p.m. “An Offender’s Guide to Classification – How the Process Works” – *Paul Whaley, II, Director of Inmate Classification, AL Department of Corrections, Montgomery, AL*  
 2:00 p.m. - 3:00 p.m. “Case Law Update” – *Bruce Gardner, Attorney, Huntsville, AL*  
 3:00 p.m. - 3:15 p.m. Break  
 3:15 p.m. - 4:15 p.m. “Criminal Defense in Iraq” – *Wilson Myers, Attorney, Bay Minette, AL and Senior Legal Consultant to the Iraqi Commission on Public Integrity and the Projects and Contracting Office*  
 4:15 p.m. - 5:15 p.m. “Pre-Trial Motions & Discovery” – *John Beck, Attorney, Fairhope, AL*  
 5:30 p.m. - 7:00 p.m. President’s Reception

FRIDAY, JUNE 23, 2006

- 8:00 a.m. - 8:30 a.m. Registration  
 8:30 a.m. - 9:30 a.m. “Using the New Research on Adolescent Brain Development in Representing Young People After Roper v. Simmons” – *Simmie Bear, Attorney Supervisor and Clinical Supervisor, Children and Family Justice Center, Northwestern University School of Law, Chicago, IL*  
 9:30 a.m. - 10:30 a.m. 2006 ACDLA Annual Meeting  
 10:30 a.m. - 10:45 a.m. Break  
 10:45 a.m. - 11:45 a.m. “Sex Offender Registration/Notification” – *Robert V. Wooldridge, III, Tuscaloosa Co. Public Defenders Office, Tuscaloosa, AL*  
 11:45 a.m. - 12:45 p.m. “Forensic Examinations of Firearms & Tool Mark Evidence” – *Joseph Saloom, Attorney, Montgomery, AL*  
 1:00 p.m. - 2:30 p.m. 2006 Awards Luncheon – *Wear Your Hawaiian Shirt!*  
 2:30 p.m. - 3:30 p.m. “Forensic DNA Testing: Basic Principles & Issues” – *Dr. Ronald T. Acton, Professor of Microbiology, Medicine, Genetics and Epidemiology and International Health and Director of the Immunogenetics Program, UAB, Birmingham, AL*  
 3:30 p.m. Seminar Adjourns for the Day  
 3:45 p.m. ACDLA Board of Directors Meeting

SATURDAY, JUNE 24, 2006

- 8:15 a.m. - 9:15 a.m. “Keynote” – *Thomas A. Mesereau, Jr., Attorney, Los Angeles, CA*  
 9:15 a.m. - 10:15 a.m. “Cross Examination: 21 Ways to Control the Runaway Witness” – *Roger J. Dodd, Attorney, Valdosta, GA*  
 10:15 a.m. - 10:30 a.m. Break  
 10:30 a.m. - 11:30 a.m. “Issues Involving Pardons & Paroles” – *Dana Pittman, Attorney, Pardons & Parole Board, Montgomery, AL*  
 11:30 a.m. - 12:30 p.m. “Professional Responsibility in Criminal Defense Practice” (Ethics) – *John Wesley Hall, Attorney, Little Rock, AR*  
 12:30 p.m. Seminar Concludes

12 CLEs have been applied for through the Mandatory Continuing Legal Education Commission of Alabama including 1 hour of Ethics.

### HOTEL ACCOMMODATIONS:

HILTON GARDEN INN

12 Via de Luna Drive, Pensacola Beach, FL 325611, 866-916-2999

Rates: Ask for ACDLA Rate of \$200-221

Room block will be dropped after May 28, 2006.

## SUMMER SEMINAR SPEAKERS AND TOPICS

Hear some of the country’s biggest names and brightest minds in criminal defense today:

### ■ Attorney Thomas A. Mesereau, Jr., Los Angeles, CA “Keynote Address”

Last year was an incredible year for *Attorney Thomas A. Mesereau, Jr.* On June 13, 2005, Mr. Mesereau heard a jury in Santa Maria, California repeat “Not Guilty” 14 times (10 felonies and 4 lesser-included misdemeanors) in the case of the *People of the State of California v. Michael Joe Jackson*. This capped a 5-month trial, which received more media coverage around the world than the O.J. Simpson and Scott Peterson trials. Tom’s life was turned upside down. Interview requests were endless. He appeared on the *Larry King Live* and *Jay Leno* shows. *Barbara Walters* named him one of her “10 Most Fascinating People.” Even *GQ Magazine* called him one of the top “Ten Men of the Year.” Tom Mesereau specializes in criminal defense (state and federal court) and civil trials. He is a partner in the firm of Mesereau & Yu, LLP in Los Angeles, California. In addition to his many free legal clinics throughout Los Angeles, once a year, Mr. Mesereau travels to Alabama to defend a death penalty trial without charging any legal fees. Don’t miss his fascinating presentation.

### ■ Supervising Attorney and Clinical Professor Simmie Bear, Chicago, IL

“Using the New Research on Adolescent Brain Development in Representing Young People After Roper v. Simmons.”  
 Ms. Bear will summarize the major findings of the scientific research on adolescent brain development and talk about a variety of ways to use that research in representing kids. Ms. Bear works with the Children and Family Justice Center at Northwestern University School of Law. Her background includes supervising attorney of the Juvenile Division at Washington Public Defender Association for over 15 years, practicing with the office for 19 years. If you represent juveniles, you need to hear this.

### ■ Attorney John Wesley Hall, Jr., Little Rock, AR

“Professional Responsibility in Criminal Defense Practice” (Ethics)  
 Mr. Hall’s practice consists of 95% criminal law in Little Rock, Arkansas. He was admitted to the Arkansas Bar in 1973, the District of Columbia in 1973, Nevada in 1993 and New York in 1996. He has appeared in the U.S. Court of Appeals for various circuits since 1973. Since that time Mr. Hall has become a well known writer and lecturer on Ethics issues. His published works are many, but include *Professional Responsibility in Criminal Defense Practice*, First Edition; *Trial Handbook for Arkansas Lawyers*, First Edition; and *Search and Seizure*, First Edition. Learn how to better serve your clients and your firm through the insight of John Wesley Hall.

### ■ Attorney Roger Dodd, Valdosta, GA; Of Counsel, Spohrer, Wilner, Maxwell and Matthews, Jacksonville, FL

“Cross Examination: 21 Ways to Control the Runaway Witness”  
 Roger J. Dodd is a trial lawyer, author, lecturer, and consultant. He is co-author of the best selling book published by Lexis-Nexis Publishing Company, *Cross-Examination: Science and Techniques*. The techniques he teaches and uses daily in cross-examination and trial tactics apply to any litigation at issue. Whether the case is criminal, domestic or civil, these techniques work.

### ■ Dr. Ronald T. Acton, Professor of Microbiology, Medicine, Genetics and Epidemiology and International Health and Director of the

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## SUMMER SEMINAR SPEAKERS AND TOPICS CONTINUED

### *Immunogenetics Program at University of Alabama/Birmingham.*

#### "Forensic DNA Testing: Basic Principles and Issues"

Dr. Acton is an expert in the use of genetic marker and DNA testing in paternity and forensic cases. He has reviewed over 500 cases and testified in over 200 cases as an expert in Alabama, Arizona, Arkansas, California, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Montana, North Carolina, Oklahoma, Tennessee, Texas, Virginia, Washington, and Wisconsin as well as in federal courts. Dr. Acton is able to communicate science in everyday terms. Be sure to hear his DNA basics made simple.

### ■ *Joseph Saloom, Attorney, Rountree & Associates, LLC, Montgomery, AL* "Forensic Examinations of Firearms and Toolmark Evidence"

Mr. Saloom is not only a practicing attorney, but he is also a forensic scientist. From 1979 to January, 2005, he worked with the Alabama Department of Forensic Sciences. In addition to ten years of analyzing controlled substances, his vast experience includes sixteen years examining firearms and ammunition submitted to the lab with the twenty-four county territory of Region III. If you are in doubt about firearms and have no working knowledge of how a forensic examination is made on firearms, you can't afford to miss this presentation.

### ■ *Paul Whaley, Alabama Department of Corrections, Montgomery, AL* "An Offender's Guide to Classification: How the Process Works"

After trial, one of the greatest responsibilities of a criminal defense lawyer is preparing your client to enter the system. DOC Director of Inmate Classification Paul Whaley will lead you through a checklist of guidelines as well as important considerations. You will be given an opportunity to ask specific questions about your client's needs. This particular presentation is a very popular one for ACDLA members.

### ■ *Dana Pittman, Attorney, Pardons and Parole Board, State of Alabama, Montgomery, AL* "Pardons and Parole Issues"

Maneuvering through the parole process can be tricky. Ms. Pittman will discuss issues dealing with the *Alabama Board of Pardons and Paroles Rules, Regulations, and Procedures*, the Board's statutorily privileged records, the parole hearing process, the revocation process, and issues that attorneys need to know when representing their clients before the Board.

### ■ *Wilson Myers, Attorney, Bay Minette, AL* "Criminal Defense in Iraq"

This topic will explore the differences between the civil law and common law systems of Iraq and the United States, the challenges faced by lawyers in Iraq today, and the impact of the implementation of the International Rule of Law had on Iraqi Society. Don't miss ACDLA member Wilson Myers who was the Senior Legal Consultant to the Iraqi Commission on Public Integrity and the Projects and Contracting Office (PCO) Representative to the three Northern Iraqi Provinces of Niniwa, Erbil and Dahok.

### ■ PLUS OTHERS:

#### *John Beck, Attorney, Fairhope, AL* "Pre-Trial Motions and Discovery"

#### *Bruce Gardner, Attorney, Huntsville, AL* "Case Law Update"

#### *Robert V. Wooldridge, III, Director, Tuscaloosa Co. Public Defenders Office, Tuscaloosa, AL*

#### "Sex Offender Laws: Registration/Notification"

## REGISTRATION FORM

### ACDLA 2006 SUMMER SEMINAR ANNUAL MEETING

#### Please sign me up!

Name(s): \_\_\_\_\_

Firm/Agency: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Fax: \_\_\_\_\_

#### Method of Payment:

\_\_\_\_\_ Check (Payable to ACDLA)

\_\_\_\_\_ Amount Enclosed

Billing Address: \_\_\_\_\_

\_\_\_\_\_ Mastercard \_\_\_\_\_ Visa

Name on Credit Card: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Credit Card# \_\_\_\_\_

Signature: \_\_\_\_\_

*All materials will be in CD Rom format.*

*Print materials may be ordered for \$40 additional.*

#### Return this form to:

ACDLA, P.O. Box 1147, Montgomery, AL 36101

For questions, contact Ann Cooper at  
334/272-0064 or [annscooper@bellsouth.net](mailto:annscooper@bellsouth.net)

Fax to: 1-866-665-7522

#### REGISTRATION:

\$300.00 ACDLA Members (by May 28)

\$350.00 after May 28

\$350.00 Non Members

\$Free President's Club Members

\$Free Lifetime Members

## CASE CONFERENCING ON CAPITAL CASES AT SUMMER SEMINAR

The ACDLA Death Penalty Assistance Committee will offer case conferencing on-site at the Summer Seminar and Annual Meeting for state and federal death penalty defense attorneys. If you are interested in participating in a case conference opportunity, please contact us no later than May 28.

*Pre-registration is essential if we are to be able to provide this service on an individual basis.*

An experienced death penalty litigator will be assigned to each person requesting this service. There will be no time constraints and members of the Death Penalty Assistance Committee will make every effort to fully answer all your questions so that you will leave with an effective plan to save your client's life.

■ **WHAT TO BRING:** Participants must bring their case files and all discovery provided to date.

■ **COST:** This service is provided free to all registered ACDLA Summer Seminar participants.

■ **WHO WILL HELP:** The lawyers sitting with you for case conferencing will be the best capital defense attorneys in Alabama.

### *Sign Me Up!* Deadline for Case Conferencing Registration – May 28

\_\_\_\_\_ Yes, I would like to schedule case conferencing during the Summer Seminar. I understand there is no extra charge for this service.

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

**Fax this form to:**

**Ann Cooper, ACDLA, 1-866-665-7522 or mail to:  
ACDLA, P.O. Box 1147, Montgomery, AL 36101**



## Membership Application

2006 New Member/Membership Renewal

**\$50 – New Lawyer**  
(member of the bar for one year or less)

**\$600 – President's Club**  
(includes free admission to Summer Seminar)

**\$135 – Regular**  
(member of the bar for more than one year)

**\$5,000 – Lifetime Membership**  
(\$4,500 lump sum or \$1,000/yr for 5 years; no more dues or registration fees for events!)

**Important Note: ACDLA is a 501(c)(6) non-profit organization. Approximately 20 percent of these dues ARE NOT tax deductible as business expenses because they are related to lobbying & political expenses.**

**Check membership category above. Complete this form and fax it to:**  
(334) 277-2927.

Or, you may print and mail this form, along with your check, to:  
ACDLA, P.O. Box 1147, Montgomery, AL 36101.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Declaration of Employment:** I am not employed in any way by a law enforcement agency, a District Attorney or as a full time judge.

Signature: \_\_\_\_\_

**Authorization to Communicate:** I give ACDLA permission to communicate with me via US mail or by electronic format (including email and facsimile) information regarding membership, CLE events and other information related to criminal defense work.

Signature: \_\_\_\_\_

**PAYMENT METHOD:** (Select One)

Check enclosed in the amount of \$ \_\_\_\_\_

(Payable to ACDLA)

MasterCard  VISA Card No.: \_\_\_\_\_

Name on Card: \_\_\_\_\_

Exp. Date: \_\_\_\_\_

Billing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Signature: \_\_\_\_\_

This membership will expire on December 31, 2006.



ACDLA  
P.O. Box 1147  
Montgomery, Alabama 36101



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## 2006 Summer Seminar

June 22-24, 2006

Pensacola Beach

Hilton Garden Inn

## Alabama Criminal Defense Lawyers Association 2005-2006 Board of Directors

*The following persons were elected to serve as officers and board members ACDLA at the 2005 Summer Seminar and Annual Meeting:*

### **Joseph P. Van Heest - President**

Law Office of Joseph P. Van Heest  
402 S. Decatur St.  
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### **Jim Roberts - Immediate Past President**

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334-247-5669 fax  
TideSteel@aol.com

### **Bruce Gardner - Next Immediate Past President**

Gardner Law Firm  
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bruce@gardnerlaw.org

### **Melinda Morgan Austin - President Elect**

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256-766-7690 fax  
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### **Bill Blanchard - Vice President**

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### **Richard Keith - Secretary**

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### **Kathryn King - Treasurer**

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256-734-0417 fax  
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### **District Vice Presidents:**

#### **Patrick Tuten - District I - VP**

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#### **Randy Brooks - District II VP**

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### **Don Colee - District II VP**

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### **John Beck - District IV VP**

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### **Paul Young - District V VP**

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### **Mike Upton - District VI VP**

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### **Public Defenders Representative:**

Carlos Williams  
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