

The Guardian

The Newsletter of the Alabama Criminal Defense Lawyers Association

July/August/September 2007

SUMMER SEMINAR WAS SIZZLING

By Amber Lynn Ladner, Birmingham, AL

The Summer Seminar was sizzling this year with a higher turn out than last year. The speakers were informative, inspiring, and enthusiastic. There were 23 lucky participants who received some amazing door prizes.

Many thanks to all those who came down to participate and learn this summer at the beautiful beach front hotel in Pensacola Beach, Florida. This year special thanks need to be given to Tommy Spina, John Robbins, and Joel Sogol for their sponsorship of our breakfast and mid-day breaks. Also, thanks must be given to the sponsors of our door prizes this year. The following groups and people sponsored this year's seminar with door prizes: Lexis Nexis, Thomson West, Patrick Mahaney, or Ken Sharma with Atlanta Custom Tailors. David Moyer, with Lexis Nexis, attended our seminar on Friday, June 22. He had a booth where he was able to assist people with questions and orders. He donated 12 books with a few of them being three to four volume sets that were valued at more than \$3000.00. Richard Blackerby, from West Thomas, donated six books with some of them being multi-volume books valued at over \$2000.00. Patrick Mahaney had a booth set up the entire seminar that featured his and Bowen's book, *Alabama DUI, Traffic, and Driver License Law Handbook*. Patrick donated one of his books as a door prize and he also contributed \$10.00 from the sale of each book to the ACDLA Legislature fund that totaled \$150.00. Finally, thanks goes to Ken Sharma for donating four silk ties and two custom-made shirts as door prizes. Mr. Sharma owns a tailor shop in Georgia and had a booth set up all three days of the seminar. ACDLA gave away a one-year regular membership for 2007-2008

and two beach bags filled with goodies.

The seminar was kicked off with Justice John England, Jr. from Tuscaloosa, Alabama. His high energy and enthusiasm started the seminar off right. He discussed how to preserve the record on appeal. He not only educated us, but he also got the audience involved by asking questions on different scenarios. Judge England was a tough act to follow, but Brett Bloomston held his own as he discussed the need for experts and why and how experts could be used in our criminal cases. Brett was followed by Rick Sandefer, past president of ACDLA. Mr. Sandefer explored the new self defense laws and gave us examples of how these laws can be used more effectively to defend our clients. The first day was concluded with a wrap up and overview of the most recent case law by Tommy Goggans, a past Executive Director of ACDLA. The second day was started off with a very informative and practical overview of criminal practice in district court by last year's Beddow recipient, Arthur Madden. Mr. Madden's material cited statutes, case law, and evidentiary rules of why and how we can defend our clients in district court. After Mr. Madden concluded, ACDLA held its annual meeting for 2007.



NACDL President Elect Carmen Hernandez was the featured keynote at this year's Summer Seminar in Pensacola Beach, Florida.

At the meeting, there was discussion about what the Legislative committee has been working on this year and what they hope to accomplish next year. None of the bills proposed by the committee this year passed, but none of the bills that were bad for our clients passed either. There was discussion about the meetings with Chief Justice Sue Bell Cobb and her agenda. Her main agenda is to re-write the juvenile code. She is working on establishing a drug court in every county in Alabama. During the meeting, there was a vote by the members on a new amendment to have a new category of membership for the purpose of allowing an avenue by which other associations, organizations and institutions can join ACDLA as non-voting members. This new amendment did pass and the new membership category is called the Institutional Membership.

The meeting concluded with a nomination for the 2007-2008 slate of officers. The people were nominated, the floor was opened and closed for other nominations, and a vote was taken. The officers for 2007-2008 are as follows: Bill Blanchard of Montgomery –

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President's Column

By Bill Blanchard, Montgomery, AL



*ACDLA President
Bill Blanchard*

In a place of honor on the wall behind my desk is a faded and framed certificate. It names me as a member of the Alabama Criminal Defense Lawyers Association, which, according to the certificate "is dedicated to the maintenance of the highest professional standards, the advancement of the administration of Justice, defense of the Bill of Rights and service to the legal profession and the people." It is dated October 1, 1983, and you can just make out the signature of President Joel Sogol at the bottom. When I first put that document on my wall in late '83 I had been practicing law only about five years, and had just about two years experience with criminal cases. Almost 25 years have rolled off the calendar since that day. I guess you could say I have a little more experience with criminal cases now. And today it is my distinct honor and privilege to follow in the footsteps of Joel Sogol and the many other fine lawyers who came after him, and pen this inaugural president's column of my term.

As you can imagine, I never thought I would be doing this when I was putting up that certificate all those years ago. Otherwise, I would certainly have thought up something witty, entertaining and enlightening to say to you by now.

Well, perhaps I can do that in future columns. For now, I just want to tell you how proud I am to be at the helm of this great organization which has now endured for more than a quarter of a century, and to thank all of you for the work you do as officers, board members, committee members and volunteers of all stripes. The ACDLA could not exist without you. We all know what a fabulous job Ann Cooper has done since coming on board as our Executive Director, but she will tell you herself (as she has often told me) that this organization could not exist without the many unpaid hours contributed by its many unselfish members. Those contributions make possible, among other things: (1) CLE programs concentrating on criminal defense with a specific focus on the state of Alabama; (2) opportunities for information sharing and collaboration via the ACDLA listserv and website; (3) the timely assistance and support rendered by our death penalty assistance committee; (4) a voice in significant court cases through the work of our amicus committee members; (5) representation before the Alabama Legislature by our lobbyist and the members of our leg-

islative committee and various officers of the association; and, finally (6) the professional publication that you hold in your hands today. I want to again express my appreciation and respect for those members who make these things possible, and promise that I will do all in my power to continue and expand our efforts.

If we are to increase our influence (especially in the legislative arena) and live up to the words on my certificate, we must grow. Seven years ago, we had a core membership of about 230 lawyers, and an annual budget of about \$80,000. Thanks to the work of Ann Cooper and your Board of Directors, we now have about 500 members and an annual budget of roughly \$160,000 (not counting our legislative program, which is separately funded and does not depend on dues or seminar revenues). As impressive as our growth and the expansion of our influence has been over the last seven years, the potential exists for much, much more. We now know, for example, that there are several thousand lawyers in Alabama who were entitled to receive past due overhead expense payments based on the *Wright v. Childree* decision. Some of them are members, but many more are not. For this reason, a great emphasis will be placed upon increasing membership during my term, both by retaining members we now have, and, of course, recruiting new members. You may expect to be contacted this fall and offered an opportunity to participate in our recruitment drive. Prizes and incentives (to be named later) will be awarded to those who are our most effective recruiters. Please start today by identifying those you know who could benefit from membership, but have yet to join. You will be provided with the help and tools you need to bring them into the fold, and you will provide the critical link of personal one-on-one contact with the prospective member. Please be alert for this opportunity to serve when it comes, and help us to grow for the future.

For now, let me say one more time how pleased and proud I am to have been chosen to serve as your president this year. I look forward to more opportunities to share thoughts and information with you in future columns.

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Guardian Deadlines

January 15, 2007
March 15, 2007
May 15, 2007
July 15, 2007
September 15, 2007
November 15, 2007

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@bellsouth.net

FROM MY PERSPECTIVE

By Ann S. Cooper, Executive Director

KUDOS TO SUMMER SEMINAR CLE CHAIRPERSON

On behalf of the Board and membership of ACDLA, I want to personally thank our new CLE Chairperson Amber Ladner of Birmingham for her tireless assistance at this year's 2007 Summer Seminar and Annual Meeting. Ms. Ladner did an outstanding job of rounding up door prizes and sponsors for several of the food functions, making this year's event even more pleasurable for everyone attending. Please mark your calendars now for the 2008 Summer Seminar that will be June 19-21, 2008 at Pensacola Hilton on beautiful Pensacola Beach, Florida. The new condo towers are now open and are available for occupancy.

CONGRATULATIONS TO THE NEW 2007-2008 ACDLA BOARD OF DIRECTORS

Your 2007-2008 Board of Directors was recently named at the Summer Seminar. For a more detailed look at leadership, please read this issue of The Guardian.

Officers include:

President – Bill Blanchard, Montgomery
President Elect – Richard Keith, Montgomery
Vice President – Kathryn King, Cullman
Secretary – Don Colee, Birmingham
Treasurer – Patrick Tuten, Huntsville

District VPs include:

District I VP – Linda Coats, Huntsville
District II VP – Randy Brooks, Anniston & Amber Ladner, Birmingham
District III VP – Jeff Duffey, Montgomery
District IV VP – John Beck, Fairhope & Michel Nicrosi
District V VP – Paul Young, Enterprise
District VI VP – Mike Upton, Tuscaloosa
Federal Defender Representative – Kevin Butler

MEMBERSHIP CAMPAIGN BEING PLANNED

There are currently 500 members in good standing at ACDLA. Approximately 80 ACDLA members did not renew their membership this past year. Do you know someone who is not currently a member and should be? If so, you won't want to miss the upcoming 2008 Membership Campaign led by Membership Chairman Richard Keith of Montgomery. Details will be announced in the next issue of *The Guardian*. If you would like to participate as a local campaign contact, please call the ACDLA office and let us know at (334) 272-0064 or by email to annscooper@bellsouth.net

FOUR CORNERS SEMINARS – NEXT CLE OPPORTUNITY

Mark your calendar for the upcoming CLEs. On Friday, December 7 and December 14, ACDLA will host its annual 4 Corners Seminars in various locations around the State. Watch for details regarding locations, topics and speakers in the months ahead.

DEATH PENALTY SEMINAR – A NEW BIRMINGHAM LOCATION FOR 2008

"Loosening the Death Belt," ACDLA's annual death penalty seminar will be held January 25-26, 2008 at the DoubleTree Hotel located at 808 South 20th Street in Birmingham. This new location offers a room rate of \$119 per night plus tax. Reservations are being accepted for the discounted rooms until January 4, 2008. You may call now to make your reservation at 205-933-9000. Ask for the Alabama Criminal Defense Lawyers Rate.

PUBLICATIONS AVAILABLE THROUGH ACDLA

ACDLA member John Mays of Decatur has graciously donated the sales of his publications to ACDLA. The following titles are available:

"Defending Child Abuse" - \$65 plus \$5 shipping
"Defending Capital Cases" - \$69 plus \$5 shipping
"Not Guilty by Reason of Mental Disease or Defect" - \$45 plus \$5 shipping
"Drug Searches, Drug Seizures and Forfeitures" - \$55 plus \$5 shipping

To order any of these books, contact ACDLA at 334/272-0064. Visa and MasterCard accepted with phone orders. Send checks payable to ACDLA, P.O. Box 1147, Montgomery, AL 36101.

NEW COMPREHENSIVE DUI HANDBOOK NOW AVAILABLE

ACDLA members Patrick Mahaney and Bill Bowen have completed a new book now for sale, the *Alabama DUI, Traffic and Drivers License Law Handbook*. The book was most recently featured in *The Alabama Lawyer* as well as *The Guardian*. For details and excerpts, go to <http://www.mahaneylaw.com/226196.html> or call Patrick Mahaney at 334-264-5054. ACDLA will receive \$10 from the sale of each book.

SUGGESTIONS ANYONE?

If you have a suggestion for a seminar speaker/topic or sponsor, contact CLE Chairperson Amber Ladner at amberlynnladner@hotmail.com or Ann Cooper at annscooper@bellsouth.net Suggestions are always welcome.

QUESTIONS OR COMMENTS

Do you have a question or comment regarding an ACDLA program or activity? Contact Ann Cooper at 334/272-0064 or by email to annscooper@bellsouth.net

CAPITAL CORNER

By John E. Mays, Decatur, Alabama

Expanding the Classes of Persons Who Are Excluded From the Death Penalty Using *Atkins* & *Roper*

According to 1998 Wisconsin L. Rev. 841 at 853 our US Supreme Court insists that capital sentencing schemes ensure that the death penalty “is reserved for the worst of the worst”,. Further 70 University of Colorado L. Rev. 813 at 866, in a discussion of *Pully v. Harris*, stated, “The Court assumed that by appropriately narrowing death eligibility the death penalty could be adequately reserved for the “worst of the worst. See also: 1998 Utah L. Rev. 505, 524 for almost the same wording.

By its decision in *Atkins v. Virginia* and *Roper v. Simmons* the Supreme Court categorically excluded specific offenders (the mentally retarded and perpetrators under eighteen years of age) from the death penalty because of a diminished culpability. Under that concept culpability increases with cognitive ability and age. In *Atkins v. Virginia* 536 US 304, 318 (2002) the court set out its reasoning as this point:

... by definition mentally retarded persons have diminished capacities to understand and process information to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, to understand the reaction of others.

Excluding the concept of “evolving standards of morality” given as one of the bases for the holdings in *Atkins* and *Roper* one point grabs the capital litigator’s attention. There are many mental illnesses, neurological impairments, physical ailments and even social conditions which are far more impairing than the factors set out in

these two cases, i.e., mental retardation and age. See: 72 Brooklyn L. Rev. 1211, 1248. Just a smattering of these are alcohol or drug addiction, survivors of childhood mental and physical abuse or social deprivation. See: 58 Stanford L. Rev. 751 at 766. Death rows across the country are heavily populated with the victims of childhood abuse. See: 77 North Carolina L. Rev. 1143, 1172. Death rows across the country are also heavily populated with persons whose backgrounds are impoverished and have extensive histories of alcohol and drug abuse. See: 35 Santa Clara L. Rev. 547, 566 and 585.

Given the reasoning of *Atkins* and *Roper* can anyone make a logical argument that as the severity of a psychiatric disorder and alcohol or substance abuse increases, that culpability for capital murder decreases? True, these factors are clearly mitigating circumstances. There is however a clear difference between mitigating circumstances and the absolute bar to capital punishment set out in *Atkins* and *Roper*. *Atkins* and *Roper* apply this bar to capital punishment on less debilitating factors than the ones set out above. Based on this observation the argument has been made that treating those who meet the *Atkins* and *Roper* criteria differently from those who are severely mentally ill, brain damaged, who have chemical imbalances in the brain, the victims of severe physical abuses as a child and who have a life long exposure to and from use of alcohol and impairing and illicit drugs is little short of a due process and equal protection violation. See: 33 New Mexico L. Rev. 293, 294. There is a tendency by some states courts to apply *Atkins* to all severely mental-

ly ill defendants in capital cases. See: *Ibid*. Brooklyn L. Rev. at 1251. Why? Here is the argument used: The characteristics of this defendant’s mental state and level of maturity shows clear traits, like those set out in *Atkins* quoted above, which likely makes them less culpable than other capital defendants. By raising a due process/equal protection argument for a mentally ill client when your proof shows as or a more deliberating state than those in *Atkins*, we can expand the number of death penalty exclusions in Alabama. Severe mental illness, if approached through this sort of proof, may become death ineligible as opposed to a mere mitigating circumstances. Death ineligible capital cases are not tried by death qualified juries and there is no penalty phase to these cases. See: *Ibid*. Brooklyn L. Rev. 1249. After all the case of *Furman v. Georgia* 408 US 238 (1972) had as its core that capital punishment must be administered consistently or not at all? See also: *Eddings v. Oklahoma* 455 US 104, 112 (1982).

Certainly the secondary purpose of the exclusions found in *Atkins* and *Roper* was to promote consistency and fairness in the capital sentencing process. Indeed consistency is a goal of capital punishment. See: *Eddings*, supra at 112 and *Lockett v. Ohio* 438 US 586, 604 (1978). If the factors set out in *Atkins* and *Roper* are aimed at the conclusion that such offenders are less culpable than the average capital offender and thus ineligible for the death penalty, then if there is proof of equal or more impairing factors for a mentally ill defendant this proof should also make that offender ineligible for death. ●

PLAIN FEEL SEARCHES MUST FEEL LIKE CONTRABAND

By John E. Mays, Decatur, Alabama

A county deputy responds to a call that an assault has occurred. She arrives at the scene and sees the defendant lying on the ground with a bloody towel over his head. His hands are cut and there is a large cut on his forehead. Paramedics were called. When the deputy asked the defendant for his name he did not respond but he was fully conscious. She asked him for his identification. In response he said his arm was hurting and he tried to reach into his pants pocket and couldn't do so. The defendant then told the deputy that his identification card was in his pants pocket and that she could "go ahead and get it". The deputy first patted the defendant down for her "safety" and then reached into the pants pocket that the defendant had tried to unsuccessfully enter. During the pat down of the defendant's pants pocket she felt a "hard tube" like the feel of a film canister. She certainly knew that the film canister was not a weapon and was not the identification she had permission to enter the defendant's pocket to retrieve. She removed the film canister and stated that when she removed it she did not know what it contained but knew that persons who used drugs often kept them in film canisters. She opened the canister and found methamphetamine. The deputy testified that without opening the canister she couldn't tell what it contained. Such were the facts in *Cannon v. State* 2007 WL 1519039.

The state attempted to justify the search of the defendant's pockets on some sort of medical emergency. The appellate court held that because the

defendant was conscious and responded to some questions no medical emergency of the level to allow a general exploratory search of the defendant's body existed. The deputy was responding to an assault and at the scene found no reason to suspect that drugs were involved. If the defendant was semi-conscious or displayed signs of drug use or overdose the court would probably have held differently than it did.

Relying on *Ex parte Warren* 783 So.2d 86 (2000) wherein a police officer opened a tic tac box saying, "through my experience as being an investigator in narcotics, I believe that it did, in fact, contain drugs because I have ran across the same type of plastic containers in the past that have come off defendants that did, in fact, hold cocaine." This tic tac box was in a defendant's pants pocket who was being patted down for weapons and the police were sent to the scene by a confidential informant who had told them there was drug dealing in progress around a certain car at a certain location. The contraband was sup-

pressed even though the police were there to investigate a series of drug transaction because:

. . .if the object detected by the officer's touch during a *Terry* search is a hard shell, closed container, then the incriminating nature of any contents can not be immediately apparent to the officer until he/she seizes it and opens it. In such a situation, the officer cannot satisfy the *Minnesota v. Dickerson* 508 US 366 (1993) requirement that the officer have probable cause to believe, before seizing it, that the object is contraband.

The defendant's consent for the deputy to search in his pants pockets for his identification allowed the officer to enter his pocket but not to retrieve and seize an object which (1) could not be a form of identification (2) could not be a weapon or (3) the shape and feel of the container did not identify it as apparent contraband. The search was suppressed. ●

MARK YOUR CALENDAR

Four Corners Seminars (4 CLEs)

December 7 & 14, 2007
Locations, topics and speakers
to be announced

New Publication Available for ACDLA Members!

Earlier this year, ACDLA members William Bowen and Patrick Mahaney produced a 412 page text on the law of DUI and alcohol related driving offenses in Alabama. The *Alabama DUI, Traffic, and Driver License Law Handbook* is the culmination of a project between the authors that began in 1990 when one was a state trooper and the other a judge on the Alabama Court of Criminal Appeals, and both were adjunct instructors at the Alabama Criminal Justice Training Center in Selma, Alabama. Both saw the need for a practical summary of the state's DUI law in one comprehensive document. Although computer assisted legal research has significantly improved the speed and scope of finding the appropriate authority for a particular area of the law, it has not replaced the need for such a centralized collection of material dealing with the subject of DUI and available as a ready desk reference.

The *Alabama DUI, Traffic, and Driver License Law Handbook* represents a compilation by topical subject area of relevant Alabama cases involving the detection, arrest, prosecution, sentencing, and post-sentencing issues related to alcohol related driving offenses, primarily DUI. Included in this handbook are related crimes and offenses involving the use of automobiles, lawfulness of traffic stops, search and seizure issues related to automobiles, and many other traffic related issues. Included also is the law of driver licensing in Alabama and cases that deal with the suspension or revocation of a driver license, also primarily as a result of alcohol related offenses.

The *Alabama DUI, Traffic, and Driver License Law Handbook* is prepared especially for Alabama lawyers, prosecutors, and judges who defend, prosecute, or decide DUI and related traffic cases in the courtroom. This handbook will also be of particular benefit to

court officials and Alabama law enforcement officers by providing a ready reference to the leading cases that comprise Alabama DUI, traffic, and driver license law and procedure.

The publication is updated semi-annually. The mid-year update for 2007 was recently released and distributed to all purchasers of the handbook for a modest charge. New purchasers of the handbook will receive both the handbook and the mid-year update for the regular price of \$75 plus shipping.

ACDLA members who have already purchased the handbook agree that it is an invaluable reference tool for the criminal law practitioner. ●

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Challenging Hearsay In Probation Revocation Hearings

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

A commonly misunderstood issue in probation revocation proceedings is the use of hearsay testimony. Whenever a defense lawyer objects to the introduction of hearsay evidence, the prosecution quickly responds, "hearsay is admissible in probation revocation hearings." The judge typically nods in agreement and overrules the objection. Too many attorneys simply shrug their shoulders and listen as the hearsay rolls in, without realizing there are still ways to challenge the use of hearsay evidence to revoke probation. Despite what prosecutors and judges may lead you to believe, you still may have the opportunity to block the revocation of your client's probation through a properly phrased objection and argument.

In the case of *Armstrong v. State*, 312 So. 2d 620 (1975), the Alabama Supreme Court established the guidelines which must be followed in order to provide a probationer with minimal due process. Among those was the requirement of "the right to confront and cross-examine adverse witnesses (unless the judge specifically finds good cause for not allowing confrontation)." *Id.*, at 623. While it is in the judge's discretion to admit hearsay evidence in probation revocation hearings, hearsay cannot serve as the sole basis for revocation of a defendant's probation. *Ex parte Belcher*, 556 So. 2d 366 (Ala. 1989); *Mitchell v. State*, 462 So. 2d 740 (Ala. Crim. App. 1984).

A common way for the hearsay issue to arise is when a probation officer attempts to testify concerning a probationer's arrest on new criminal charges. It is unlikely that the probation officer will have first-hand knowledge of the alleged crime, and typically the probation officer's testimony is based solely on his or her reading of a police report. In *Hill v. State*, 350 So. 2d 716 (Ala. Crim. App. 1977), a probation officer's testimony provided the sole evidence regarding a probationer's arrest on new charges. The Alabama Court of Criminal Appeals held that use of such testimony denied the probationer of minimal due process of law because "[t]he use of such hearsay evidence denied the appellant the right to confront and cross-examine the persons who originated the factual information which formed the basis for revocation of his probation." *Id.* at 718. Similarly, in *Mallette v. State*, 572 So. 2d 1316 (Ala. Crim. App. 1990), it was held that a probation officer's testimony that a probationer failed two drug tests was insufficient to prove the alleged violations because the probation officer was not the one who actually performed the tests.

This issue may also arise during the course of an arresting officer's testimony. In *Beckham v. State*, 872 So. 2d 208 (Ala.

Crim. App. 2003), an arresting officer testified that he had used an audio transmitter worn by a confidential informant to monitor a drug sale. The audiotape was not offered at the hearing, and the officer testified he could not identify the probationer's voice. Thus, the only evidence that the probationer was involved in the drug sale was the officer's hearsay testimony that the informant told him the probationer was the seller. The Alabama Court of Criminal Appeals held that "[b]ecause hearsay testimony may not form the sole basis for the revocation of probation, the trial court erred when it revoked Beckham's probation on this particular charge." *Id.* at 211. Almost identical facts involving confidential informants appeared again in *Nash v. State*, 931 So. 2d 785 (Ala. Crim. App. 2005), and in the recent case of *Hall v. State*, ___ So. 2d ___ WL 866657 (Ala. Crim. App. 2007), where the court reaffirmed that "hearsay testimony cannot form the sole basis for revocation of probation."

For additional authority supporting this holding and additional fact situations in which the hearsay issue arises, review cases such as *Ex parte J.J.D., Jr.*, 778 So. 2d 241 (Ala. 2000); *Goodgain v. State*, 755 So. 2d 591 (Ala. Crim. App. 1999); *Clayton v. State*, 669 So. 2d 220 (Ala. Crim. App. 1995); and *Chasteen v. State*, 652 So. 2d 319 (Ala. Crim. App. 1994).

In response to the hearsay argument, prosecutors sometimes claim that an arrest in and of itself is a violation of the terms and conditions of probation. Thus, they claim, they do not have to prove the underlying offense. However, Alabama case law is clear that a mere arrest is not sufficient to revoke probation. "Before revoking probation because the probationer has been arrested, the trial court must be reasonably satisfied that the underlying charge against the probationer is true." *Wade v. State*, 652 So. 2d 335, 336 (Ala. Crim. App. 1994). "A 'mere arrest' or the filing of charges is an insufficient basis for revoking one's probation." *Clayton v. State*, 669 So. 2d 220, 221 (Ala. Crim. App. 1995), quoting *Allen v. State*, 644 So. 2d 45, 46 (Ala. Crim. App. 1994).

By objecting to the use of hearsay to revoke probation and by intelligently arguing the law to the trial court, you may find yourself having more success in probation revocation hearings than you expected. ●

William L. Pfeifer, Jr., is an attorney with the firm of Pfeifer, Rose & Kolb, P.C., in Baldwin County. wpfeifer@gmail.com

S U M M E R S E M I N A R

Continued from page 1

President; Richard Keith of Montgomery – President Elect; Kathryn King of Cullman-Vice President; Don Colee of Birmingham – Secretary; and Patrick Tuten of Huntsville-Treasurer. Melinda Morgan Austin of Florence moved to Immediate Past President and Joe Van Heest of Montgomery moved to Next Immediate Past President.

Elected as District Vice Presidents were: District I – Linda Coats, Huntsville; District II – Randy Brooks, Anniston and Amber Ladner, Birmingham; District III – Jeff Duffey, Montgomery; District IV-Michel Nicrosi, Mobile and John Beck, Fairhope; District V- Paul Young, Enterprise; District VI – Michael Upton, Tuscaloosa, and Public Defenders Representative – Kevin Butler, Montgomery.

After the annual meeting, the seminar resumed with Jody Bicking giving a presentation on how to expand our practice. He gave words of encouragement for our profession and praised us for the work that we do to protect people's rights. Some of the suggestions he mentioned for expanding our practice was getting involved in your community by giving speeches at schools and PTA meetings about the legal system and how laws affect them and hold legal workshops in your community. He also suggested that civil firms could be an excellent source of criminal referrals. Mr. Bicking was followed by two dynamic speakers, Sam Dennis and John Lentine. They spoke about the importance of motions and the need to be creative. One of the examples they gave was a motion based on one of Sam's clients. The motion was entitled: Motion to Suppress Based on Smelly Probable Cause. The motion was based on a comical police report about the officer searching Sam's client because he passed gas. The motion and police report was the highlight of the hour long presentation and maybe the seminar. Sam and John were followed by the 2007 Awards Luncheon.

At the luncheon, everyone had an opportunity to eat and socialize. Melinda Morgan Austin, President for 2006-2007 presented awards for the 2007 year. The most distinguished award that a lawyer can be awarded in Alabama is the Roderick Beddow award. It is an award for the contributions that a person makes to improve the criminal system in their life time. This year it was awarded to a very deserving recipient Robert V. Wooldridge, III of Tuscaloosa. The next award given was the Pursuit of Justice Award which was awarded to the Southern Poverty Law Center of Montgomery. Then Melinda awarded several individuals with a Merit Award for some amazing legal accomplishments in the past year. The recipients were Michael Cornwell and Joanne Jannik of Tuscaloosa, Jeff Deen and Michel Nicrosi of Mobile, Bruce Gardner of Huntsville, Robert Tuten and Brice Callaway of Huntsville, Dwain Hartwick of Enterprise, and Mike Winter of Montgomery. Finally, Ms. Austin awarded the following special people the President's Award for their work and assistance this past year with ACDLA, William R. Blanchard of Montgomery, Richard Keith of



Southern Poverty Law Center received a Pursuit of Justice Award this year for outstanding contributions to ACDLA's legislative program. Show here are (L-R) SPLC representative Marion Chartoff accepts the award from President Melinda Morgan Austin.



(L-R) The Roderick Beddow Award, ACDLA's highest honor, was presented by Jim Roberts to Bobby Wooldridge, both of Tuscaloosa. Bobby was recognized for a lifetime of achievement in the field of criminal defense work in Alabama. He is currently a Public Defender for the Public Defenders Office in Tuscaloosa County.

R W A S S I Z Z L I N G



ACDLA members enjoy Friday's Awards Luncheon buffet.

Montgomery, Kathryn King of Cullman, Kathryn "Sunny" Lippert of Bessemer, and Paul Young of Enterprise. Also recognized this year were those members that became life members of ACDLA. The following people are now life members: Kathryn "Sunny" Lippert of Bessemer, Pamela R. Scott of Headland, and Ron Thrasher of Birmingham. And last but definitely not least, Ann Cooper was given a special thank you and small token of our appreciation for all the tireless work that she does for our organization. She often works around the clock to serve us. Thank you, Ann.

After the Awards Luncheon, the afternoon was concluded by a talented and entertaining attorney from Atlanta, Georgia, Christine Koehler. Ms. Koehler started her presentation dressed as Nancy Grace and singing about Nancy's professional misconducts. Ms. Koehler enlightened us about prosecutorial misconduct and about ways to avoid bar complaints.

The last day of the seminar began with Carmen Hernandez, President Elect of the National Association of Criminal Defense Lawyers. Ms. Hernandez has a connection to Alabama as one of the attorneys involved in the Seigleman and Scrushy sentencing. She spoke about the inequities in sentences that our clients face and our need to fight for our clients during the sentencing phase. She was followed by Jeff Deen and Michel Nicrosi. Deen and Nicrosi provided an overview of the new area of white collar prosecution by the Federal Government which involves honest service and mail fraud. They gave an overview of the statutes involved and the people that are being targeted by prosecutors for these crimes. Doctor Gregory Davis followed Deen and Nicrosi. Dr. Davis spoke about the importance of reviewing the autopsy report, why it is important to ask questions if you do not understand something in the report, and how it can be helpful to contact the Coroner or Medical Examiner about their findings. It can be important to your client to provide any history about the deceased to the coroner so that he can use it in making his report. The seminar was concluded by the elegant and talented Cynthia Roseberry from Fayetteville, Georgia. Ms. Roseberry informed us about the importance of how the race of our clients and how their diversity can impact the way that we interview our clients and represent them. She explained ways of coping with these differences so that we can better serve our clients.

This year's seminar was informative, refreshing, and reenergizing. We hope that if you were unable to attend the annual meeting and seminar that you will try to attend another one of ACDLA's wonderful seminars. The next seminars will be the Four Corners seminars on December 7 and 14. On January 25-26, 2008, we start the year off with a bang with "Loosening the Death Belt" the 2008 death penalty conference held in Birmingham, Alabama. Finally, mark your calendars for next year's annual "Justice Must Be Won" -- 2008 ACDLA Summer Seminar and Annual Meeting held in Pensacola Beach, Florida on June 19-21, 2008 for fun, sun, and CLEs. ●

The Indictment, Jurisdiction, and Related Concepts

By Bill Bowen, Birmingham, AL

For over a century, the law in Alabama was clear - a failure to allege an essential element of the offense in the indictment was fatal and a matter of jurisdiction. It could not be waived by a failure to object. All that has changed. In *Seymour v. State*, 946 So.2d 535 (Ala. Crim. App. 2006), four judges of the Court of Criminal Appeals voted to affirm (without opinion) the denial of petitioner's petition for post-conviction relief. Judge Cobb, now Chief Justice Cobb, dissented on the ground that the indictment failed to charge the offense of shooting into an occupied dwelling because it did not charge a culpable mental state. Despite this dissent, the Alabama Supreme Court overruled this well-settled principle and held that "a defect in the indictment could not divest the circuit court of its power to hear the case." *Ex parte Seymour*, 946 So.2d 536, 538 (Ala.2006).

Now, "a defect in a criminal indictment no longer deprives the trial court of jurisdiction, as it had under the common law, but instead is a nonjurisdictional error that may be waived." *Ex parte Jenkins*, 2007 WL 779141, *2 (Ala. 2007) (also recognizing that a judgment may be void if the court "acted in a manner inconsistent with due process" at *3). Under this new holding, subject matter jurisdiction and the sufficiency of the indictment are two separate and distinct concepts. "A defect in an indictment may be error, see Rule 15.2(d), Ala. R.Crim. P- or even constitutional error, see Ala. Const., Art. I, § 8 - but the defect does not divest the circuit court of the power to try the case. A defendant who challenges a defective indictment is thus subject to the same preclusive bars as one who challenges any other nonjurisdictional error, such as an illegal seizure or a violation of the Confrontation Clause." *Seymour*, 946 So.2d at 539. Now, to determine subject-matter jurisdiction, the only question is whether the trial court had the constitutional and statutory authority to try the offense with which the defendant was charged. *Seymour*, 946 So.2d at 538.

Now a defective indictment that does not allege all the elements of a crime does not deprive the court of jurisdiction and must be objected to in a timely fashion. *Ex parte State in re Madden*, No. 1051078, 2007 WL 1519866 at *1 (Ala. May 25, 2007) (failure of indictment to allege that defendant "intentionally" received stolen property); *Holloway v. State*, No. CR-05-0185, 2006 WL 2788988 at *1 (Ala. Crim. App. Sept. 29, 2006) (capital murder indictment fail to charge what crime defendant intended to commit in the dwelling when murders occurred); *Carr v. State*, 950 So.2d 1228, 1228 (Ala. Crim. App. 2006) (failure of indictment for grand larceny to allege "with intent to covert or deprive owner"); *Culver v. State*, No. CR-05-0512, 2006 WL 2457621, at 2 (Ala. Crim. App. Aug. 25, 2006) (failure of burglary indictment to allege victim was not participant in the crime and failure of indictment for attempted murder to allege that stabbing of victim caused "serious physical injury"); *Herren v. State*, No. CR-04-1593, 2006 WL 3734713, at *1 (Ala. Crim. App. Dec. 20, 2006) (indictment for escape third degree not alleged at time of escape—defendant was under sentence of imprisonment on conviction for criminal offense).

The rule in *Seymour* is pervasive as it effects guilty pleas,

sentencing, and post-conviction proceedings. Now, a defendant can plead guilty to an offense which does not constitute a lesser included offense of the offense charged in the indictment. *Cobb v. State*, CR-05-0422, 2006 WL 825037, at *1 (Ala. Crim. App. Sept. 29, 2006) (guilty plea to robbery in the second degree under indictment for robbery in the first degree). The fact that the indictment is defective for failing to include an element of the lesser-included offense to which the defendant pleaded guilty is not a jurisdictional matter. *Taylor v. State*, 953 So.2d 429, 430 (Ala. Crim. App.2006) (indictment charged only first degree robbery and did not include element of second degree) wherein then-Judge Cobb notes that "[u]ntil recently, a trial court lacked subject-matter jurisdiction to adjudicate a defendant guilty of a lesser-included offense based on an amended indictment if the original indictment changing the offense omitted an element of the lesser-included offense." See also *Underwood v. State*, No. CR-05-2149, 2007 WL 625031 (Ala. Crim. App. March 2, 2007) (Shaw, J. concurring in result - argument that trial court lacked jurisdiction to accept guilty pleas to second degree rape under an indictment charging first degree rape does not implicate jurisdiction). Fortunately, a defendant still cannot plead guilty to an offense greater than that charged in the indictment. *Williams v. State*, No. CR-05-1823, 2006 WL 3734725 (Ala. Crim. App. Dec. 20, 2006) (trial court did not have jurisdiction to accept a defendant's guilty plea to actual possession of a controlled substance where the indictment charged attempted unlawful possession). Even further, a district court has subject-matter jurisdiction to accept a defendant's guilty pleas to informations to drug offenses that allegedly were not properly signed or notarized. *Patton v. State*, No. CR-05-2156, 2007 WL 624742, at *1 (Ala. Crim. App. Mar. 2, 2007).

As a practical matter this means, apparently, that there is no longer a distinction between a "voidable" and a "void" indictment. But see *Patton v. State*, No. CR-05-2156, 2007 WL 624742, at *4-6 (Ala. Crim. App. Mar. 2, 2007) (Welch, J., concurring in result). Now, it appears that an indictment can be amended at any time before conviction. Claims that the indictments are defective and will not support guilty pleas or were improperly amended are not jurisdiction claims and may be barred because of the failure to object in a timely manner. *Minshe v. State*, No. CR-05-1864, 2007 WL 866210, at *1 (Ala. Crim. App. Mar. 23, 2007).

The failure of the trial court to advise a defendant of his right to appeal a guilty-plea conviction and to have counsel appointed on appeal if indigent is not a jurisdictional defect and the failure must be timely raised. *Robey v. State*, 950 So.2d 1235, 1236 (Ala. Crim. App. 2006) overruling prior authority to the contrary.

"An illegal sentence, however, differs from a defective indictment." *Ex parte Batey*, 2006 WL 3334490, *5 n. 2 (Ala.. 2006). A claim that a sentence exceeds the maximum authorized by law is a jurisdictional claim and is not subject to the procedural bars

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The Other Y.O. Statute For DUI Cases - Section 32-5A-191(b)

By Bill C. Messick, Attorney At Law, Mobile, Alabama

If your client is charged with DUI and they were under the age of 21 years at the time of the offense, they certainly have the right to be considered for treatment as a Youthful Offender (YO) under §15-19-1, *et seq.* COA. However, there is another, less well-known, statute under which your client might be able to obtain YO status for a DUI offense if they qualify – §32-5A-191(b) COA. As discussed below, each statute has its advantages and disadvantages.

The general Youthful Offender statute (§15-19-1, *et seq.* COA) is available to a Defendant charged with DUI in Alabama if the offense was committed in Defendant's minority

and was not disposed of in juvenile court; *Ex parte King*, 547 So.2d 579 (Ala. 1989), on remand 547 So.2d 581. One advantage of the general YO statute is that an adjudication of DUI cannot be used to enhance the Defendant's adult sentence for a subsequent DUI conviction. The disadvantage of this statute is that the Defendant is subject to the same range of punishment as a DUI first offense; including the suspension of their driving privileges for 90 days (§32-5A-191(e) COA). It should be noted that a Defendant is not entitled to youthful offender status in a civil proceeding to review suspension of his driver's license after he was convicted of DUI; *Copenhaver v. State Dept. Of Public Safety*, 671 So.2d 712 (Ala.Civ.App. 1995) (*cert. denied*).

Under §32-5A-191(b) COA, the Defendant might have the option of being considered for Youthful Offender status; and, a less severe DUI punishment. To qualify under section (b), the Defendant must: (1) be a minor, (2) have blood alcohol level of between .02 and .08. If the Defendant blew over .08 or refused the breath test, they are ineligible for consideration under this statute.

There are several advantages to having a DUI adjudicated under §32-5A-191(b) instead of the general YO statute. First, the Defendant's driver's license or driving privilege shall be suspended for a period of only 30 days – in lieu of any other penalties provided in subsection (e) of §32-5A-191 COA. Essentially, the Defendant cannot be fined or sentenced to any term of incarceration or probation under §32-5A-191(b). And, they cannot be required to attend and complete a DUI or substance abuse court referral program in accordance with subsection (i) of §32-5A-191 COA. If the Defendant's DUI is adjudicated pursuant to §32-5A-191(b), there shall be no disclosure, other than to courts, law enforcement agencies, and the person's employer.

It remains unclear as to whether the Defendant must pay court costs if their DUI is adjudicated under §32-5A-191(b). The statute is silent. And, there is no case law on point. For those reasons, most judges impose costs of court as a condition to granting relief under §32-5A-191(b).

There appears to be only one distinct disadvantage to having a DUI adjudicated under §32-5A-191(b). If the Defendant's DUI is adjudicated under §32-5A-191(b), it can be used to enhance their adult sentence for subsequent DUI conviction; *Casaday v. State*, 828 So. 2d 960 (Ala.Crim.App. 2002).

It is not possible to say that one statute is better than the other when seeking YO for your client charged with DUI. Each has its advantages and disadvantages. And, each Defendant has different goals. Some might want the immediate gratification of a short license suspension with no fine; without regard to the future enhancement consequences. Others might be willing to endure probation, a fine and a longer suspension to avoid the possibility of enhancement in a future DUI case. LawLink@bellsouth.net ●

The Indictment, Jurisdiction, and Related Concepts.

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of Rule 32.2. *Minshew v. State*, No. CR-05-1864, 2007 WL 866210, at *1 (Ala. Crim. App. Mar. 23, 2007); *Ex parte Batey*, No. 1050947, 2006 WL 3334490, at *2-3 (Ala. Nov. 17, 2006) (claim that sentence exceeds the scope of the HFOA is jurisdictional although the State's failure to prove a prior conviction is not).

However, the *Seymour* rule is not totally unfavorable to the defense. An objection that the indictment does not charge a criminal offense because the crime charged does not exist does constitute a jurisdictional claim which is not procedurally time-barred. *Conner v. State*, No. CR-05-0898, 2006 WL 2457529, at 474 (Ala. Crim. App. Aug. 25, 2006) (attempted robbery after January 1, 1980). Also, the state can waive, by failing to assert, the procedural bars of Rule 32.2. These affirmative defenses are not jurisdictional. *Ex parte Clemons*, No. 1041915, 2007 WL 1300722, at *6 (Ala. May 4, 2007). *Clemons* also held that an appellate court is no longer required to take cognizance that the post-conviction petition is barred for a reason that was not raised by the state at the trial court level. An appellate court may assert such defenses *sua sponte* (and dismiss the petition or affirm its dismissal) only under extraordinary circumstances. Finally, the trial court has the power to hear an untimely petition for post conviction relief. *Ex parte Ward*, No. 10551818, 2007 WL 1576054, at *8 (Ala. Jun. 1, 2007).

Maybe "[t]he law in Alabama regarding a trial court's personal and subject-matter jurisdiction over a criminal defendant is convoluted, and ... tortured with inaccuracy and confusion." *Ex parte Robey*, 953 So.2d 363 (Ala. 2006) (Stuart, J. dissenting). I guess I am confused because I was taught that an indictment must allege all the elements of the charged crime. *U.S. v. Resendiz-Ponce*, 127 S.Ct. 782, 787 (U.S. 2007). Do you ever wonder whatever happened to due process by whatever name it is called? ●

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Montgomery attorney **William R. Blanchard** is founder of Blanchard Law Offices in Montgomery, Alabama. He has over 20 years of experience and practices in all levels of state and federal court. Mr. Blanchard concentrates his practice in the areas of criminal

defense, appeals and post-conviction relief, family law and divorce, and personal injury, including motor vehicles accidents. He received his B.A. in Arts from The University of Alabama and JD from Thomas Goode Jones School of Law. Previous bar leadership posts include Past President of the Montgomery County Bar Association, Criminal Defense Committee, and Past Chairman of the ACDLA Legislative Committee. He serves as a member of the Alabama State Bar Association, the National Association of Criminal Defense Lawyers, Equal Justice Initiative, American Inns of Court, Montgomery Trial Lawyers Association, and Criminal Justice Act Panel of the U.S. District Court for the Middle District of Alabama.



RICHARD KEITH **PRESIDENT-ELECT**

Richard Keith was admitted to the practice of law in 1990 after graduating from Jones School of Law in 1989. He has been a solo practitioner since 1990 and is the managing partner of the Montgomery law firm of Keith & Dubin, P.C. Richard's primary focus of

practice is criminal defense. He has represented more than 60 defendants charged with capital murder. He is Past President of the Montgomery County Trial Lawyers Association, a member of the Montgomery County Bar Association, the National Association of Criminal Defense Lawyers, and serves as a CJA Panel Attorney for the Montgomery Federal Defenders Office.



KATHRYN KING **VICE PRESIDENT**

Kathryn King was born and raised in the Shoals area of Northwest Alabama. She graduated from Sheffield High School and attended the University of Alabama. She graduated with a BA in Anthropology in 1982 and earned her

MA in Anthropology from the University of Arkansas in 1988. She returned home to Alabama and attended the University of Alabama Law School, earning her degree in 1991. In 2002, her husband convinced her to move to Cullman, Alabama where she is currently in private practice. She has devoted a large portion of her practice to criminal defense and is currently the Secretary of the Alabama Criminal Defense Lawyers Association.



DONALD L. COLEE, JR. **SECRETARY**

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, the Alabama Criminal Defense Lawyers Association, the Birmingham Bar Association, the National Association of Criminal Defense Lawyers, 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 seminars, the Birmingham Police Academy seminars, as well as the Greater Birmingham Criminal Defense Lawyers Association's seminars.



PATRICK M. TUTEN **TREASURER**

Patrick M. Tuten attended Faulkner University and graduated from Jones School of Law at Faulkner in 1995. His private law practice, Tuten Law Offices, are located in Huntsville, Alabama where he has practiced since 1976. Patrick is licensed to practice in

all State and Municipal Courts in Alabama, the Federal District Court, Northern and Middle Districts of Alabama, as well as the Eastern District of Tennessee and the 11th Circuit and 6th Circuit Courts of Appeal. He has served as a Municipal Judge for the Town of Triana, Alabama and a Substitute Municipal Judge for the City of Huntsville, Alabama. Patrick is currently a member of the Alabama State Bar, the Huntsville Madison

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MELINDA MORGAN AUSTIN IMMEDIATE PAST PRESIDENT

Florence attorney **Melinda Morgan Austin** just completed her term as President of ACDLA. She was admitted to the Alabama Bar in 1996. She holds a B.A. from The University of North Alabama and her J.D. from The University of Alabama School of Law.

She is licensed to practice law in the Alabama and U.S. District Court, the Middle and Northern Districts of Alabama. Melinda served as President of the Lauderdale County Bar Association from 2003 to 2004. She is a member of the Alabama State Bar and most recently served as President of the Alabama Criminal Defense Lawyers Association from 2006-2007. Melinda's areas of practice include criminal defense, domestic relations, family law, divorce and general practice. She is a member of the law firm of Holt, Mussleman, Holt and Morgan.



JOSEPH P. VAN HEEST NEXT PAST PRESIDENT

Joseph P. Van Heest has practiced law in Alabama since 1994, and has represented hundreds of clients in civil and criminal cases in federal, state, and municipal courts. He is a graduate of Syracuse University and Catholic University of America Law School. He

came to Alabama in 1992 and served as law clerk to U.S. District Judge Harold Albritton. Joe then spent seven years working with Steve Glassroth and in May, 2001, left the firm of Glassroth & Van Heest, P.C., to become Assistant Federal Defender in the Middle District of Alabama. While there, he maintained a full trial unit caseload, while spending his last two years as the Coordinator of the Capital Habeas Unit. Joe left the Office of the Federal Defender in June 2005, to open a solo law office in Montgomery. He is Next Past President of the Alabama Criminal Defense Lawyers Association, and the Montgomery Chapter of the Federal Bar Association. Joe is also a graduate of the National Criminal Defense College Trial Practice Institute in Macon, Georgia, as well as NCDC's two

other programs: Advanced Cross Examination and Theories and Themes in the Defense of Criminal Cases. He is a member of the National Association of Criminal Defense Lawyers, and a Barrister with the Hugh Maddox American Inn of Court in Montgomery. He is a former director of the Montgomery County Trial Lawyers Association, and currently serves on the Grievance Committee for the Montgomery County Bar Association. Mr. Van Heest has been a frequent seminar speaker on issues in criminal defense ranging from the defense of firearms cases, and challenging eyewitness identification, to federal sentencing issues, ethics and the recent indigent defense crisis in Alabama.



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Huntsville attorney, **Linda F. Coats**, holds a J.D. from The University of Alabama School of Law. She was admitted to the Alabama State Bar in 1991. She is a sole practitioner whose specialty areas include: Family Law, adoptions, criminal defense, simple wills, estates, and Chapter 7 bankruptcy. Linda is an active member of the Alabama Criminal Defense Lawyers Association Legislative Committee and works with local political groups in Huntsville.

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Attorney **Randy B. Brooks** practices law in Anniston, Alabama with the firm of Brooks, Harmon & Monk, LLC. He has been practicing there since 1978. He practices almost exclusively in the areas of criminal defense. Randy was admitted to the State Bar in 1978 and holds a J.D. from Cumberland School of Law, Samford

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University. He has been an active member of the Alabama Criminal Defense Lawyers Association for several years, including service on the Board of Directors as a District II Vice President.



Amber Lynn Ladner has been a solo practitioner in Birmingham since 2004. She has a General Law practice with emphasis in the area of federal and state criminal justice and family court (both criminal and civil cases). From 2003 to 2004, Amber practiced in the firm of Luker, Cole and

Associates in Birmingham, where she specialized in areas of federal and state criminal justice, family court (both civil and criminal cases), GAL in civil actions, and GAL for involuntary commitments, probate and domestic relations. Her background includes work as a family support specialist for Gateway Family and Child Services where she was responsible for three to four family caseloads. Here she helped families find support in their community and worked closely with the Alabama Department of Human Resources. From 1998 until 1999, Amber served as a mental health specialist at Diamond Grove Community Counseling Services where she functioned as a member of the treatment team and accepted responsibilities for duties such as patient observation rounds, suicide risk observation, and assisting with treatment teams. Amber is a 2003 honors graduate of the Birmingham School of Law. She received her Educator's License for the State of Mississippi in 1998, her B.A. from William Carey College in 1998 and an Associate Degree from the Mississippi Gulf Coast Community College in 1996.



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Montgomery attorney **Jeffery C. Duffey** is a sole practitioner. He holds a B.S. from Auburn University and in 1977, graduated from Thomas Goode Jones Law School. Jeff was admitted to the

Alabama Bar in 1978. He is admitted to practice in the U.S. District Courts, Middle District, Northern District, and Southern District; the U.S. District Court for the District of Arizona; and the U.S. Supreme Court. He is also admitted to practice in the U.S. Court of Appeal for the 4th, 5th, 6th 8th, and 11th Circuits. Jeff is active in many professional organizations including the American Bar Association, the Federal Bar Association (2001 – President), the National Association of Criminal Defense Lawyers, the Alabama Criminal Defense Lawyers Association, the Montgomery County Bar Association (President – 2003), Federal Defenders for the Middle District for Alabama (Treasurer – 2007), as well as the Hugh Maddox Inn of Court (2006-07 – Vice President Elect).

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John W. Beck is a graduate of the Regent University School of Law (Virginia). He was admitted to the Alabama State bar in 1995. He is currently a sole practitioner in Fairhope where he practices in the areas of criminal cases – particularly capital murder, drug cases, DUI/traffic, robbery/burglary, as well as sex crimes/assaults. He is

admitted to practice in all courts in Southwest Alabama. He has over ten years experience as a trial attorney and has represented clients in over 50 jury trials. John is currently a member of the National Association of Criminal Defense Lawyers, the Alabama Criminal Defense Lawyers Association, as well as the Baldwin County Criminal Defense Lawyers Association.



Mobile attorney **Michel Nicrosi** is a partner in the law firm of Miller, Hamilton, Snider and Odom. Her practice focuses on preventive and litigation services for businesses and individuals in corporate and white collar crime matters. She served as a federal prosecutor for over sixteen years. She joined the U.S. Department of Justice in

Washington, D.C., after her graduation from law school in 1989. She was appointed to the DOJ under the Attorney General's

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Honor Program. For several years, Michel served as a trial attorney in the Southern Criminal Enforcement Section of the Tax Division. She prosecuted white collar criminal cases with emphasis on tax fraud and other financial crimes in several states throughout the country. In 1995, she transferred to the U.S. Attorney's Office for the Southern District of Alabama where she continued to handle white collar cases involving fraud, public corruption, and cybercrime. While in the U.S. Attorney's Office, Michel served as chief of the criminal division from 1997 to 2001. As chief she was responsible for supervising the criminal attorneys and managing the criminal litigation for the judicial district. In 2006, Michel successfully defended Paul Hamrick, the former chief of staff to the Governor of Alabama in the most significant public corruption trial in the history of the State of Alabama (the Siegelman-Scrusby trial in the Middle District of Alabama). A federal trial jury acquitted Mr. Hamrick on all charges including RICO violations, mail and wire fraud, and obstruction of justice after a nine-week trial. Michel received her undergraduate *magna cum laude* from The University of Alabama in 1986. She was earned her Juris Doctor degree from The University of Alabama School of Law and was admitted to the Alabama State Bar in 1989. She is a member of the American and Mobile Bar Associations and holds an AV peer review rating from Martindale-Hubbell.



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Enterprise attorney **Paul A. Young, Jr.**, is a 1979 graduate of The University of Alabama School of Law. He has practiced law in Coffee County, Alabama for most of his 28-year career. Paul Has received a number of awards and accolades for his achievements as a criminal defense attorney. In 1994, he received the Alabama State Bar's prestigious Clarence Darrow Award for unselfish service in the field of criminal law. He has also been honored with two President's Awards from the Alabama Criminal Defense Lawyers Association. 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.



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Michael J. Upton is a sole practitioner in Tuscaloosa, practicing almost exclusively in the areas of Criminal Defense and DUI Defense. He earned his B.S. in Secondary Education in 1989 from the University of Alabama, and in 1992, earned his J.D. from The University of Alabama School of Law. A member of the Alabama State Bar and the National Association of Criminal Defense Lawyers, he has served on the Board of Directors of the Alabama Criminal Defense Lawyers Association since 2001. Mike has authored materials for, and lectured at the ACDLA Four Corners seminar on several occasions, and since 2004 has been a member of the planning committee for ABICLE's yearly Criminal Defense Seminar. He has also served on the Criminal Practice and Procedure Committee of the Tuscaloosa County Bar Association. Mike was one of 75 attorneys recently named to represent indigent defendants in Federal Court as a member of the CJA Panel for the Northern District of Alabama. Mike's wife, Stephany, is an Assistant Public Defender in Tuscaloosa.



KEVIN L. BUTLER
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Kevin L. Butler is the First Assistant Federal Defender for the Middle District of Alabama. He received his J.D. in 1991 from Arizona State University College of Law and his undergraduate B.S. in engineering from

Cornell University in 1988. Kevin has served as an Assistant Federal Defender for the past fifteen years and First Assistant Federal Defender since 2003. Prior to joining the Federal Defender Program, he clerked for the Hon. Robert J. Johnston, U.S. Magistrate Judge for the U.S. District Court in Las Vegas, Nevada and interned in Las Vegas with United State Chief Judge Lloyd D. George. Mr. Butler is a frequent lecturer on criminal law topics, giving lectures on defending methamphetamine cases, defending gun cases, representation of the mentally ill, courtroom technology and pretrial discovery. ●



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