

The Guardian

The Newsletter of the Alabama Criminal Defense Lawyers Association

November/December 2004

Bright to Keynote ACDLA Death Penalty Conference

Stephen B. Bright, Director of the Southern Center for Human Rights (SCHR) in Atlanta, Georgia will keynote ACDLA's Ninth Annual Death Penalty Seminar, "Loosening



Stephen B. Bright

the Death Belt" in January. Mr. Bright brings with him a wealth of knowledge in defending capital cases and has visited and taught at previous ACDLA seminars. We are very honored to have him back again.

In addition to being director of the SCHR, Mr. Bright teaches courses on the death penalty and criminal law at the Yale and Harvard law schools. He has represented persons facing the death penalty at trial, on appeals and in post-conviction proceedings since 1979. He argued

Amadeo v. Zant before the U.S. Supreme Court in 1988, in which the death sentence was set aside because of racial discrimination.

He has testified before committees of both the U.S. Senate and House of Representatives and committees of the legislatures of Connecticut, Georgia and Texas. He served on an American Bar Association Task Force that studied capital punishment issues and made recommendations, ultimately adopted by the American Bar Association with minor modification, to the U.S. Congress about how to improve the fairness of the process by which people are sentenced to death.

He has taught courses on capital punishment, criminal procedure, and prisoner's rights at the law schools of Yale, Harvard, Emory, Georgetown, Northeastern, and Florida State universities, and a course on international human rights law and capital punishment at the Institute on World Legal Problems in Innsbruck, Austria conducted by St. Mary's University School of Law.

Don't miss this opportunity to hear Stephen Bright along with other top criminal defense lawyers including Professor Penny J. White, John E. Mays, Andrea Lyon, Al Pennington, Michael Mears, Bill Blanchard, Bill Massey, Bruce Gardner, John Mauldin, Bill Nettles and Chris Adams to name a few. The seminar will be January 28 and 29, 2005 in Birmingham, Alabama at the Embassy Suites Hotel. Twelve (12) CLEs have been approved for this event

by the Mandatory Continuing Legal Education Commission of Alabama.

Registration and agenda details are included in this issue. Also, don't forget to make your hotel reservations at Embassy Suites Hotel by December 28. Ask for the DP Rate of \$129 single or double. Call 1-205-879-7400 for room reservations.

SCHOLARSHIPS ARE AVAILABLE!

The American Bar Association Death Penalty Representation Project has announced scholarships for the "Loosening the Death Belt" seminar. You do not have to be a member of the ABA in order to qualify. Application must be made in advance of the event by contacting Becky Coffee or Jessica Skornicka at (202)662-1738 or by emailing: coffeer@staff.abanet.org or skornickaj@staff.abanet.org

Four Corners Seminars - Six Locations!

DECEMBER 3, 2004

Anniston - Calhoun County Courthouse

Florence - Lauderdale County Courthouse

Mobile - Mobile Governmental Complex, Ceremonial Courtroom

DECEMBER 10, 2004

Dothan - Ramada Inn on the Circle

Montgomery - Alabama State Bar, Board Room

Tuscaloosa - County Courthouse

See page 7 for details!

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President's Column

By Jim Roberts, Tuscaloosa, AL



*ACDLA President
Jim Roberts*

The 2005 Membership Campaign is well underway. Our Membership Committee has put together an excellent campaign and I believe it will be our most successful campaign to date. Over the past couple of years, our Association has set membership records each year. However, we recently requested statistics from the Administrative Office of Courts on the number of lawyers receiving payments for representing indigent defendants and found that our membership reflects

only a small percentage of lawyers practicing criminal defense in our state.

There are roughly 2500 lawyers practicing criminal defense in Alabama, yet ACDLA currently has approximately 550 members. That means that only twenty-two percent of those practicing criminal law in Alabama are members of the only organization dedicated to serving criminal defense lawyers and improving the quality of criminal defense in our state. By simply increasing that percentage to forty percent, we can reach 1000 members.

Studies have shown that the most effective way to gain new members in an association such as ours is through direct contact. Therefore, the Membership Committee is setting out to emphasize direct contact in this campaign. The easiest, and most effective way to make direct contact is for our current members to merely approach those lawyers in their areas who practice criminal defense and ask them to join ACDLA. Everyone knows lawyers in their counties or districts who are not members of ACDLA. Just approach those lawyers and ask them to join. Explain to them the numerous benefits of membership in ACDLA.

What are those benefits? The most concrete benefit is the ACDLA Listserv. As each of you know, the ability to access the experience and legal knowledge of hundreds of seasoned criminal defense lawyers in a matter of moments cannot be undervalued. If you have ever had a question answered on the Listserv, then you should explain that value of that to your friends who are not members of our association.

Membership in ACDLA also offers great training in criminal defense. We offer three seminars per year. Our members get discounted rates to the preeminent Capital Murder/Death Penalty seminar in the South. The Loosening the Death Belt seminar continues to be the best of its kind. Our summer seminar presents the opportunity, at discounted rates, for members to earn all

twelve required CLE hours at one time. For those of us who wait to the last minute to comply with the CLE requirements, ACDLA offers its members four free hours of CLE each December through the Four Corners seminars. This seminar is specifically designed to give our members the opportunity to complete their CLE requirement in the most convenient way. Free and nearby. This year, the Four Corners seminars will be held at six locations around the state.

Tell your friends that our members also have access to the members-only section of our web site which provides forms and briefs compiled by experienced lawyers from across our state. Additionally, our membership directory at the ACDLA web site gives prospective clients an easy way to find out who practices criminal law in their hometown and how to reach that lawyer. We also provide a mini-web page for those members who would like more information about themselves and their practice to be available to the public through our web site.

ACDLA is also the only organization that provides a statewide presence on issues affecting criminal defense. Twice in recent years indigent defense funding has been under attack and each time, ACDLA has successfully defended indigent defense funding. We are increasing our legislative presence and continue to be a statewide voice for all criminal defense lawyers.

These are only a few of the reasons our friends should join our organization. But with an increase in membership, the Association's ability to provide services will likewise increase. The Budget and Finance Committee recently met to review our current finances and to develop a long range plan for ACDLA. With a total membership of 1000, ACDLA would be in a position to hire a lobbyist. A lobbyist would make our legislative efforts more efficient and more effective. We would also be in a position to affect positive legislation such as mandatory recording of custodial interrogations, expungement, increased indigent defense funding and a myriad of death penalty issues.

Each of us has a role to play in this membership campaign. Persuade your fellow criminal defense lawyers who have not joined ACDLA to do so now. Executive Director Ann Cooper is always available to forward membership applications to aid you in this endeavor. Also, anyone can join the association through the web site. Members from each ACDLA District will soon be sending letters to these same people asking them to join our association as part of this campaign. However, we will be much more effective if each of you follow up those letters with a personal invitation.

*You can reach Jim Roberts, ACDLA President at:
TideSteel@aol.com*

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

annscooper@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

March 15, 2004
May 15, 2004
July 15, 2004
September 15, 2004
November 15, 2004

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@charter.net

FROM MY PERSPECTIVE

By Ann S. Cooper, Executive Director

PLEASE GET INVOLVED

The 2005 Regular Session of the Alabama Legislature will get underway soon. There will be many issues of concern introduced in this session. In order to have an impact on these issues, we must build a contact network. ACDLA Legislative Chairman Bill Blanchard has designed a questionnaire to help us get started.

Please take a moment now to get involved and complete the "Membership Questionnaire" found in this issue of *The Guardian*. When you have finished, simply fax it to Bill at the number on the survey form or put it into the mail at the address on the form. We need to stand united and build our contact team now so that we can be prepared to have our voice heard at the Statehouse in 2005.

MORE TRAINING OPPORTUNITIES – SCHOLARSHIPS AVAILABLE!

"Loosening the Death Belt IX," ACDLA's 9th Annual Death Penalty Seminar, will be held January 28 & 29, 2005 in Birmingham at the Embassy Suites Hotel. If you do capital case-work, you can't afford to miss this unique training opportunity. Some of the country's top criminal defense lawyers will present key information that would save your client's life.

Agenda details and registration forms are found in this issue of *The Guardian*. Scholarships are being offered by the American Bar Association Death Penalty Representation Project and you do not have to be a member of the ABA to qualify. You must simply apply for the scholarship in advance of the seminar. For scholarship details, please see the seminar article or check the self-mailer brochure that went out to all members in recent days. You may also go on-line at www.acdla.org and click on "seminars" for an application form and more info.

The Embassy Suites Hotel room block will be dropped on 12/28/04. Ask for the DP rate of \$129 single or double. Call for rooms: 1-205-879-7400

DUES STATEMENTS – 2005 MEMBERSHIPS

2005 dues notices have now been mailed to all ACDLA members. Please remember, your membership expires December 31, 2004, unless you have renewed in recent weeks or you are a lifetime member. If you have lost your renewal form you may go on-line at www.acdla.org and click on "about ACDLA" for another form.

We hope you will make every effort to get involved in our upcoming events and stay a part of this growing organization. Your membership and involvement is important.

Also we remind you that the listserv membership is an important tool that is included in your dues. We ask that you get your membership renewed as soon as possible so that your listserv membership won't be affected in any way. All expired memberships will be removed from the listserv by January 31, 2005. Please don't let your membership expire.

HAVE QUESTIONS?

For questions regarding all ACDLA programs and events, please contact me anytime at: annscooper@bellsouth.net and please note this is my new email address. You may also reach me by phone at 334/272-0064.

I look forward to seeing you all in Birmingham!
Ann Cooper
annscooper@bellsouth.net

Criminal Justice: Taking the Fight to Another Arena

By William R. Blanchard, ACDLA Legislative Chairman

First, a personal observation: a couple of years ago when I was appointed to chair the ACDLA Legislative Committee, I was somewhat underwhelmed. I thought of the job as a post that generally went to a lawyer in Montgomery because "that's where the Legislature meets". The goals, processes, and functioning of the committee were very vague. Legislation, it seemed, was not an ACDLA priority (as opposed to publications, seminars, and *amicus* work, for instance).

I am happy and excited to now report that this is changing, and that our organization, through its current president, Jim Roberts, has announced the goal of making ACDLA a presence in the Alabama Legislature, thereby giving our members a voice on many vital criminal justice issues that has been lacking or non-existent in the past.

We all know that the decisions made in our appellate court system can have far ranging impact on our clients and on our practices. Though we seldom stop to think about it, the actions of the Legislature in enacting or amending laws can and often does have an even greater direct impact. Perhaps we only rarely think of it because we feel there really is not much we can do. We believe that the Legislators themselves will rebuff or ignore us because we practice criminal defense. Surely nothing we advocate will help them get that coveted "tough on crime" label! We don't know how to "practice" before the Legislature. Who are the players? How do you get a bill introduced? How do you get it passed? How do you "kill" a bad bill? We haven't yet stopped to realize that the pendulum has begun to swing back the other way because of the public's dawning recognition that our nation's prisons are bursting at the seams with non-violent offenders and minor drug offenders, which is costing enough to run a third-world country in taxes. More than 100 people have now been exonerated and freed from death row. The list of recent news stories highlighting flaws in the justice system goes on, and includes horror stories of incredibly harsh minimum mandatory sentences handed down pursuant to the Federal Sentencing Guidelines. Because this type of information has begun to filter into the public consciousness, criminal justice issues of the type we might like to foster are not as "radioactive" for the typical Legislator as they once were. For example, some states have had success getting their lawmakers to support laws requiring the mandatory recording of interrogations by convincing the lawmakers (and even law enforcement groups) of a simple truth: that recording interrogations promotes good police work, tends to prevent wrongful convictions, and is not particularly burdensome or expensive.

The ACDLA, through our affiliation with the National Association of Criminal Defense Lawyers (NACDL) has a powerful ally in our efforts to take the criminal justice fight to this legislative arena where we have so seldom fought before. Last summer, John Robbins of Birmingham and I attended a meeting of NACDL's state legislative network in San Francisco. We learned that NACDL and many other groups around the country (the Justice Policy Institute comes immediately to mind) are multiplying their legislative strength

by meeting and cooperating with state affiliates such as ACDLA in order to take advantage of the developing favorable climate for consideration of "fairness" issues. The overall goal is not only to defeat poorly thought-out and counter-productive legislation, but to introduce at the state level positive legislative initiatives which can have an impact on drug policy, the death penalty, defense of indigents and a host of other issues. Our organization, our clients, and I believe, the citizens of our state stand to benefit in the long-run if we join in this effort.

That is why I have included with this issue a short survey, which I sincerely hope that each and every ACDLA member will promptly complete and return. The results will be compiled into a database which will become an invaluable tool in building an effective legislative program for ACDLA. When the database is complete, we will know with the push of a button which of our members reside in the district of (and may personally know) a specific legislator. We will be able to quickly identify members who are willing to assist by reviewing bills which have been introduced and are willing to help out in other ways when the Legislature is in session. I hope that every member will feel the call to become involved in some way toward helping the ACDLA to become a known and respected voice of reason in the halls of our State House. When we are successful in defeating a bad bill or in passing legislation improving the system of justice, your involvement and efforts will be a justifiable source of great pride for you personally, and for our entire organization.

Please take the time right now to fill out the survey and return it without delay. It should only take about five minutes of your time, including the time needed to mail or fax it to my office.

I began this article with a personal observation. I'd like to end it with a confession. When I began my work with the Legislative Committee I quickly realized that *not only did I not personally know my district's legislators, I wasn't sure that I even knew their names.* How embarrassing. That problem has now been remedied, I assure you, but if you start to fill out the survey and suddenly realize that the names of your State Representative and/or State Senator are eluding you, and you don't want to experience the angst that might follow asking your employer, partner, wife, husband, etc., then, as I have heard said many times lately "help is on the way". Just go to <http://www.legislature.state.al.us/misc/zipsearch.html> and put in your nine-digit zip code to learn the names of your legislators. Oh, by the way, in case you don't know your nine-digit zip code (I didn't) then you can go to <http://www.zipcode.com> and choose the "USPS-ZIP+4 Code Lookup" link.

Please watch this space and your ACDLA list serve in the coming months for more information of interest with regard to ways you can make your voice heard by those who make the laws in the Alabama State House.

FOUR CORNERS SEMINARS – *Headed Your Way!*

Presented by
Alabama Criminal Defense Lawyers Association

DECEMBER 3, 2004

ANNISTON
Calhoun County Courthouse
FLORENCE
Lauderdale County Courthouse

MOBILE
Mobile Governmental Complex,
Ceremonial Courtroom

DECEMBER 10, 2004

DOTHAN
Ramada Inn on the Circle
MONTGOMERY
Alabama State Bar, Board Room
TUSCALOOSA
County Courthouse

Today more than ever, criminal defense lawyers must focus on developing skills that win cases. Join fellow ACDLA members at the annual Four Corners Seminar closest to you for the latest insight into defending some of today's most common case scenarios:

- "Crawford v. Washington"
- "The Ethics of Criminal Defense"
- "Discovery Issues/404(b) Brady"
- "Getting Funds and Getting Paid"

Registration is advised for these events. Handout materials are limited.

Four Corners is free to ACDLA members and registration is \$125 for all others. OR...JOIN/RENEW YOUR ACDLA MEMBERSHIP at the DOOR FOR \$135 AND GET INTO FOUR CORNERS 2004 & 2005 Free!

4 CLEs have been applied for. Contact Ann Cooper at 334/272-0064 for more details or you may use the application form attached.

We look forward to seeing you there.

FOUR CORNERS SEMINARS

REGISTRATION FORM

Deadline for pre-registration: December 1, 2004.

SIGN ME UP FOR: (circle one)

- Mobile - Dec. 3 Anniston - Dec. 3 Florence - Dec. 3
 Montgomery - Dec. 10 Dothan - Dec. 10 Tuscaloosa - Dec. 10

Name(s): _____

Firm: _____

Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

Email: _____

ACDLA Member Yes No

Renew/join for 2005 now! See details below.

Non-members \$125 per person for seminar registration only OR
join/renew ACDLA as a Regular Member for 2005 at \$135 per person
and get in free!

PAYMENT METHOD:

Check enclosed – Amount Paid \$ _____

MasterCard/VISA Card No.: _____

Name on Card: _____

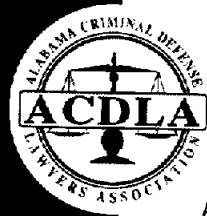
Exp. Date: _____

Card Billing Address: _____

City, State, Zip: _____

Signature: _____

Return to: ACDLA, P.O. Box 1147, Montgomery, AL 36101



THE ALABAMA CRIMINAL
DEFENSE LAWYERS
ASSOCIATION

***“Loosening the
Death Belt IX:
Tightening the Defense—
One Life at a Time”***

A Death Penalty Seminar
Co-Sponsored by the Cumberland
School of Law, the University of
Alabama School of Law and the
American Bar Association Death
Penalty Representation Project

Friday, January 28 and
Saturday, January 29, 2005
Embassy Suites Hotel, Birmingham, AL
8 a.m.-5 p.m. daily

12 MCLE Credit Hours
(334) 272-0064 Conference Registration
(205) 879-7400 Hotel

THE
DEATH PENALTY

**“LOOSENING THE DEATH BELT IX:
TIGHTENING THE DEFENSE—
ONE LIFE AT A TIME”**

About the Seminar

This seminar features some of the top criminal defense attorneys in the U.S. Southeast describing the life or death issues of capital casework. In this two-day event you will hear highly acclaimed death penalty lawyers talk about their experiences. Learn, first-hand, tried and true techniques specializing in court testimony and working with difficult clients. In addition, learn about juries – what motivates them and how they think.

Take away new insight on:

- “Recent Insights into Capital Litigation”
- “Mental Defenses”
- “Making the Jury Walk in Your Client’s Shoes”
- “Through the Looking Glass: Habeas Corpus Issues”
- “Building the Winning Team in a Capital Case”
- “The Heinous, Atrocious and Cruel Aggravator”
- “Trying a Case to Create a Residual Doubt”
- “Dealing with Judicial Override”
- “Saving Good Jurors on Voir Dire and Finding the Bad Ones”
- “Why Do Jurors Vote for Life and Death – What Motivates Them and What Doesn’t”

Registration is required, so fax, email or mail your registration today using the attached registration form or call Ann Cooper at 334/272-0064 for more information.

A room block is reserved for seminar participants at the Embassy Suites Hotel in Birmingham. Deadline for room registration is December 28, 2004. See the registration form for more details.

AGENDA

FRIDAY, JANUARY 28, 2005 – BALLROOM

- 8:50 a.m. "Opening Comments & Welcome" – *James H. Roberts, Jr.*, Tuscaloosa County Public Defenders Office, Tuscaloosa & President, ACDLA
- 9:00 a.m. "Recent Decisions in Capital Litigation" – *Penny J. White*, Professor of Law, College of Law, University of Tennessee
- 10:00 a.m. Break
- 10:15 a.m. "Mental Defenses" – *John E. Mays*, Attorney at Law, Decatur, AL
- 11:15 a.m. "Making the Jury Walk in Your Client's Shoes" – *Andrea D. Lyon*, Associate Clinical Professor of Law and Director of the Center for Justice in Capital Cases at DePaul University's College of Law in Chicago, IL.
- 12:15 p.m. Lunch – On Your Own
- 1:30 p.m. "Habeas Corpus Issues" – *Al Pennington*, Attorney at Law, Mobile, AL
- 2:30 p.m. "Building the Winning Team in a Capital Case" – *B. Michael Mears*, Director, Georgia Public Defenders Standards Council, Atlanta, GA
- 3:30 p.m. Break
- 3:45 p.m. "The Heinous, Atrocious and Cruel Aggravator" – *William R. Blanchard*, The Blanchard Law Firm, Montgomery, AL
- 4:45 p.m. Adjourn to Reception
- 5:15 p.m. Reception for Speakers and Participants

SATURDAY, JANUARY 29, 2005 – BALLROOM

- 9:00 a.m. "Creating Residual Doubt" – *William D. "Bill" Massey*, Massey & McClusky, Memphis, TN
- 10:00 a.m. "Dealing With Judicial Override" – *Bruce A. Gardner*, Gardner Law Firm, Huntsville, AL
- 11:00 a.m. Break
- 11:15 a.m. "Keynote Address" – *Steve Bright*, Director, Southern Center for Human Rights, Atlanta, GA & Professor of Law, Yale Law School
- 12:15 p.m. Lunch – On Your Own
- 1:30 p.m. "Saving Good Jurors on Voir Dire and Finding the Bad Ones" – *John Mauldin*, Attorney at Law, Greenville, SC
- 2:30 p.m. "Opening Statements in the Penalty Phase" – *Bill N. Nettles*, Attorney at Law, Columbia, SC
- 3:30 p.m. Break
- 3:45 p.m. "Why Do Jurors Vote for Life and For Death – What Motivates Them and What Doesn't" – *Chris Adams*, Multi-County Public Defender, Atlanta, GA
- 4:45 p.m. Wrap-Up & Adjourn

This course or a portion thereof has been approved by the Mandatory Continuing Legal Education Commission of Alabama for a total of 12.0 hours' credit.

Registration: \$300 for ACDLA Members by 12/28/04; \$350 after 12/28/04 and all non-members at the door.

Hotel Accommodations: Embassy Suites Hotel, 2300 Woodcrest Place, Birmingham, AL 35209. 1-205-879-7400 – Ask for DP Rate of \$129 Single or Double. Room block will be dropped after 12/28/04.

REGISTRATION FORM

Name(s) _____

Firm _____

Address _____

City/State/Zip _____

Phone _____

Fax _____

E-Mail Address _____

I would like handouts in: Print Format CD Rom Format

| | By | After |
|--|--------------|--------------|
| CHECK ALL THAT APPLY: | 12/28 | 12/28 |
| <input type="checkbox"/> Early Registration – 2004 ACDLA members | \$300.00 | \$350.00 |
| <input type="checkbox"/> Early Registration – Public Defenders | \$300.00 | \$350.00 |
| <input type="checkbox"/> Non-members ACDLA | \$350.00 | \$350.00 |
| <input type="checkbox"/> Materials Only | \$75.00 | \$75.00 |
| | Subtotal: | _____ |
| | Total: | _____ |

*Registration does not include dues

METHOD OF PAYMENT

Check-Payable to ACDLA MC VISA

Credit Card No. _____

Name on card _____

Billing Address _____

Expiration Date _____

No Refunds after January 8, 2005. Substitutions accepted.

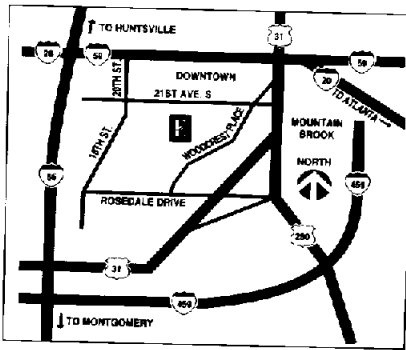
Signature _____

Email: anncooper@charter.net, Phone: 334-272-0064

Fax this form to: 334-277-2927

Mail with payment to: ACDLA, P.O. Box 1147, Montgomery, AL 36101

DEATH PENALTY CONFERENCE SITE



EMBASSY SUITES HOTEL
 Birmingham, Alabama
 2300 Woodcrest Place
 Birmingham, AL 35209-1321
 (205) 879-7400 Fax (205) 870-4523
 Rate \$129.00 s/d

LOCATION Off Hwy 31 and Hwy 280 in the SouthBridge Office Park. Easily accessible from Interstates 65 and 20/59. Two miles from downtown and eight miles from Birmingham International Airport. From downtown, exit 126A and follow Hwy 31 South to the 21st Avenue South exit. At the end of the exit, go straight through the light and up the hill. Embassy Suites Hotel is on your right.

TRANSPORTATION Complimentary transportation to and from Birmingham International Airport, as well as shuttle service to major businesses, shopping and entertainment within a five-mile radius of the hotel (based on availability).

ACCOMMODATIONS Each of our 242 Spacious Two-Room Suites offers a private bedroom and a separate living room with sofa bed, well-lighted work/dining area, microwave, refrigerator and coffee maker. Other amenities include two telephones with voice mail and data port; two remote control cable televisions with ESPN, HBO and Nickelodeon (LodgeNet movies available for charge); hair dryer, iron and ironing board. Large executive one-bedroom suites with a conference table for eight people, and two-bedroom/two-bath suites are also available. Every suite overlooks the towering trees, fishpond and waterfalls of our peaceful garden atrium.



Membership Application

2005 New Member/Membership Renewal

- \$50 – New Lawyer
(member of the bar for one year or less)
- \$135 – Regular
(member of the bar for more than one year)
- \$600 – President's Club
(includes free admission to Summer Seminar)
- \$5,000 – Lifetime Membership
(\$4,500 lump sum or \$1,000/yr for 5 years; no more dues or registration fees for events!)

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, 2005.

CAPITAL CORNER

By John E. Mays, Decatur, Alabama

KNIGHT V. STATE

*(When Is A Prior Robbery Not An Aggravating Circumstances —
When are Prior Bad Acts Admissible When the Defendant Pleads Insanity)*

Gregory Knight was convicted of the capital murder of his wife. The jury recommended death by a vote of (10-2) and the trial court sentenced the defendant to die. The sentence was reversed and the case remanded for a new sentencing hearing before a duly impaneled jury.

The state presented the aggravating circumstance of 13A-5-49 (2) that the defendant had previously been convicted of a crime involving violence, to wit, robbery in Florida. The defendant testified as to the circumstances of the robbery. He would certainly be entitled to do this because the jury must ultimately determine what weight to place upon it. He testified that the robbery was the snatching of \$1400.00 from the top of the prior victim's purse, in her presence, without the use of any violence at all. Robbery is not ipso facto a violent crime. If the facts of the prior robbery do not demonstrate violence then the aggravating circumstance under 13A-5-49 (2) should not have been submitted to the jury for consideration. It seems more prudent, in scenarios like this case, to file a motion in limine and hold a hearing outside the presence of the jury as to whether the circumstances of the prior violent crime were indeed violent.

In the guilt phase of the trial the defendant plead not guilty by reason of mental disease or defect. To rebut this defense the state introduced evidence of the defendant's prior violent acts toward his wife, the victim. They cited *Burnett v. State* 518 So.2d 235 (1987) for authority. This case held:

... the state may prove his commission of other crimes as tending to show that he was not demented and that his commission of the now-charged crime was the offspring of a wicked propensity, rather than a diseased mind.

The foregoing case pre-dates January 1, 1996, the date the Alabama Rules of Evidence were put into effect. However, *Knight v. State*, supra found an exception under 405(b) and although it doesn't cite the Rule, under 404(b).

The evidence concerning the specific acts of prior violence toward the victim was admissible to show a "course of conduct" that tended to indicate that the violence toward the victim that resulted in her death was not an isolated incident.

Concerning this part of the case it is necessary to make a comment. The evidence of insanity was slim. A forensic psychologist testified that at the time of the murder the defendant:

... had a brief reactive psychosis where his emotions overtook his reason.

The psychologist went on to call the murder a "crime of passion." Herein is what separates this case from most cases where a defendant pleads not guilty by reason of mental disease or defect. There was no claim of a lingering or certainly permanent insanity such as schizophrenia. That fact alone separates this case from most insanity cases. Of course, if the defendant claims to have been insane for only moments, "brief reactive psychosis," past acts of violence toward the victim, which were not the product of a mental disease or defect but pure meanness, are admissible to show that the motivating force in the case sub judice was that same meanness and not insanity. The facts in this case on the issue of insanity are quite limited and unconvincing. The insanity alleged was in existence for only moments. So, don't let any prosecutor use *Knight v. State* as a carte blanche to introduce prior bad acts in insanity cases because the facts in that case are both odd and suspect on the issue of mental disease or defect. The more you can get the trial court to limit *Knight* to its facts, the more useless it will become to prosecutors.

The defendant proved two statutory mitigating circumstances. He proved (1) lack of significant history of prior criminal activity and (2) defendant's age at the time he committed the capital offense. Be careful how you use these two mitigating circumstances if your client has a history of juvenile convictions or youthful offender convictions. Neither of these can be admitted before a penalty phase jury. However, they can be admitted in the judges portion of the sentencing hearing under 13A-5-47. The appellate court held that these two criminal histories could not be used to "negate" the foregoing mitigating circumstances. However, they could be used by a trial judge to "diminish the weight to be accorded the mitigating circumstances." In other words, in this scenario the trial judge can assign these mitigating circumstances minimum weight but cannot give them no weight nor discount them altogether.



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