

The Guardian

The Newsletter of the Alabama Criminal Defense Lawyers Association

April/May/June 2010

THE ALABAMA CRIMINAL DEFENSE LAWYERS ASSOCIATION

PRESENTS...

“Justice Must Be Won XVIII”

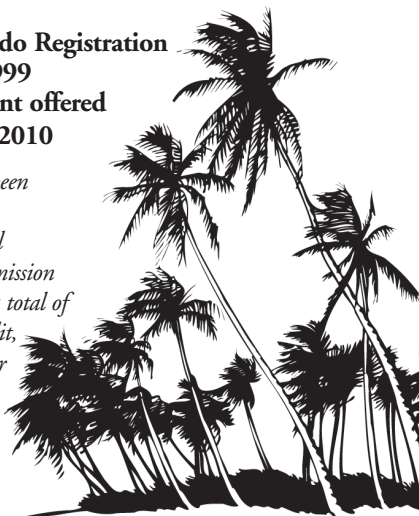
2010 SUMMER SEMINAR AND ANNUAL MEETING

June 17-19, 2010
Pensacola Hilton
Pensacola Beach, FL

Conference Registration
334-272-0064 or on-line at
www.acdla.org “Seminars”
Early Bird Discount by June 1, 2010

Hotel & Condo Registration
1-866-916-2999
Hotel Discount offered
until June 1, 2010

*This course has been
approved by the
Mandatory Legal
Education Commission
of Alabama for a total of
12.0 Hours' credit,
including 1 hour
of Ethics.*

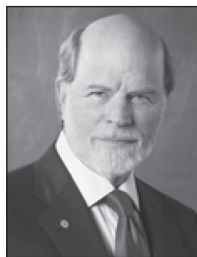


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Weiner to Keynote Summer Seminar

Each year ACDLA brings top criminal defense specialists to Pensacola to present at its annual meeting and summer seminar. This year is no exception. ACDLA is deeply honored to present renowned Miami criminal defense attorney, Jeffrey S. Weiner to keynote “Justice Must Be Won XVIII” at the Pensacola Hilton on Pensacola Beach, Florida.



Jeffrey S. Weiner
Weiner & Ratzan, PA
Miami, FL

Survey after survey of fellow attorneys has named Jeffrey S. Weiner among the “best” criminal lawyers, with a national and international reputation for providing quality representation. Mr. Weiner is listed in the most prestigious publications in which practicing attorney rate their peers. As a few examples, Mr. Weiner is listed in the *2010 Best Lawyers in America*™, in *Florida Trend Magazine's* “Legal Elite”™ (the top “1.8 percent of the 57,968 Florida Bar members who practice law in the state.”), *Super Lawyers Magazine*™ and Mr. Weiner has an AV rating from *Martindale-Hubbell* legal directory (the highest available rating), in which lawyers are rated for their skill and ethics.

Mr. Weiner is a former president of the National Association of Criminal Defense Lawyers and a former president of the Florida Criminal Defense Attorneys Association. He represents federal, state and international clients.

Since 1974, Jeffrey S. Weiner, has been a dynamic and leading advocate for the preservation and protection of constitutional rights – before, during and following an arrest, the filing of formal criminal charges by an indictment, an information, or a complaint. Known for being a “lawyer to be reckoned with,” you won’t want to miss a minute of Mr. Weiner’s inspiring keynote address on Friday, June 18.

In addition to the keynote, ACDLA is pleased to bring some of the state and nation’s brightest defenders to the Summer Seminar. Other speakers and topics include:

- Sex Offenses and Community Notification – Jeff & Melinda Morgan Austin, Florence, AL
- Case Law – Don Colee, Birmingham, AL
- High Profile Cases: Defending a Judge and a Politician – Glennon Threatt, Jr., Birmingham, AL and Jeff Deen, Mobile, AL
- Street Crimes and the Jury – Jonathan Rapping, Atlanta, GA
- Drug Crimes – John Bishop, Pleasant Grove, AL
- Investigating and Impeaching Witnesses – Kent Schaffer, Houston, TX
- Federal Gun Possession – Fred Tiemann, Mobile, AL
- Facebook & Social Networking Issues – Paul Young & Carmen Howell, Enterprise, AL
- Defending the Non-Citizen – Boyd Campbell, Montgomery, AL

Don’t hesitate – learn what works in Alabama from top criminal defenders. Register today and save! Complete details may be found in this issue of *The Guardian*.

President's Column

By Kathryn King, Attorney at Law, Cullman, AL



ACDLA President
Kathryn King

Dear Members:

I am informed that this is my last president's column for *The Guardian*. I cannot say that I am unhappy about this fact. Although I love communicating with you all, I always struggle for something to write. This has been a fantastic year for ACDLA. We have presented three great seminars so far, with a fourth shaping up to be spectacular. The upcoming Drug

Crimes/Drug Searches seminar to be held April 30, 2010 promises to be one of our more interesting seminars, with nationally known experts in the field coming to Huntsville to share their knowledge. The seminar is being held at the Westin Hotel in Huntsville's Bridge Street Shopping Complex, which includes several good restaurants, including one combined with a movie theater. By the time this issue of *The Guardian* is delivered to you, the seminar will have already occurred, and I am sure those who attended will be raving about how great it was.

Our next seminar will be the annual Summer Seminar at Pensacola Beach June 17 -19. This year our theme is "What Works in Alabama." We have many excellent speakers lined up to present several fascinating topics. This is also the time for our annual business meeting, where members will be asked to vote for officers for the upcoming year. There may be other items that need to be voted on as well, so I urge all of you to attend.

The legislative session has wound down for another year. Once again, the expungement bill failed to pass. Changes were made to it late in the session and its House sponsor chose not to support the Senate substitute bill, but to bring it back again next year in a better form. An Indigent Defense Commission (IDC) bill was introduced again this year, but failed to pass. Some of you will think this is a good thing and some of you may not. On another matter, ACDLA was instrumental in persuading the House Judiciary Committee not to advance a bill which would prohibit young people from receiving youthful offender status if their crime resulted in serious physical injury or death to the victim. Our concern was that this bill would

prevent young people from receiving youthful offender status if they were charged with criminally negligent homicide or vehicular homicide, which are crimes which do not require any intent to injure. Of course, much of the blame for the failure for many pieces of legislation to pass is the bingo debate.

We will be working again next year to push the passage of the expungement bill. It would help if everyone would spread the word about what this bill does. In its current form, it only authorizes expungement of criminal records where a person was found not guilty or where their case was dismissed for some reason. I believe that most of the public would feel that such people should be able to have those charges wiped from their records.

Our membership numbers have remained steady throughout the year, which I consider a failure on the part of the Board and the rest of our membership to get the word out about the benefits of belonging to this organization. We all need to do a better job of promoting ourselves. What we have to offer in terms of seminars, the listserv and our document library cannot be found in any other organization. Criminal Defense is the only area of law where we all share a common opponent, the State. With all of its resources, the State has a distinct advantage over us, and this organization is a great way to help level the playing field. Our members are always on hand to help other members with a difficult issue, to provide sample motions and briefs, to provide names of experts in various fields, and to keep each other updated on the latest court opinions. I want to urge every member to recruit at least one other member before the year is over. By doing so, we could double our organization's membership. The larger we become, the more we can offer and the more influence we will have over matters affecting our members and our clients.

In closing, I want to say what an honor it has been to serve this organization. Every week, I read an article in some news service which tells of some great victory by one of our members. I know that many of those victories were made possible by the assistance of other members of this organization. Keep up the good work and get involved with ACDLA!

Your President

Kathryn King
king6085@att.net

**The Guardian is published by the:
Alabama Criminal Defense
Lawyers Association**

PO Box 1147
Montgomery, AL 36101
(334) 272-0064

Editor: Ann Cooper

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

annscooper@acdla.org

ACDLA will also consider for publication articles which have appeared elsewhere.

ACDLA reserves the right to select and edit material for publication.

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Guardian Deadlines

March 15, 2010
June 15, 2010
September 15, 2010
December 15, 2010

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
annscooper@acdla.org

FROM MY PERSPECTIVE

By Ann S. Cooper, Executive Director

DRUG CRIMES SEMINAR

As of this writing nearly 100 criminal defense attorneys from around Alabama have registered to attend an ACDLA in Huntsville, "Drug Crimes, Drug Searches," Alabama's premiere drug crimes seminar for 2010. If you have not already made plans to attend, please get to Huntsville and take advantage of this opportunity to see and hear national drug crimes experts. The Westin Hotel situated at the Bridge Street annex will be the site for this event. The seminar has been approved for 6 CLEs, including 1 hour of Ethics. For complete details, go to www.acdla.org

2010 SESSION NOW OVER

The 2010 Regular Session of the Alabama Legislature has now adjourned *sine die*. Alabama lawmakers let election year politics block progress for ACDLA's expungement bill. Although we had both Senate and House versions, introduced by Sen. Smitherman and Rep. Chris England, respectively, the House version stalled out while the Senate version was substituted by Sen. Jabbo Waggoner in the last days of the session. The substitute bill left out many important provisions negotiated last year. Rep. England plans to refile the bill in 2011 and try again. Watch the ACDLA listserv for updates on the ACDLA legislative program.

2010 SUMMER SEMINAR – A REAL WEINER!

Top Miami criminal defense attorney, Jeffrey S. Weiner, will keynote the 2010 Summer Seminar and Annual Meeting, "Justice Must Be Won XVIII." Early bird discounts will drop June 1, 2010. Take advantage of a \$50 savings by registering early. For complete details look inside this issue of *The Guardian* or go to www.acdla.org and select "Seminars." Don't forget to book your room at the Pensacola Beach Hilton by June 1 too. Details on the hotel may also be found at the website.

AWARDS LUNCHEON – TO RECOGNIZE TOP DEFENDERS

Each year ACDLA recognizes outstanding criminal defense work by its members at the annual awards luncheon in Pensacola. This year Merit awards, President's Awards and the coveted Roderick Beddow award will be given to deserving members from around the state. Be sure to attend this important gathering in Pensacola.

ENHANCED GUARDIAN

The Guardian is taking on more and more contributions from member attorneys. If you would like to submit something for publication consideration, please submit to: ACDLA Publications Committee, P.O. Box 1147, Montgomery, AL 36101 or send by email to: annscooper@acdla.org and mark the article "For Consideration."

Summer is a time for Sun, Fun and CLEs. I look forward to seeing each of you in Pensacola!

Ann Cooper
annscooper@acdla.org

Alabama's Indigent Defense Crisis: Two Opposing Views

Alabama's indigent defense is in crisis. All sides agree on that. How to resolve the problems of a growing indigent defense budget and dwindling state revenue has created heated debate among the membership. Here are two opposing views. Neither view necessarily represents the opinion of the ACDLA Board of Directors.

INDIGENT DEFENSE IN ALABAMA – WHY WE NEED A STATE INDIGENT DEFENSE COMMISSION

An Editorial by William N. Clark, Attorney, Birmingham, AL

In 1976 after having practiced law for five years, I was asked by the President of the Alabama State Bar to Chair a committee to review indigent defense in Alabama. This seemed a rather daunting task for a relatively new lawyer, but there were outstanding lawyers appointed to the committee, and the committee worked zealously on the task. To assist in its work, the committee discovered the Spangenberg Group which was working through the auspices of the American Bar Association to assist states in evaluating and analyzing their indigent defense systems. Because of the Judicial Article which had been passed some years earlier, largely through the efforts of then Chief Justice Howell Heflin, each Circuit was supposed to have a county or circuit Indigent Defense Commission to oversee indigent defense. It is a creation of statute. The statute provides the make up of the Commission. The Commission's task was (is) to oversee indigent defense in that Circuit. The Commission has no authority to make a final decision, as to the type indigent system the Circuit will adopt, but makes recommendations to the presiding judge who then makes the decision after consultation with the other judges. One of the problems which existed at that time was that many counties had never established an indigent defense commission. While I have not done a recent survey, in the not too distant past, there were still many counties which did not have commissions and if they had been created did not function.

Mr. Spangenberg's analysis in comparison with other states demonstrated that our rates were quite low. He also recommended that Alabama should look carefully at some sort of statewide oversight of indigent defense. At that time, and today, there is no State coordination or review of the quality of indigent services, how they are provided, or how much is spent. For the most part, there is no oversight at the local level either. Another result of Spangenberg's study was that he recommended that public defender systems were more efficient and more effective in providing legal services in large urban areas than an appointed or contract counsel system. After approximately five years of work, the work of the committee, the Legislature did increase the rate for appointed counsel from \$10.00 to \$20.00 for out of court and \$20.00 to \$40.00 for in court. However, nothing else was done at that time.

Since that time at least four Chief Justice's of the Alabama Supreme Court have had task forces look into the indigent defense issue, and all have recommended some form of a State oversight committee or commission, the most recent being that of Chief Justice Cobb.

The genesis of the Indigent Defense Commission bill which has been presented to the Alabama Legislature over the past few years came from an Alabama State Bar Indigent Defense Symposium in February

of 2004. The purpose of the symposium was to review the status of indigent defense in Alabama. Speakers from Alabama included judges, defense counsel, legislators, and others including several out of state speakers who reviewed indigent defense reform in their respective states. At the conclusion of the meeting, it was the consensus that a state Indigent Defense Commission should be created. There was already in existence a draft of a bill which created a form of Indigent Defense Commission which had been recommended by the task force appointed by Justice Perry Hooper in 2000. The revised draft bill was finally completed but not in time to be introduced in the 2004 legislative session. Since that time both Chief Justice Nabers and Chief Justice Cobb have supported the Indigent Commission bill. During the past two sessions, the Alabama Criminal Defense Lawyers Board of Directors has cooperated with the Chief Justice in trying to get a bill which would be acceptable to all concerned, so far without success.

Why is an indigent defense commission necessary? The answer is twofold. First, to make every effort to ensure that quality legal services are provided to indigent defendants in Alabama so as to be true to the clarion call of Gideon's trumpet. Second, based upon the history of how indigent defense in Alabama has been administered over the years, it makes sense, would be more efficient, and would provide a means to monitor the quality of services being provided, and the economics of the system. Currently, there is no oversight of either one of those functions.

A few years ago over 26 states had some form of statewide oversight of indigent defense. In recent years reports of the Administrative Office of Courts show very substantial sums in the six figures being paid to some appointed counsel. Certainly in some instances, such total fees are justified, but reports from family members of some persons represented by appointed counsel, reflect that too often an appointed lawyer only sees the defendant in the courtroom. Other abuses have also been reported.

One of the major criticisms of the statewide Indigent Commission is that it takes away local control. However, while the last bill left intact the provision that the local indigent defense commission should be advisory only, it did provide for an increase in the opportunity to be heard when voting on the type indigent defense system a county might have by adding an increased number of members representing the counties. This addition was intended to be sure that the counties had fair representation on the commission when voting what type system shall be used in a particular county.

I am very much in favor of lawyers being fairly compensated for their services. However, it is time to bring some order to the system which will in turn increase the quality of services to indigent

defendants, and provide reasonable oversight of the economics of the system. I am afraid that if nothing is done, as costs continue to increase, the Legislature will drastically reduce funding for indigent defense just as it has done for such criminal justice agencies as the Department of Corrections and the Board of Pardons and Parole. •

Redden, Mills & Clark, LLP
940 The Financial Center, 505 20th Street North
Birmingham, AL 35203
(205) 322-0457 - Office, (205) 322-8481 - Fax
wnc@mclaw.com

JUST WHEN YOU THOUGHT IT WAS SAFE TO GO BACK INTO THE COURTHOUSE. . .

An Editorial by Michael Hanle, Attorney, Birmingham, AL

For some time now, we criminal defense attorneys have struggled with the heavy burden of representing indigent criminal defendants in this State. This is a career path that many of us have chosen over other more lucrative areas of practice because we believe in what we are doing. Some have chosen this path out of necessity, because it offers a means of making a living in these tough economic times. Regardless of the choice, the burden is wide reaching and often all-consuming of our time and energy. We are underpaid for our efforts and are frequently unappreciated by those in positions of power. We are limited in the funding we need to compete against the District Attorneys we face on a day to day basis. We often neglect our family and friends, our health, and our sanity. But yet we persevere. We do so because we believe in what we do.

Oftentimes, we are looked upon negatively by the public and the press for doing our job and doing it well. We have all heard “How can you represent that kind of person?” or “How can you represent a guilty person?”

During the past five years, we criminal defense attorneys have been subjected to a number of political attacks based solely on our representation of indigent criminal defendants.

First, the Attorney General said we weren't entitled to “overhead” expenses, so the comptroller cut those out of our vouchers. Following years of litigation and appeals, “overhead” expenses have been restored and those attorneys with claims have been paid in full.

Second, Chief Justice Drayton Neighbors concluded that the State spent too much money representing indigent criminal defendants, so he continued the process of creating an Indigent Defense Commission (IDC). Legislation has been introduced and reintroduced for the past five years to create the IDC that would restructure the way in which indigent criminal defense services are provided in the State. I will not go into the details of that legislation, but despite powerful support, those efforts have failed to date; and it appears this year's efforts will meet that same result.

Most recently, Chief Justice Cobb has repeatedly stated, and apparently believes, that she has the authority to create such a commission with or without the actions of the legislature. I do not know if she possesses that power, but I do know that the thought of the judiciary creating a statewide system of indigent criminal defense scares me. A system which would establish public defenders or contract counsel for most of the state scares me. A system that would take control of how indigent criminal defendants are represented away from local judges and place it in the hands of another bureaucratic machine sitting far away from the battle lines in Montgomery scares me. The impact of this newly created system on indigent criminal defendants and their attorneys is still uncertain.

Is it possible that the judiciary and/or the legislature could create something that will result in a better system of providing indigent criminal representation? Is it possible that the judiciary and/or legislature could produce a system that provides better quality representation than is currently being provided? I say, maybe, but not likely. And most likely, never without the input of the attorneys who do the work on a day to day basis.

There are two things that we can be certain about. One, the State of Alabama will finally gain control over the amount of money that is spent on indigent criminal defense. Indigent criminal defense is one of the few expenditures that the State of Alabama makes every year that is not contained in a budget, approved by the legislature and signed by the Governor. There is uncertainty in how much it is going to cost each year for indigent criminal defense. Each year, the Fair Trial Tax fund is used to pay for indigent criminal defense. And each year, the Fair Trial Tax fund runs out long before the last bill is paid and the General Fund is called upon to cover the difference. This is something that is at the root of the drive to change how indigent criminal defense services are rendered in this State. This is the real driving force behind those seeking to create the IDC, in my opinion.

The second thing that we can be certain about is this . . . some of you who are reading this will no longer be handling indigent criminal defense cases. This is a hard pill for some of us to swallow and creates great passion in some of you who oppose this change.

For all of the talk about change, the one thing that does not seem to get discussed is accountability. Accountability starts at the top, with the Judges who make appointments, select contract counsel and sign off on vouchers. Accountability starts with the attorneys who are accept the responsibility of peer review and are asked to review vouchers submitted by their brother and sister attorneys. Accountability is something that is lacking in our current system and has created a proportionate amount of the excess which has resulted in the accelerating cost of indigent defense. It is something that must be addressed before we can get to the root of the problem.

As soon as the interested parties in Montgomery and across the State can be honest about the real issues involving indigent criminal defense, the sooner we can sit down and start working on a system that will truly benefit the indigent criminal defendants that we passionately represent. I welcome the opportunity to discuss these matters with you, with the Judiciary, and with our elected representatives in the Legislature. •

1330 21st Way South, Suite 200, Birmingham, AL 35205
(205)930-9717, (205)933-0101 fax
hanlelaw@bellsouth.net

SUMMER SEMINAR SPEAKERS AND TOPICS

Hear some of the best criminal defenders practicing today address Alabama's hottest criminal topics:

On Sex Offenders and Community Notification

- **Jeffrey Brian Austin** graduated Cum Laude from the University of North Alabama in 1995 majoring in Political Science. He graduated from Mississippi College School of Law in 1998. He served as law clerk for Presiding Lauderdale County Circuit Court Judge N. Michael Suttle from 1998 to 2000. He is a current member of the law firm of Mitchell, Winborn, Austin and Miles. He is a member of the Lauderdale County Bar Association, National Association of Criminal Defense Lawyers, Alabama Trial Lawyers Association, and the Alabama Criminal Defense Lawyers Association. Areas of practice include criminal defense, workers' compensation, and personal injury.
- **Melinda Morgan Austin** graduated Magna Cum laude from the University of North Alabama in 1993, where she majored in Political Science, Sociology and Criminal Justice. She received her Juris Doctorate in 1996 from the University of Alabama School of Law. During law school she clerked for the law firm of Holt, Mussleman & Holt. She was admitted to practice in the State of Alabama in 1996, and in the U. S. District Court for the Middle and Northern Districts of Alabama. She served as law clerk to Judge N. Michael Suttle, Presiding Circuit Court Judge for the Eleventh Judicial Circuit. Melinda is a member of the law firm of Holt, Mussleman, Holt and Morgan where she devotes the majority of her practice to criminal defense work and domestic relations cases.

On Case Law

- Birmingham attorney **Donald L. Colee, Jr.** is a graduate of The Cumberland School of Law at Samford University. He was admitted to the Alabama State Bar in 1976. From 1976 to 1983, Don served as Deputy District Attorney of Jefferson County. From 1983 to the present, he has been in the private practice of law in Birmingham. He handles all types of cases from death penalty to misdemeanors, trials and appeals. Don is an active member of the Alabama Bar Association, ACDLA, the Birmingham Bar Association, the National Association of Criminal Defense Lawyers (NACDL), and has been a member of the Chalkville Campus Advisory Board for the Department of Youth Services since 1988, working with juveniles. He has served as a CLE lecturer at the Birmingham Bar Association, the Birmingham Police Academy, as well as the Greater Birmingham Criminal Defense Lawyers Association seminars.

On High Profile Cases: Defending a Judge and a Politician

- **T. Jefferson "Jeff" Deen, III** graduated from Cumberland School of Law in 1977. He is past president of the Alabama Criminal Defense Lawyers Association; selected in March 2007 by Birmingham Magazine as "one of the best criminal defense lawyers in Alabama; tried eight major felony cases in 2006 in the Circuit Court of Mobile County obtaining three "not guilty verdicts for rape 1st, sodomy 1st and murder along with two hung juries for murder (later reduced to manslaughter and time served) and attempted murder (later nolle prossed); represented the only defendant found "not guilty" in a fifteen defendant drug conspiracy trial in the USDC for the Southern District of Alabama in the Spring of 2006; and, garnered a "not guilty" verdict for Paul Hamrick, Alabama Gov. Don Siegelman's chief of staff, in the Scrusby/Siegelman trial during the Summer of 2006. In October of 2009, Jeff was co-counsel on the Mobile Judge Herman Thomas case. Judge Thomas was accused of sex abuse charges involving men who had appeared in his court and were found not guilty. The jury deliberated over three days in the trial. It returned seven not guilty verdicts covering sex abuse, sodomy and assault.

Fourteen other charges were dismissed by the judge after the jury reported it was deadlocked.

- **Glennon F. Threatt, Jr.** is a partner in the Birmingham law firm of Threatt and Blockton. He graduated from Howard University School of Law and was admitted to the Alabama Bar in April, 1999. He is an active member of the Alabama Criminal Defense Lawyers Association. Mr. Threatt most recently represented Birmingham Mayor Larry Langford who was convicted in October, 2009 of accepting bribes in exchange for funneling \$7.1 billion in bond business to a prominent investment banker.

On Ethics

- **Stephen Glynn** is a member at the firm Glynn, Fitzgerald & Albee, S.C. located in Milwaukee, Wisconsin. He practices 20 percent Criminal Defense and 80 percent Federal Law. He graduated at University of Wisconsin, J.D., cum laude, 1970 and received his B.S. in 1967 from that college. His biography includes: Articles Editor, Wisconsin Law Review, 1969-1970. Law Clerk to Hon. James E. Doyle, U.S. District Court, Western District of Wisconsin, 1970-1971. Lecturer: Criminal Law, University of Wisconsin Law School, 1984-1985, 1992, 1999, 2001; Trial Advocacy Institute, University of Virginia School of Law, 1987-1994. Member, Insanity Defense Committee, 1980-1981 and Preliminary Examinations Committee, 1981-1985, Wisconsin Judicial Council. Member: Wisconsin Attorney General's Advisory Committee on DNA; Special Committee on Genetic and Medical Information, Wisconsin Legislative Council; Wisconsin Criminal Justice Study Commission, 2006-. Author: "Indigent Misdemeanants' Right to Appointed Counsel," 1969 Wis. L. Rev. 297; "Criminal Law," in State Bar of Wisconsin Attorney Desk Reference; "Pretrial Motions" Chapter in Defense of Criminal Cases in Wisconsin; "Criminal Procedure," Wisconsin Criminal Defense Manual.

On Street Crimes and the Jury

- **Jonathan Rapping** teaches criminal law and criminal procedure at Atlanta's John Marshall Law School and is the Executive Director of the Southern Public Defender Training Center. Prior to joining the JMLS faculty Professor Rapping was the Chief of Training for the Orleans Public Defenders and has been instrumental in the rebuilding of that office in the wake of Hurricane Katrina. Before joining the Orleans Public Defenders, he was the first Training Director for the Georgia Public Defender Standards Council. In that capacity he developed the GPDSC Honors Program, designed to recruit young public defenders to offices throughout the state and to provide them with the training and support needed to help transform indigent defense representation in those jurisdictions. Prior to that, he was the Training Director for the Public Defender Service for the District of Columbia. Professor Rapping has designed training programs and supervised new lawyers for the past seven years. He had been a public defender for twelve years prior to joining the faculty at JMLS and continues to represent indigent clients in the South. He has tried a wide variety of cases, both adult and juvenile and has represented clients charged with offenses ranging from misdemeanors to capital murder. Professor Rapping was an adjunct professor of trial advocacy at Georgetown University and serves as a visiting professor with Harvard's Trial Advocacy Workshop. He has designed and participated in training programs for public defenders across the country. Professor Rapping received a J.D. from the George Washington University School of Law, a M.P.A. from the Woodrow Wilson School at Princeton University, and a B.A. from the University of Chicago. Professor Rapping was awarded a Soros Fellowship to design and implement the Southern Public Defender Training Center, a training center for public defender offices throughout the South. In recognition of his work in New Orleans, he was a co-recipient of the prestigious Lincoln Leadership Award, given by Kentucky's Department of Public Advocacy to honor leadership in national efforts to improve

indigent defense. Most recently, Professor Rapping was selected as one of Harvard Law School's Wasserstein Public Interest Fellows in recognition of his contribution to the public interest legal arena.

On Investigating and Impeaching Witnesses

• **Kent Schaffer** is a partner in the lawfirm of Bires and Schaffer located in Houston, Texas. He brings over 25 years of criminal law practice to his clients in Houston, throughout the state of Texas, and across the nation. He has confined his practice, primarily, to the trial of criminal cases since 1981. Mr. Schaffer has also appeared in the media and on numerous news programs to provide legal commentary and analysis. He has appeared on every local network, and numerous national programs, including: Current Affair, American Journal, Inside Edition, America's Most Wanted, Final Justice, City Under Siege, CNN's Burden of Proof, Cochran & Company, Rivera Live, Internight, Court TV, and has been a regular commentator on CNBC's Power Lunch. Some of Kent's honors and awards include: Texas Super Lawyer, 2008, ATLA Top 100 Trial Lawyers for Texas, 2007, Best Lawyers in America, 2003 - Present, Best Criminal Defense Lawyer in Houston, Houston Press, 1995, Best Lawyers Houston - H Magazine, and Who's Who in American Law. Published works include Marijuana, The Law and You: A Guide to Minimizing Legal Consequences, Quick American Archives, 1995.

On Federal Gun Possession

• **Fred W. Tiemann** is a Federal Public Defender for the Southern District of Alabama in Mobile. There he represents clients charged with narcotics, bank robbery, bank fraud, gun crimes, immigration, arson, mail and wire fraud, and a variety of other felony offenses. Since February, 2002, he has first-chaired nine jury trials, obtaining two acquittals, two hung juries, and one split verdict. He also represents clients on appeal and obtained two reversals. Mr. Tiemann has been a Federal Public Defender in the Northern and Southern Districts of Texas, in Minnesota and a Minnesota State Public Defender. He received his Juris Doctorate in 1996 from the University of Notre Dame. He graduated with a B.S. in Business Administration from the University of Minnesota in 1988. In addition to his law career, Mr. Tiemann is a Certified Public Accountant and is proficient in Spanish.

On Facebook and Social Networking Issues

• **Paul A. Young, Jr.** of Enterprise is a 1979 graduate of the University of Alabama School of Law. He has practiced law in Coffee County for most of this 30-year-career. Paul has received a number of awards and accolades for his achievements as a criminal defense attorney. In 1994, he received the State Bar's prestigious Clarence Darrow Award for unselfish service in the field of criminal law. In 2009, Paul received ACDLA's highest honor, the Roderick Beddow Award. He has also received two Presidents awards from ACDLA. Paul served as president of the Coffee County Bar Association from 1987 to 2003 where he has been recognized for his fifteen years of service as bar president. His solo practice specializes in criminal defense, domestic relations and personal injury. Annually Mr. Young serves as site coordinator for the ACDLA Four Corners Seminar in the Dothan/Enterprise area.

On Defending the Non-Citizen

• **Boyd Campbell** has practiced immigration and nationality law in Montgomery, Alabama, since 1988. He is an active member of the American Immigration Lawyers Association (AILA) and has served as an AILA mentor for many years. He is also active in the Alabama Bar's Volunteer Lawyers Program and was included in the 2010 edition of The Best Lawyers in America in the field of immigration law. His website, the Immigration Law Center on the Internet www.visaus.com which provides information about immigration and visas, has been active since 1994.

OTHER SPEAKERS INCLUDE

- **Carmen Howell**, an up and coming young attorney from Enterprise, AL
- **John Bishop**, a retired police officer and formerly with the DEA Task Force, Pleasant Grove, AL.

ALABAMA CRIMINAL DEFENSE LAWYERS ASSOCIATION 2010 SUMMER SEMINAR AND ANNUAL MEETING "JUSTICE MUST BE WON XVIII: WHAT WORKS IN ALABAMA"

JUNE 17-19, 2010

PENSACOLA HILTON, PENSACOLA BEACH, FL

THURSDAY, JUNE 17, 2010

- Noon – 1:00 p.m. Registration
 12:30 p.m. – 1:30 p.m. "Case Law Update" – *Don Colee, Attorney, Birmingham, AL*
 1:30 p.m. – 2:30 p.m. "Defending the Non-Citizen in Alabama" – *Boyd Campbell, Attorney, Montgomery, AL*
 2:30 p.m. – 2:45 p.m. **Break**
 2:45 p.m. – 4:15 p.m. "Street Crimes, Stress and Suggestion: Helping the Jury See What the Witness Did Not" – *Jonathan Rapping, Attorney, Atlanta, GA*
 4:15 p.m. – 5:15 p.m. "Meth Labs, Rolling Meth Labs and What Police Don't Tell You and You Need to Know" – *John Bishop, Former DEA Task Force Member, Pleasant Grove, AL*
 5:15 p.m. **Seminar Adjourns for the Day**

FRIDAY, JUNE 18, 2010

- 8:00 a.m. – 8:30 a.m. Registration
 8:30 a.m. – 9:30 a.m. "High Profile Cases: A Judge and a Politician" – A Panel Discussion with *Glennon Threatt, Attorney, Birmingham, AL, Jeff Deen, Attorney, Mobile, AL*
 9:30 a.m. – 11:00 a.m. "Ethically Dealing with Witnesses, Snitches. Family & Friends: Transactions With Persons Other Than Clients" – *Stephen Glynn, Attorney, Milwaukee, WI*
 11:00 a.m. – 11:15 a.m. **Break**
 11:15 a.m. – 12:15 p.m. "Federal Gun Possession" – *Fred Tiemann, Attorney, So. District Federal Defenders, Mobile, AL*
 12:15 a.m. – 1:45 p.m. **2010 Awards Luncheon** – Wear Your Hawaiian Shirt!
 1:45 p.m. – 2:00 p.m. **Break**
 2:00 p.m. – 3:00 p.m. **Keynote** – "A Lawyer to Be Reckoned With" *Jeffrey S. Weiner, Attorney, Miami, FL*
 3:00 p.m. – 3:45 p.m. **2010 ACDLA Annual Meeting**
 3:45 p.m. **Seminar Adjourns for the Day**
 3:45 p.m. ACDLA Board of Directors Meeting

SATURDAY, JUNE 19, 2010

- 8:15 a.m. – 9:15 a.m. **President's Breakfast**
 9:15 a.m. – 10:15 a.m. "The Art of Social Networking or How I Facebooked My Ass Into Jail" – *Paul Young & Carmen Howell, Attorneys, Enterprise, AL*
 10:15 a.m. – 10:30 a.m. **Break**
 10:30 a.m. – 11:30 a.m. "Investigation & Impeaching Rats, Snitches and Cooperating Witnesses" – *Kent Schaffer, Attorney, Houston, TX*
 11:30 a.m. – 12:30 p.m. "Sex Offenders and Community Notification: The New Frontier" – *Jeff and Melinda Morgan Austin, Attorneys, Florence, AL*
 12:30 p.m. **Seminar Concludes**
This course has been approved by the Mandatory Legal Education Commission of Alabama for a total of 12.0 Hours' credit, including 1 hour of Ethics.

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WILL DROP JUNE 1, 2010**

The Capital Defense Clinic at the University of Alabama School of Law: Creating Student/Lawyer Partnerships

By Talitha Powers Bailey, Capital Defense Clinic, Community Development Clinic, Tuscaloosa, AL

Clinics have been a part of law schools for many years now. However, like me, many practitioners may have made it through law school and through many years in the practice of law without ever coming across one. Live client clinics offer second and third year law students the opportunity to work with real clients on real cases. Unlike mock trial and moot court, a Clinic student will get the invaluable experience of the actual practice of law, under the supervision of a licensed attorney, before they are out there actually practicing law. Although the Clinical Program at the University of Alabama School of Law has been around for decades, it has recently been expanded and developed to include seven distinct Clinics: Capital Defense, Civil, Community Development, Criminal Defense, Domestic Violence, Elder Law and Mediation. Every day at the Law School, dozens of students are working on case theories, consulting with clients and even going to court. During and after their casework, the students consult with their supervising attorneys about best practices, professionalism, next steps in case development and their performance in the representation of their client. Each student at the Law School is guaranteed a Clinic experience if they choose to take advantage of the program because we believe that the real-world legal experiences provided by the Clinics are an invaluable step in training new lawyers for the actual practice of law.

The Capital Defense Clinic was started in 2003. The CDC enrolls eight second and third year law students for a full academic year. During the Fall Semester, students receive substantive instruction on the Capital Murder Statute and controlling case law, advanced criminal procedure, motion drafting, mitigation investigation and interviewing techniques as well as instruction on other aspects of the capital case that may pertain to a specific case it has accepted. The Clinic Director screens capital cases from all over the state, sometimes seeking out cases and sometimes receiving calls from practicing attorneys in need of assistance. The Clinic accepts cases at any stage in litigation and has, in fact, worked on cases pre-trial, at trial, on direct appeal, on Rule 32 and in Habeas Corpus. As they are learning the specialized skills associated with capital litigation, the students also

begin working on their cases. Generally in teams of two or three, the students will make contact with the attorneys handling a capital case. As any attorney who handles capital work knows, there is always more work to do than hours in the day. The CDC students have the time and resources to research and draft motions, sort through historical files, interview witnesses and family members, organize medical records and many other time consuming tasks. In several cases, CDC students have been able to establish relationships with defendants through frequent visits which have been invaluable when it came time to contemplate a plea. Of course, trust between a lawyer and client is critical when discussing a possible plea, especially one involving life without parole. The time that CDC students are able to invest in building a trust relationship with a defendant and his family serves both the client and the attorney during these delicate conversations.

In Fall 2009, Birmingham attorneys Rick Sandefer and Bill Myers secured an outright pre-trial dismissal of capital charges against their defendant with the assistance of CDC students. CDC students assisted in drafting motions, including one to suppress a seriously defective identification; in sifting through phone records to shore up an alibi; and in working with the defendant and his family to help them to be patient through what felt like a drawn out process. While learning practical skills and assisting in the favorable outcomes of real cases, CDC students also learn about the realities of the criminal justice system in Alabama. They meet real defendants and their families. They get a first hand look at the way prosecutors and defense attorneys work their cases. Perhaps most importantly for these future lawyers, they learn what it really means to practice law in the public interest: assisting the least sympathetic defendant, in the most atrocious offense, but still striving to see that he is afforded a zealous defense and that his story is heard. ●

For more information, contact:
Talitha Powers Bailey
Capital Defense Clinic
Community Development Clinic
tbailey@law.ua.edu
205-348-6845 (voice)
205-348-6851 (fax)

Youthful Offender Applications – What You Don't Know Might Hurt You

By William L. Pfeifer, Jr., Anniston, AL

Alabama's Youthful Offender Act is the source of a significant amount of confusion in the practice of criminal law. Because the Act itself does not provide many details on how it should be implemented, the appellate courts have fashioned the bulk of the rules governing youthful offender (YO) cases on an as-needed basis. This article is an attempt to clear up some of the confusion by collecting some of the diverse rules which have evolved over the years.

There are very few limitations on the judge. A trial judge has "almost absolute discretion" in granting or denying youthful offender status. *Morgan v. State*, 363 So.2d 1013, 1015 (Ala. Crim. App. 1978). The Youthful Offender Act "requires that the court conduct a factual investigation into the defendant's background." *Ware v. State*, 432 So.2d 555 (Ala. Crim. App. 1983). However, there is no set method for how the judge must consider a defendant's application. *Edwards v. State*, 317 So. 2d 512 (Ala. 1975). The judge does not have to state on the record why he or she is denying youthful offender status. *Garrett v. State*, 440 So. 2d 1151 (Ala. Crim. App. 1983). In fact, the judge does not even have to grant a formal hearing. *Morgan v. State*, 363 So. 2d 1013 (Ala. Crim. App. 1978). "Where it does not affirmatively appear that the trial court's decision was arbitrary or that it was made without any examination or investigation, there is no basis for overturning the trial court's decision." *Wilson v. State*, 563 So. 2d 11,12 (Ala. Crim. App. 1989).

YO cannot be denied based solely on the charge itself – for now. As referenced in the *Wilson* case, the judge's decision cannot appear to be arbitrary and it cannot appear that the decision was made without any examination or investigation. Otherwise, the only meaningful limitation on the judge's discretion in deciding whether to grant youthful offender status is that the judge cannot deny it "based solely on the charge in and of itself." *Ex parte Ferrell*, 591 So. 2d 444, 449 (Ala. 1991); see also *Watkins v. State*, 357 So. 2d 156 (Ala. Crim. App. 1977). However, there was a bill which died this session which would have changed this rule. If it had passed, it would have prohibited a judge from granting youthful offender treatment on any case involving serious injury or death.

The confidential investigation may not be as confidential as you think. When a defendant applies for youthful offender treatment, the Department of Pardons and Paroles conducts an investigation of the defendant and files a report with the judge. This investigation usually includes interviewing the youthful offender applicant. Alabama Code Section 15-19-5 provides that no statement, admission, or confession made by a defendant during this examination and investigation will be admissible against him at trial except in a sentencing hearing. However, this prohibition against use in a trial is subject to the "harmless error" rule according to the Alabama Court of Criminal Appeals. In *Coleman v. State*, 452 So. 2d 1355 (Ala. Crim. App. 1984), a defendant who was denied youthful offender status who later testified in her jury trial was cross-examined about statements she made to the probation officer during the youthful offender investigation. The Court of Criminal

Appeals ruled the improper questioning was harmless error because the defendant denied making the statements, and that the questions themselves were not so prejudicial as to be reversible error just from being asked (though she was convicted and sentenced to 25 years in prison).

A youthful offender adjudication may not be as confidential as you think. Youthful offender convictions are not open to the public and generally cannot be used against a witness to impeach his credibility. *Thomas v. State*, 445 So. 2d 992 (Ala. Crim. App. 1984) and Rule 609 of the Alabama Rules of Evidence. However, the defendant or a witness can be impeached with a youthful offender adjudication in a jury trial if he or she gets on the witness stand and claims to have never been in any trouble, or through offering other testimony that opens the door to evidence about the youthful offender adjudication. *Saunders v. State*, 10 So. 3d 53 (Ala. Crim. App. 2007). For some potentially helpful arguments, see the discussion about "opening the door" in *Ex parte Ray*, ___ So. 3d ___ (Ala. 2009), which held that the completeness doctrine did not justify admitting evidence of a defendant's prior juvenile conviction under the facts of that specific case.

A defendant cannot request youthful offender treatment without waiving the right to jury trial. The question of the constitutionality of requiring a defendant to waive the right to a jury trial in exchange for youthful offender treatment arises from time to time. The view of the courts is that participation in the youthful offender adjudication process is voluntary, and a defendant is not compelled to seek youthful offender status if he or she does not want it. The waiver of the right to a trial by jury as a condition of obtaining the benefits of youthful offender treatment is not unconstitutional and the youthful offender procedures do not violate due process. *Raines v. State*, 317 So. 2d 559 (Ala. 1975).

A judge cannot give pretrial diversion on a YO plea without the consent of the State. In the case of *Ex parte State* (State of Alabama vs. D.L.A.), 975 So. 2d 1014 (Ala. Crim. App. 2007), the trial judge granted youthful offender status to a defendant and withheld adjudication for a year. The judge stated that if the defendant stayed out of trouble for a year, he would dismiss the charge. After the year passed without any problems, the judge dismissed the charge. The State objected and filed a mandamus petition against the judge. The Court of Criminal Appeals held that while the judge's attempt to help the defendant was an "admiral goal," the judge did not have authority to create his own pretrial diversion program and was ordered to reinstate the youthful offender adjudication.

A judge cannot impose consecutive probation periods or consecutive sentences if the total of either exceeds three years. If a defendant is granted youthful offender status on more than

Continued on page 11

State of South Carolina vs. Grover Rye

By Lawden H. Yates, Attorney, Blountsville, AL

Grover Rye was convicted of Murder in the August 14, 2004 shooting death of Rob Odam, and was sentenced to serve thirty years in the penitentiary. After serving ten months in prison, Rye was given a new trial when the Supreme Court of South Carolina reversed the trial court's conviction due to an omission in charging the jury on "defense of home and habitation" under South Carolina law.

Rye assembled a new defense team consisting of Dennis Bolt, James Griffin and Lawden H. Yates. The retrial began October 2009 in Columbia, South Carolina.

For over thirty years Grover and his wife had owned and used the land he acquired from his family with no problems. Early on, he and his wife moved an older house onto the property and raised their children at that location, just outside Columbia, South Carolina, in Richland county. When his young daughter brought home an abandoned kitten, the practice of accepting and raising pet cats at that location was started. Even after the Ryes were able to buy a home in town, the cats were still kept on the rural farm and properly cared for on a daily basis. At the time of the problems which led up to the shooting of Odam, there were numerous cats at the home place, some over twenty years old, and all had names and were cared for everyday. Although the Ryes would occasionally spend weekends and holidays at the home place, they also stored equipment and supplies for Grover's heating and air conditioning business there as well.

Grover, the son of a career deputy sheriff, grew up on Historic Goodwill Plantation nearby and was instilled with a strong sense of preservation and conservation of land and animals. He enjoyed a peaceful existence, and in the community earned a reputation as a good man who got along with everyone.

Several months before the shooting, a new tenant moved onto the property next to the Rye's farm, and things changed. On more than four occasions, Grover found several of his cats shot and killed on his property. He also found that his house and shed had been burglarized. Expensive equipment had been destroyed, and the house and an old car had been shot up. Grover could see three sets of tracks on his property, and found spent cartridges of three different calibers. Clearly this indicated there three people involved. Each time Grover dutifully called 911 and reported what happened, pointed out the evidence for the responding deputies and told them the perpetrators probably came from next door. The sheriff's deputies never followed up on anything until the day of the shooting.

August 14, 2004, Grover, after installing an air conditioner for an elderly relative, returned to his property. He discovered more cats had been shot that day. He drove a short distance to his cousin's house and once again reported the offense to the Sheriff's Office. Since Grover did not have a cell phone, he told the 911 dispatcher he would return to his property and wait in his truck at the end of his driveway since the location was somewhat difficult to find. While he is waiting he heard more shots fired on his property. Grover got his deer rifle (.30 caliber M-1 carbine) out of his truck and ran to his house. He intended to hold the trespassers until law enforcement arrives. At the gate he hears three more shots and felt the "wind" from the last shot. He then realized where the shots are coming from, because he sees a man with a Bushmaster .223 caliber AR

15 rifle at the corner of his shed, approximately 40-50 feet away. In a confrontation seconds later, Grover fired four times when the armed intruder refused to put down his weapon and pointed the barrel at Grover. All four shots passed completely through the body. All from left side to right side. All, mostly horizontal with the body in the upright position.

One of the wounds was particularly telling, because it was through the upper part of the left arm then into the chest in a way that would only be consistent with the deceased's arm raised as in pointing a rifle at Rye. After the shooting, Grover ran to this truck, drove back to his cousin's house and called 911 again, told what happened, and asked for help, then returned to the scene.

Rye told the authorities he fired in self-defense after first being shot at and then having the rifle pointed at him even when he yelled to the deceased to put down his gun. However, Rye was almost immediately designated a "suspect", and charged with murder. This was in spite of the fact Rye was on his own property, cooperated fully with authorities, and was in fact waiting for deputies to arrive when the shooting occurred. When it was learned that the deceased was an off-duty deputy from another county, the local media portrayed the deceased as a nice looking, young, married man, who had served his country in the military and was now a dedicated law enforcement officer. Fortunately at the retrial, the defense was able to help Rye in a number of ways to prove his innocence.

The State's star witness, Mason Mitchell, testified and demonstrated at trial that Odam was on the ground when shot. Further, that Rye stood over Odam and fired vertically downward after Odam had surrendered his gun. None of the four bullets were recovered from beneath the body. The investigating officers admitted they searched for bullets, but finding none, issued no report.

The officers also discounted a bullet mark on a tree, a bullet skid mark on a metal tank and even spent cartridges matched to Odam's rifle, all of which were consistent with what Rye said from the beginning. These findings were directly in contradiction to Mitchell's account. At a point in Mitchell's testimony on cross examination he actually said "I lied again". The jury found Grover Rye "Not Guilty".

This case was featured on TRU TV "IN SESSION" (formerly COURT TV), six hours per day, January 11, 2010 through January 15, 2010. It is available through their website and is enlightening. The program has all the relevant testimony, openings, closings, interviews with attorneys, witnesses and even jury members.

It is rare to have jury member feedback. In this case, the jurors were not so much concerned with "self-defense" but instead used "defending one's property" as a basis to reach their conclusion. This is even more amazing knowing that the jury initially was divided on the issue of guilt.

Rye believes he would have never been charged had Odam not been a Deputy Sheriff. Especially since Odam, Mitchell and a third accomplice were guilty of Burglary, Discharging a Firearm into an Unoccupied Dwelling and a Vehicle,

Criminal Mischief, Animal Cruelty, Trespass and other offenses. It was only on the day beginning the retrial of this case that Mitchell and the third accomplice plead guilty to Trespass and Animal Cruelty.

Alabama does not have "defense of home and habitation" in Code provisions for use of deadly force. ●

lawdeny@otelco.net

For Recidivists the Trial Court Can Sentence Under the Habitual Offender Act or the Voluntary Sentencing Standards under 12-25-35 (c) and 12-25-36 (3)

By: James Edmond Mays, Attorney, Decatur, Alabama

The appellant was charged with sale of cocaine. At sentencing the state provided proof of three prior felony convictions and that the sale involved two enhancements, within three miles of a school and within three miles of a housing project. The state, as per its procedure in every county in Alabama, then filed a motion to treat the defendant as an Habitual Offender.

The trial judge denied the state's motion and sentenced the defendant to 80 months in prison pursuant to the voluntary sentencing standards. The state filed mandamus stating that (1) their motion to treat the defendant as an habitual offender should have been granted and (2) that the defendant's sentence should have been a minimum of (30) years under the Habitual Offender Act.

Mandamus was denied indicating that the trial court had acted within the perimeters of the state law.

The court relied primarily on *State v. Jones* 13 So.3d 915 (2008). See *State v. Crittenden* 17 So.3d 253, 259 (2009):

The implication of the Supreme Court's decision in *Jones* is that the Act takes precedence over other mandatory sentencing statutes if a trial judge elects to sentence a defendant under the Act. Had application of the HFOA or the drug-enhancement provisions been mandatory and jurisdictional, as the State asserts, the Supreme Court would not have affirmed the circuit court's sentence in *Jones* imposed pursuant to the voluntary sentencing standards.

...Based on the plain language of the Act, the Alabama Sentencing Commission's interpretation of the Act, and the Supreme Court's opinion in *Jones*, we conclude that the circuit court acted within the discretion electing to follow the voluntary sentencing guideline and not the HFOA. The Act gives the trial judge discretion to either sentence a defendant pursuant to the voluntary sentencing standards or pursuant to the HFOA. This is consistent with the principals of sentencing adopted by the Alabama Supreme Court in Rule 26.8 AL R. Crim. P.

Thus, if the trial court is determining the appropriate sentence for a defendant, as opposed to a plea bargain entered into, the judge may use the HOFA or 1975 Code of Alabama 12-25-35 (c) and 12-25-36 (3) whichever the court deems appropriate to the offender. Generally the voluntary guidelines are less. These guidelines lack the enhancements for (1) sales within three miles of a school and (2) sales within three miles of a housing project.

1975 Code of Alabama 12-25-36 has two provisions that must be taken into account and explained to the client. First, 12-25-36 (1) states that sentences under the act "shall not be subject to any other provisions of law concerning duration of sentence." Second, "The minimum term of sentence shall be consistent with the sentence range recommended in the voluntary truth-in-sentencing standards for the worksheet score of an offender. No offender sentenced to incarceration may be released from incarceration before the expiration date of the minimum term of sentence." •

Youthful Offender Applications – What You Don't Know Might Hurt You

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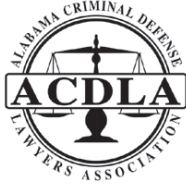
one pending charge, the judge cannot run the sentences consecutively if the result would be a sentence exceeding the three year maximum for a youthful offender adjudication for an underlying felony charge. As the Court of Criminal Appeals stated in *Hastings v. State*, 549 So. 2d 115 (Ala. Crim. App. 1988), "[i]f the trial court was of the belief that appellant required incarceration for a period longer than three years, youthful offender status should not have been granted." Consecutive sentences totaling more than three years are not permitted under the Youthful Offender Act. *DY v. State*, 841 So. 2d 304 (Ala. Crim. App. 2002)

Failure to object to the denial of youthful offender status waives the issue on appeal. It is not enough to request youthful offender treatment for a defendant, nor is it sufficient to present a brilliant legal and factual argument to the trial court supporting the request. If the judge denies the application, the attorney must make an objection to the denial of youthful offender status or the issue is not preserved for appeal. *Ford v. State*, 645 So. 2d 317 (Ala. Crim. App. 1994). When making the oral objection, the attorney should make sure that the court reporter is still taking

notes to ensure that the objection appears in the court record. It is also wise to follow up the oral objection with a written objection as well, to remove any possible doubt as to whether an objection was raised to the denial of youthful offender treatment. Finally, if the defendant decides to enter a guilty plea, the reservation of the right to appeal the denial of youthful offender status should be put on the record during the plea proceeding before reaching the point at which the defendant actually pleads guilty. Otherwise, the right to appeal the issue may still be lost. *Ex parte LaPointe*, 926 So. 2d 1055 (Ala. 2005)

Conclusion. Adult prosecutions and youthful offender adjudications do not necessarily follow the same rules and procedures. Always review the law as it applies to youthful offenders before assuming that a YO case will work the same as a case involving an adult defendant. •

William L. Pfeifer, Jr., is a trial lawyer and appellate attorney now focusing his practice on appellate law. Visit him on the web at www.WilliamPfeifer.com or contact him by email at wpfeifer@gmail.com



ACDLA
P.O. Box 1147
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Kathryn King
409 2nd Ave. SW
Cullman, AL 35055
(256) 734-0400
(256) 734-0417 fax
kaking@hiwaay.net

Immediate Past President

Richard Keith
22 Scott Street
Montgomery, AL 36104
(334) 264-6776
(334) 265-5362 fax
rkk@rkeithlaw.com

Next Past President

Bill Blanchard
505 So. Perry St.
Montgomery, AL 36104
(334) 269-9691
(334) 263-4766 fax
bill@blanchardlaw.com

President-Elect

Don Colee
604 38th St. South
Birmingham, AL 35222
(205) 592-4332
(205) 591-6765 fax
dcolee@bham.rr.com

Vice President

Patrick Tuten
223 East Side Square
Huntsville, AL 35801
(256) 536-6881
(256) 536-2501 fax
ptuten@tutenlaw.com

Secretary

Jeff Duffey
600 So. McDonough St.
Montgomery, AL 36104
(334) 834-4100
(334) 834-4101 fax
jcduffey@aol.com

Treasurer

Amber Ladner
2205 Morris Ave.
Birmingham, AL 35202
(205) 251-6666
(205) 323-3240 fax
amberlynnladner@hotmail.com

DISTRICT VICE PRESIDENTS

District I

Linda Coats
614 Stevens Ave.
Huntsville, AL 35801
(256) 539-5584
(256) 539-7802 fax
lindacoats@comcast.net

Brian M. White

P.O. Box 2538
Decatur, AL 35602
(256) 355-1100
(256) 355-0025 fax
bmwlaw@whiteandoakes.com

District II

Dani Bone
P.O. Box 1278
Gadsden, AL 35902
(256) 547-1005
(256) 546-4183 fax
dv_bone@bellsouth.net

Bill Broome

P.O. Box 1952
Anniston, AL 36202
(256) 238-8744
(256) 238-8746 fax
BroomeNotGuilty@aol.com

Michael Hanle

1330 21st Way South Suite 200
Birmingham, AL 35205
(205)930-9717
(205)933-0101 fax
hanlelaw@bellsouth.net

District III

Jeremy Armstrong
P.O. Box 3409
Phenix City, AL 36868
(334) 291-0410
(334) 291-0411 fax
jarmstrong@armstrongandgray.com

Mike Winter

300 Water St. #300-A
Montgomery, AL 36104
(334) 263-5787
mikewinter@winterlegal.net

District IV

Ashley Cameron
155 Dauphin Street
Mobile, AL 36602
(251)432-8432
(251)432-8464 fax
aec@ashleycameronlaw.com

Michel Nicrosi

P.O. Box 46
Mobile, AL 36601
(251) 432-1414
(251) 433-4106 fax
mnicrosi@gmail.com

District V

Paul Young
P.O. Drawer 311368
Enterprise, AL 36331-1368
(334) 347-0843
(334) 347-8275 fax
paulyoung@entercomp.com

District VI

Hays Webb
P.O. Box 21239
Tuscaloosa, AL 35402
(205) 247-5011
(205) 247-5669 fax
hays@turnerwebbroberts.com

PUBLIC DEFENDERS REPRESENTATIVE

Allison Taylor
Tuscaloosa County Public
Defenders Office
714 Greensboro Avenue Suite 519
Tuscaloosa, AL 35401
(205) 345-8200
(205) 345-9933 fax
aataylor@samford.edu

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