

The Guardian

The Newsletter of the Alabama Criminal Defense Lawyers Association

July/August/September 2012

LUKER NAMED BEDDOW WINNER

ACDLA, at its 2012 Summer Seminar annual awards banquet in Pensacola Beach, Florida, awarded its highest honor, the Roderick Beddow Award to Birmingham criminal defense lawyer, David Luker.



David Luker

Mr. Luker has been a part of ACDLA since its inception in 1981. His devotion as an advocate of the improvement of the criminal justice system is undeniable and he has readily devoted his time in speaking at continuing legal education seminars, and teaching at the Birmingham School of Law. He fully understands the importance of what criminal defense lawyers do in representing all of those who are accused of crime, including those who are unable to pay for our services.

David Luker is very much like Mr. Beddow, who was a zealous advocate for his client. He is dedicated to mentoring new lawyers, and serves the bar through his committees. Known for his high profile cases, his client list also includes Thomas Blanton, Jr. and Eric Rudolph, among a few.

He is a member of the National Association of Criminal Defense Lawyers (NACDL), ACDLA and is a co-founder and charter member of the Greater Birmingham Criminal Defense Lawyers Association.

The Roderick Beddow Award is given each year to a member of ACDLA in recognition of a career of criminal defense work.

Receiving **Merit Awards** for outstanding success in criminal cases were:

Bruce Gardner, Huntsville
Jake Watson and Brian White, Huntsville
Michael Hanle, Brett Bloomston and Joe Basgier, III, Birmingham
John Lentine, Birmingham
Jeff Bramer, Birmingham
Bill Clark, David McKnight, Jim Parkman, Birmingham,
Tommy Goggans, Jeff Duffey, and Ron Wise, Montgomery
Dennis Knizley, Mobile
Paul Young, Enterprise and J. David Robinson, Daleville
Dustin Fowler, Dothan
Ross Massey, Tuscaloosa
Jason Neff, Tuscaloosa
Gar Blume, Tuscaloosa
Walt Buttram, Brandy Pearson & Scott Stewart, Gadsden

Receiving **Presidents Awards** from President Patrick Tuten for outstanding contributions to ACDLA this past year were:

Bill Broome, Anniston
Hays Webb, Tuscaloosa
Kathryn King, Cullman
Jeff Austin, Florence
Patrick Mahaney, Montgomery
Joel Sogol, Tuscaloosa
Linda Coats, Huntsville
Bill Blanchard, Montgomery
Joe Van Heest, Tuscaloosa
Paul Young, Enterprise
Ann Cooper, Montgomery

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Amber Ladner presented David Luker of Birmingham the 2012 Roderick Beddow Award, ACDLA's highest honor.



President's Column

By Jeff Duffey, Montgomery, AL



Dear Members:

I am extremely proud and honored to be elected as 2012 President of the Alabama Criminal Defense Lawyers Association. As Elvis would say, "Thank ya, thank ya very much!"

Congratulations go to Birmingham criminal defense lawyer David Luker who was awarded the highest honor bestowed by ACDLA, the Roderick Beddow Award. David was presented the award at the 2012 Summer Seminar in Pensacola Beach, FL.

I also want to welcome four new District Vice Presidents/Board members who were elected at the Summer Seminar: Ron W. Smith of Huntsville (District I), David Lee Johnston, Jr. of Anniston (District II), Russell Bergstrom of Mobile (District IV), and Robert Haigler, Jr. of Daphne (District IV).

Speaking of the Summer Seminar, it was again excellent. The speakers were informative and keynote speaker Jose Baez gave a very heartfelt message regarding his personal experiences in the Casey Anthony case.

Stay tuned for the 2013 Summer Seminar. For the first time in the history of this organization we will have a joint meeting with the Georgia Association of Criminal Defense Lawyers in Panama City, FL. We expect to have outstanding speakers and a great opportunity to meet and network with members of the GACDL. The 2013 Summer Seminar will be held in May instead of the traditional June date. Save the date: May 2-4, 2013.

One of the purposes of ACDLA is "to disseminate by lecture, seminars, and publications, the advancement of knowledge of the law as it relates and is ancillary to the field of criminal defense practice." To that end we have an excellent seminar coming up in October called "Using Psychological Experts for the Defense: When, How & Why." It will be held October 19, 2012 at the Embassy Suites in Huntsville.

Topics include:

1. Mental Evaluations of Your Client
2. When and How to Utilize a Neuropsychologist
3. Post Traumatic Stress Disorder (PTSD)
4. Traumatic Brain Injury
5. Eyewitness Identification Common Errors
6. The False Confessions Phenomenon

It stands to be an excellent opportunity to learn from the experts and our peers.

In closing I want to mention one area I would like to emphasize this term. Fifty years ago the U.S. Supreme Court in the landmark case of *Gideon v. Wainwright*, unanimously declared the "obvious truth" that "lawyers in criminal court are necessities, not luxuries." The Constitution requires that everyone charged with serious crime be afforded the opportunity for assistance of counsel. That means everyone, even the most despised of people. This country was founded on the belief of individual freedom and liberty. When one is charged with a serious crime, that person is in real danger of losing that freedom and liberty. Liberty is a precious right and should not be taken away without some protection that is fairly done. We have a common interest in effectively representing our clients to the best of our ability. That is no less than what the Constitution requires. In doing so we sometimes are unfairly taken to task by judges, prosecutors, and others in authority. I want to re-emphasize our Strike Force Committee to be at the side of any of our members who are unfairly accused in matters arising out of the performance of that duty. I intend to propose a set of guidelines to the Board to determine how best to protect our members who are unfairly taken upon by those in authority.

Jeff Duffey
jcduffey@aol.com



Joseph Baez receives the ACDLA official Summer Seminar shirt from President Jeff Duffey. Mr. Baez received a warm reception as keynote of the event

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

annscooper@acdla.org

ACDLA will also consider for publication articles which have appeared elsewhere. ACDLA reserves the right to select and edit material for publication.

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Guardian Deadlines

March 15, 2012
June 15, 2012
September 15, 2012
December 15, 2012

Send camera-ready copy with payment to the ACDLA office.

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

ACDLA
PO Box 1147
Montgomery, AL 36101

Please notify the ACDLA office immediately of any changes in your contact information. If you are not on the ACDLA email discussion group and you would like to be, please send your name and email address to **annscooper@acdla.org**

FROM MY PERSPECTIVE

By Ann S. Cooper, Executive Director

CONGRATULATIONS DAVID LUKER!

ACDLA's highest honor went to one of Alabama's finest criminal defense lawyers recently. If you know David, please contact him and let him know you are proud of this achievement. His selection highlights a lifetime of work in the field and he is to be congratulated by all in ACDLA for such a distinguished body of work.

MORE CLES COMING UP – "USING PSYCHOLOGICAL EXPERTS: WHEN, HOW & WHY" – OCTOBER 19, 2012 (6 CLES.)

Don't miss ACDLA's next CLE set for Huntsville's Embassy Suites Hotel. Conveniently located near the courthouse, participants will be treated to a well rounded faculty focusing on a number of critical issues including:

- Mental Evaluations
- Post Traumatic Stress Disorder
- Traumatic Brain Injury
- The False Confessions Phenomenon
- Common Errors in Eyewitness Identification
- When and how to use a Neurologist

Presenters will be Dr. Eric Seamann, Assistant Professor, Department of Psychology, University of Alabama, Huntsville, Dr. Kristen Triebel, Assistant Professor of Neurology, University of Alabama Huntsville and Dr. Jeffrey Neuschatz, Associate Professor of the Department of Psychology, University of Alabama Huntsville.

Sign up now and save \$50! To sign up online, go to <http://acdla.org> or to sign up over the phone, call 1-334-272-0064. Early bird discounts drop September 18. Registration is \$249 for ACDLA members by September 18 and \$299 for all after that date.

Special room discounts will be offered at The Embassy Suites located at 800 Monroe Street, Huntsville, Alabama. Call 1-256-539-7373 and use the reference group code of: CDL to get room discounts of \$119 single or double. Better hurry. Room discounts drop September 18, 2012.

2012-2013 BOARD OF DIRECTORS

Be sure to notice in this edition of The Guardian, the roundup of ACDLA's 2012-2013 Board of Directors. Please get to know your district vice president and be sure to keep them posted on problems or questions about ACDLA programs and activities. The breakdown of counties by district is included in the directory list for your convenience. If you still have questions about your district vice president, please contact me right away and I will be glad to give you their name and contact information. The Board of Directors is elected each year at the Summer Seminar and Annual Meeting.

Officers include:

President – Jeff Duffey, Montgomery
President-Elect – Amber Ladner, Birmingham
Vice President – Bill Broome, Anniston
Secretary – Hays Webb, Tuscaloosa
Treasurer – Linda Coats, Huntsville

As always, please feel free to contact the ACDLA office if you have questions regarding membership and services. Dues statements will commence in early September. Be sure to be on the lookout for your statement. On behalf of the Board of Directors, we appreciate your continued support of ACDLA.

Best,

Ann Cooper
Executive Director
annscooper@acdla.org
(334)272-0064

DOES THE NOSE REALLY KNOW?

By The Hon. Tommy Spina, Birmingham, AL and Whitney H. Torbert, Peterson
Associate Director, Cumberland Trial Advocacy Board and Candidate for Juris Doctor, Birmingham, AL

Sit. Stay. Speak. These are three examples of commands that a motivated dog with adequate training could learn to perform at will. Dogs learn at an early age that certain cues from their handlers are meant to trigger their performance. These cues can be simple motions or verbal commands. These cues can be intentional or unintentional. Whatever the cue, dogs become trained to react. In some cases, if not most, these reactions become reflex.

Positive reactions mean positive reinforcement. In the case of dog training, the positive reinforcement is often a treat and/or praise. Soon enough, dogs begin to pick up that performing a trick, whether they are given a cue or not, will earn them treats and praise. Sometimes, dogs are simply rewarded solely for good behavior. Eventually, the dog's motivation to act is based on its reliance of treats and praise. This theory presents a problem in the case of Drug Detection K-9's. These Drug Detection K-9's are not motivated by the idea of fighting drug crimes and protecting the community as their handlers are. These Drug Detection K-9's are motivated by approval and rewards.

The job of a Drug Detection K-9 is to alert to the presence of the odor of narcotics. At the proper age, these dogs attend schools where they are introduced to the smells of different narcotics and trained to react to these odors. While these dogs are extensively trained and are able to detect some odors fairly accurately, it does not always happen consistently. Just as humans, these K-9's make mistakes. However, unlike humans, K-9's cannot give a reasoning to their reactions. Some argue that these dogs are merely reacting due to a cue given, whether intentional or unintentional, from their handler. Some suggest that they are merely reacting for the rewards. In the end, the reasoning behind the K-9's response is left to be interpreted by its handler. This act of translating between K-9 and handler begs the question: is it the handler taking cues from the K-9 or is the K-9 taking cues from the handler? Overall, the primary concern with Drug Detection K-9's and their motivation to react is whether the unexplained responses of a dog are enough to establish probable cause to conduct a warrantless search. *Jeffrey S. Weiner, Police K-9's and the*

Constitution: What Every Lawyer and Judge Should Know. The Champion. April 2012. Pg. 22.

One of the underlying basis for the use of canines in searches is the Carroll Doctrine. The Carroll Doctrine refers to, "a principle that permits a police officer to search an entire motor vehicle, and any containers inside it, if there is probable cause to believe the vehicle contains contraband or the fruits, instrumentalities or evidence of criminal activity." Carroll Doctrine Law and Legal Definition, <http://definitions.uslegal.com/c/carroll-doctrine>. Probable cause is defined as, "a reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime." *Black's Law Dictionary (9th ed. 2009)*. The unresolved question is whether K-9 alerts and handler translated responses are enough to establish a reasonable ground to expect that an individual or vehicle contains narcotics.

Based on precedent set forth by the United States Supreme Court and the subsequent Alabama Appellate Courts adoption of the principles set forth in that precedent, trained Drug Detection K-9 alerts are enough to establish probable cause. In *State of Alabama v. David R. Ellis* the court cited that, "an alert by a trained drug-sniffing dog provides probable cause to search without a warrant." *State v. Ellis*, 71So.3d 41,49 (Ala. Crim. App. 2010). The Alabama court stated, "The Eleventh Circuit has] long recognized that 'probable cause arises when a drug-trained canine alerts to drugs." *Id.* Alabama Courts have even upheld the validity of a K-9 search in the presence of mistake. In *Manuel Jesus Ynosencio v. State*, the Alabama Supreme Court held that despite that the K-9 dog in this case made a misidentification prior to alerting to the presence of narcotics in Mr. Ynosencio's car, this was not enough to to "destory the general reliability of a trained dog's identification of narcotics" and thus probable cause was present. *Ynosencio v. State*, 629 So.2d 795, 798 (Ala. Crim. App. 1983). Thus, despite the fallibility of the Drug Detection K-9's, unless the traffic stop is deemed to be unjust, the court will likely uphold that a positive alert

from the drug dog is enough to establish probable cause.

A recent study conducted by the Chicago Tribune analyzed three years of data from police departments in the suburbs of Chicago and found that just 44% of dog alerts resulted in the discovery of drugs or paraphernalia, and that the average false alert resulted in a stop lasting almost a half hour. The numbers are even more staggering for Hispanics drivers – the success rate was a mere 27%. Even accounting for alerts triggered by drug residue, the numbers suggest that the dogs are either being poorly trained or are responding to cues from their handlers like leading them too many times or too slowly around a vehicle.

A study conducted by researchers at the University of California at Davis and published in January states unequivocally that “handler beliefs affect scent detection dog outcomes,” and that detector dogs are cued by their handlers 85% of the time. Lawrence Myers, an associate professor of animal behavior at Auburn University’s College of Veterinary Medicine has said that he’s “disturbed by the number of dog-handler teams that are not well trained,” while Steven D. Nicely an expert at K9 Consultants of America – who started training dogs in 1973 as a military policeman, became a police officer in Texas, and has been a professional dog trainer since 1989 – says that he’s convinced that “the majority of detector dog trainers are not very knowledgeable.”

If there is in any silver lining in all this for pot possessors it’s that the same glaring incompetence that’s pervasive in false detections can lead to canines being so poorly trained that they’re unable to detect non-trace amounts of illegal substances in the majority of cases, according to Nicely. In a Japanese university study published in the Journal of Veterinary Behavior in 2009, researchers stated clearly that “a dog’s response to commands is influenced not only by the relationship with its owner, but also the owner’s dog-handling ability.” The ability of law-enforcement trainers can seriously be called into question, Nicely says that in his review of “approximately 30 drug detector dogs’ field performance... the average probability of non-trace amounts [of drugs] being seized is 39%.” He says properly training dogs could easily lead to non-trace amounts being seized 80% of the time.

Edwin Yohnka, director of communications and public policy at the American Civil Liberties Union of Illinois asserts that “dog sniffs should be banned absent individualized reasonable suspicion that a car contains illegal drugs,” in other words, evidence besides a dog’s bark.

In conclusion, keep filing Motions to Suppress Evidence obtained as a result of warrantless searches initiated by the probable cause developed by a “dog”, while right now the climate for success is not favorable, I always remember the words of Judge U.W. Clemon, “There was a time that *Plessy v. Ferguson* was the law.” Don’t give up and maybe one day we can affect a change. ●

ABOUT THE WRITERS:



The Hon. Tommy Spina, shown here with his faithful pal, Sophia Lucia Spina, is a criminal defense lawyer in private practice in Birmingham, Alabama. His practice is limited to criminal defense on a Federal, State

and Municipal Court level. His practice focuses on representation of criminal defendants at all stages of criminal proceedings including pre-indictment, trial, appeal and post-conviction. He has taught Criminal Law and Criminal Procedure at the Birmingham School of Law (2000, 2001, 2008) and has served as Special Circuit Court Judge by appointment of the State of Alabama Supreme Court on a number of occasions in Jefferson County. He was on the Committee that studied and implemented the current Drug Court Program presently in operation in Jefferson County District Court and presided over by Judge Pete Johnson. He is presently the Municipal Court Judge for the City of Vestavia Hills, Alabama (2002-present). In addition to Alabama, he has represented clients in Federal and State cases in Arizona, Texas, Mississippi, Florida, Georgia & Louisiana. He is admitted to practice in the U.S. Supreme Court and the U.S. Courts of Appeals for the Eleventh and Fifth Circuits.

Whitney Hannah Torbert is a candidate for Juris Doctor in May, 2013 with Cumberland School of Law. She is Peterson Associate Director and a member of the Cumberland Trial Advocacy Board.

Confronting Crawford: Are You 'Enjoying' The Right To Confrontation?

By: David McKnight, Birmingham, AL

*"In all criminal prosecutions, the accused shall enjoy the right...
to be confronted with the witnesses against him..."*

—U.S. Constitution, amend. VI (emphasis added)

RELIABILITY AND ROBERTS

Crawford v. Washington, 124 S.Ct. 1354, 1359 (2004) has been hailed for breathing life back into the Confrontation Clause, calling it a "bedrock procedural guarantee". Prior to *Crawford* the right to confront was governed by the "amorphous notion of reliability" set out in *Ohio v. Roberts*, 100 S.Ct. 2531 (1980). *Crawford*, *supra* at 1370. The *Roberts* rule was that "reliable" statements didn't need cross-examination. Reliable statements were defined as those which bore "adequate indicia of reliability" or possessed "particularized guarantees of trustworthiness". *Roberts*, *supra* at 2540.

CROSS-EXAMINATION AND CRAWFORD

Crawford stands for the principle that the Confrontation Clause bars "admission of **testimonial statements** of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had a prior opportunity for cross-examination." *Id.* at 1365 (emphasis added). The Court held that the "obvious reliability" of a testimonial statement does not dispense with the Confrontation Clause. The Clause "commands, not that evidence be reliable, but the reliability be assessed in a particular manner: by testing the evidence in the crucible of cross-examination." *Id.* at 1370. Thus, determining what constitutes a "testimonial statement" has become crucial. The Court enumerated a core class of testimonial statements.

Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations. These are the modern practices with closest kinship to the abuses at which the Confrontation Clause was directed.

Id. at 1374. However, the Court left "for another day any effort to spell out a comprehensive definition of 'testimonial'." *Id.*

TESTIMONIAL STATEMENTS:

A DECISIONMAKING FRAMEWORK

Since 2004, the U.S. Supreme Court has given us some guidance and continues to do so, as to what is a "testimonial statement". "Most Supreme Court cases since *Crawford* involving the Confrontation Clause have fallen into two groups involving, respectively, accusatory statements made to government officials and forensic laboratory results."

ACCUSATORY STATEMENTS

TO GOVERNMENT OFFICIALS

The Supreme Court has addressed statements made to government officials (i.e. police officers and 911 operators) in: a). *Crawford v. Washington*; b). *Davis v. Washington*, and c). *Michigan v. Bryant*.

***Crawford*:** Michael Crawford was prosecuted for stabbing a man who had allegedly attempted to rape his wife, Sylvia. Sylvia witnessed the stabbing, was arrested as a suspect, given Miranda warnings, interrogated about the incident and provided a recorded statement to police. At trial, Sylvia Crawford claimed spousal privilege and did not testify, but the State introduced the tape recording of her statement to the police to prove that the stabbing was not in self-defense. The Supreme Court found Sylvia's statements during a station-house interrogation about the stabbing were testimonial and their admission when her husband had no opportunity for cross-examination constituted a Sixth Amendment violation of his right to confrontation. *Crawford* dealt with a classic police interrogation and left the nuances of statements given under less clear cut circumstances for another day.

***Davis*:** Next, the Court decided *Davis v. Washington*, 126 S.Ct. 2266 (2006) which is actually two domestic violence cases: *Davis* and *Hammon*. In *Davis*, Michelle McCottry made statements to a 911 operator during a domestic disturbance with Adrian Davis, her former boyfriend. McCottry told the

operator: “He’s here jumpin’ on me again” and “He’s usin’ his fists.” The operator then asked McCottry for her assailant’s name and at that point in the conversation McCottry reported that Davis had fled in a car. *Id.* at 2271. McCottry did not appear at Davis’ trial, and the State introduced the recording of her conversation with the 911 operator.

In *Hammon*, police responded to a domestic disturbance call at the home of Amy and Hershel Hammon. When they arrived, they found Amy alone on the front porch and whatever had taken place was already concluded. The police asked Amy to fill out and sign a battery affidavit. She wrote: “Broke our Furnace & shoved me down on the floor into the broken glass. Hit me in the chest and threw me down. Broke our lamps & phone. Tore up my van where I couldn’t leave the house. Attacked my daughter.” *Id.* at 2272. Amy did not appear at Hershel’s trial, so the police officers who spoke with her testified as to her statements and authenticated the affidavit. The trial court admitted the affidavit as a present sense impression and admitted the oral statements as excited utterances under state hearsay rules.

The Supreme Court distinguished these two cases holding that the statements at issue in *Davis* were nontestimonial and the statements in *Hammon* were testimonial. The Court noted that Davis’ statements involved events that were actually happening—an ongoing emergency. Whereas Hammon’s interrogation was part of an investigation into possible past criminal conduct and there was no emergency in progress. The Court established the “Primary Purpose Test” which provides that:

[s]tatements are **nontestimonial** when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an **ongoing** emergency. They are **testimonial** when the circumstances objectively indicate that there is no such ongoing **emergency**, and that the primary purpose of the interrogation is to establish or prove **past events** potentially relevant to later criminal prosecution.

Id. at 2273-74 (emphasis added).

Bryant: In *Michigan v. Bryant*, 131 S.Ct. 1143 (2011) the Court provided additional clarification concerning application of the primary purpose test. In Bryant, police officers responded to a 3:25 a.m.

radio dispatch indicating that a man had been shot. At the scene, they found Anthony Covington lying on the ground next to his car in a gas station parking lot. Covington had a gunshot wound to his abdomen, appeared to be in great pain, and spoke with difficulty. The police questioned him. Covington identified the shooter and described the incident. Within 5 to 10 minutes of this conversation emergency medical services arrived, transported Covington to a hospital where he died within hours. *Id.* at 1150. At trial a police officer was allowed to testify concerning Covington’s identification of the shooter and description of the shooting. The Supreme Court ruled that the police officers were not trying to create a statement to be used at trial when they spoke with Covington, but rather were responding to an on-going emergency. The Court said Confrontation Clause assessments are “context dependent” and require an objective evaluation of the circumstances in which the encounter occurs in order to determine its primary purpose. *Id.* at 1156, 1159. This assessment should incorporate the actions and statements of both the declarant and the interrogators. *Id.* at 1160. The Court noted that a gunman on the loose poses an “ongoing emergency” to the police and the public at large thus expanding its analysis beyond the original victim. *Id.* at 1156. The Court considered various factors including: whether there was an ongoing emergency (a gunman at large), the medical condition of the victim (mortally wounded), the formality of the circumstances under which the statement is taken (informal and not at the police station), and assessed the purpose of the questioning reasonable participants would have had under the same circumstances. *Id.* The Court concluded that the statement was not testimonial, thus there was no Confrontation Clause issue and it could be admitted under the state and federal rules of evidence.

LAB REPORTS

The Court has been less willing to allow statements in the form of lab reports or chemical analysis to be admitted without cross-examination of the analyst performing the work. When the evidence at issue is a lab report, counsel should consult the Supreme Court’s opinions in: a). *Melendez-Diaz v. Massachusetts*; b). *Bullcoming v. New Mexico*; and c). the soon to be released opinion in *Williams v. Illinois*.

Melendez-Diaz: In *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009) the defendant was charged with trafficking cocaine. At his trial, the State

Continued on page 8

CONFRONTING CRAWFORD

Continued from page 7

admitted (pursuant to a Massachusetts statute) three sworn and notarized “certificates of analysis” indicating that the substance found in his vehicle was cocaine. His trial counsel objected on Crawford confrontation grounds but was overruled. Following conviction he appealed. The Supreme Court held that such certificates are in essence affidavits and thus fall within the “core class of testimonial statements” requiring confrontation. *Id.* at 2532. The Court noted that the affidavits were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. *Id.* The Court refused to create a “forensic evidence” exception to the Crawford rule. The Court wrote that analysts who write reports the prosecution introduces must be made available for cross-examination even if they possess “the scientific acumen of Mme. Curie and the veracity of Mother Theresa.” *Id.* at 2537 fn.6.

Bullcoming: Last year the Court affirmed *Melendez-Diaz* in *Bullcoming v. New Mexico*, 131 S.Ct. 2705 (2011). Bullcoming was arrested for a DWI and refused the breath test but a blood-alcohol test revealed a concentration of 0.21, well above the threshold for aggravated DWI. At trial, the prosecution did not call the analyst who performed the test and signed the certificate of analysis but instead admitted the certificate through another analyst who worked in the same lab. The Supreme Court reversed the conviction and wrote that surrogate testimony does not satisfy the Confrontation Clause. “The accused’s right is to be confronted with the analyst who made the certification, unless that analyst is unavailable at trial, and the accused had an opportunity, pretrial, to cross-examine that particular scientist.” *Id.* at 2710.

Williams: During the week of December 11, 2011, the Supreme Court heard argument in *Williams v. Illinois*, 131 S.Ct. 3090 (2011). This sexual assault case involves the testimony of an expert witness for the State who compared the DNA profile of vaginal swabs conducted by an independent lab (Cellmark) and the DNA profile from the defendant’s blood, determining they were a match. The expert had no personal knowledge of

the procedures or methodologies used by Cellmark. The forensic report itself was not introduced nor did any of the analysts who prepared it testify at trial. The issue presented is: “[w]hether the prosecution violates the Confrontation Clause when it presents, pursuant to a state rule of evidence, the substance of a testimonial forensic laboratory report through the trial testimony of an expert witness who took no part in the reported forensic analysis, where the defendant had no opportunity to confront the analysts who authored the report.” *Brief of Petitioner*, 2011 WL 3894397. The State argued this is acceptable because the report itself was not admitted at trial. Justice Kennedy, who wrote dissenting opinions in both *Melendez-Diaz* and *Bullcoming* indicated through his questioning that he believes he is bound by their precedent. Therefore it appears that Williams will have a similar outcome to *Melendez-Diaz* and *Bullcoming*, but we will have to wait and see.

CONCLUSION

“Our criminal justice system gives an accused the right to insist that those who make statements creating evidence against the individual do so face-to-face and subject to cross-examination.” Following *Crawford* and its progeny, if an accusatory statement is made to a government official, it is inadmissible if it is testimonial unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination. Whether or not an accusatory statement is testimonial will be objectively determined according to the primary purpose test. On the other hand, if the statement is a lab report, so far the Court has required the analyst who wrote the report be present to testify about its contents.

ABOUT THE WRITER:

David McKnight is an attorney with the law firm of Baxley, Dillard, McKnight & James in Birmingham, Alabama (www.baxleydillard.com). ●



“Using Psychological Experts for the Defense: When, How & Why”

6 CLEs

October 19, 2012

Embassy Suites Hotel, 800 Monroe St., Huntsville, AL

1-800-EMBASSY / Reference Group Code: CDL

Special Rate: \$119 single or double / Discount drops: 9/18/12

- 8:50 a.m. Welcome & Announcements
- 9:00 a.m. “Mental Evaluations of Your Client: What Should Be Included and Why”
Dr. Eric Seamann, Asst. Professor, Dept. of Psychology, University of Alabama-Huntsville
- 10:00 a.m. “When and How to Utilize a Neuropsychologist”
Dr. Kristen L. Triebel, Asst. Professor of Neurology, University of Alabama-Huntsville
- 11:00 a.m. “Post Traumatic Stress Disorder (PTSD)”
Dr. Eric Seamann, Asst. Professor, Dept. of Psychology, University of Alabama-Huntsville
- LUNCH Noon
- 1:15 p.m. “Traumatic Brain Injury”
Dr. Kristen L. Triebel, Asst. Professor of Neurology, University of Alabama-Huntsville
- 2:15 p.m. Break
- 2:30 p.m. “Eyewitness Identification: Common Errors”
Dr. Jeffrey Neuschatz, Associate Professor, Department of Psychology, University of Alabama-Huntsville
- 3:30 p.m. “The False Confessions Phenomenon”
Dr. Jeffrey Neuschatz, Associate Professor, Department of Psychology, University of Alabama-Huntsville
- 4:30 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 maximum of 6.0 General CLE credit hours.

REGISTRATION FORM

“Using Psychological Experts: When, How & Why”
Please sign me up!

Name(s): _____

Firm/Agency: _____

Address: _____

City: _____

State: _____ Zip: _____

Email: _____

Fax: _____

Registration:

\$249 by September 18, 2012 for ACDLA Members

\$299 for non-members

\$299 for all after September 18, 2012

Free to Lifetime Members

The seminar registration includes all breaks and materials on CD rom.

Registrations Total \$ _____

TOTAL ENCLOSED: \$ _____

Method of Payment:

_____ Check (Payable to ACDLA) Amt. Enclosed _____

_____ Visa _____ Mastercard

Name on Credit Card: _____

Expiration Date: _____

Signature: _____

ALL MATERIALS WILL BE IN CD ROM FORMAT.

Sorry, no refunds after September 18,
but substitutions are welcomed.

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CAPITAL CORNER

By John Edmond Mays, Attorney, Decatur, Alabama

IMPLIED THREATS TO SUPPORT FIRST DEGREE RAPE MUST BE CLEAR IN JUVENILE CASES

The case of *C.D.B. vs. State*, 81 So3d 399 (2012), was a juvenile case adjudicated in Calhoun County. The perpetrator was a fourteen year old male and the victim a nine year old female. The two had a dating relationship. The girl's mother was ironing clothes and the two juveniles were watching television. The defendant removed the girl's pants and they had sex on the floor in front of the television. The girl made a complaint to her mother as soon as the defendant left.

The female testified that she complied with the defendant's request for sex because "she was somewhat afraid of him". She said she was afraid of the defendant because she had seen him lose his temper and argue with his father in the past.

However, she also testified he:

"Did not threaten her or do anything to make her feel like if she didn't want to do what he asked, he would hurt her."

The court overturned the conviction and stated:

Viewing the evidence in a light most favorable to the State, this Court must conclude that the State failed to "present any evidence (C.D.B.) used physical force that overcame (D.E.D.'s) earnest resistance". D.W., 350 So3d at 957. Nor did the state present any evidence indicating that C.D.B. made "a threat, express or implied, that placed (D.E.D.) in fear of immediate death or serious physical injury to herself or another person". See: *Ex parte J.A.P* 853 So2d 280, 289 (2002) "holding that its decision in *Powe vs. State* 597 So2d 721 (1991), under which an implied threat may be inferred, applies only in "cases involving the sexual assault of children by adults who exercised positions of domination and control over the children" and does not apply in cases involving sexual relations between two children.

The Court went on to hold after stating the above rule that the following facts brought out in the trial did not constitute an implied threat:

1. The male was older than the female.

2. The male was larger than the female.

3. The female had seen the male argue with his father and grab a belt out of his father's hand.

The court concluded that these factors were inadequate proof because:

A threat, whether explicit or implicit, is defined as "a communicated intent to inflict harm on another or another's property". ●

CONVICTED FELONS IN POSSESSION OF FIREARMS HAVE AN OBSTACLE TO CLAIMING SELF-DEFENSE

The Alabama Court of Criminal Appeals recently decided the case of *Kidd vs. State* 2012 WL 1450539. Certiorari has not been granted.

The appellant, William Kidd, was convicted of murder. He had gone to the home of the victim, William Hamilton and after a brief argument shot him in the chest. Kidd entered the victim's home carrying a .40 cal pistol. He claimed that the victim wanted to trade his .45 cal for the .40 cal because it held more bullets. The trade occurred and then the evidence was disputed. The defendant claimed that as he was leaving he turned around and saw the victim pointing a pistol at him and he drew his pistol and fired in self-defense. Two other witnesses testified. One stated the victim was unarmed and another testified the victim was armed but that the pistol he held had no clip in it.

However, the most important facet to the issues involved was the appellant was a multiple convicted felon who was prohibited from possessing a firearm. The issue arose during the trial court's charge to the jury.

A person who is justified in using deadly physical force in self-defense under 13 A-3-23 (a) has no duty to retreat and has the right to stand his ground as long as the person:

"...is not engaged in unlawful activity."

At trial, the state contended that because Kidd was a felon in possession of a firearm, he was engaged in an unlawful activity and therefore had a duty to retreat under 13A-3-23 (b). The appellate court agreed and held:

"In the present case, Kidd's unlawful possession of the

firearm contributed to the argument that eventually led to the shooting. Accordingly, he was not entirely free from fault. Therefore, 13A-3-23 (b) imposed a duty to retreat upon Kidd and the trial court's instruction to that effect was appropriate."

Question: Can one safely retreat from someone who has a pistol pointed at him? ●

BOOK REVIEW: *QUEST FOR JUSTICE* BY RICHARD JAFFE

Quest For Justice is a book written by ACDLA's past president and lifelong friend, Richard Jaffe. It is a very real book, real defendants, real courtrooms and a lawyer who defends those who face the ultimate penalty.

Although the book describes many successes, through its recounting of actual capital cases it clearly demonstrates that the death penalty is inherently wrong and simply cannot be fairly administered. The volume chronicles a number of trials, most of them capital. It's void of ego; there is no bragging about courtroom victories. Even in his victories, Richard describes his feelings about gaining the trust of his client and then holding that client's life in his hands. It's a book by a lawyer for lawyers.

On three occasions Richard represented people whom a flawed system had sentenced to die and he exonerated them. James Willie "Bo" Cochran, Randal Padgett, and

Gary Wayne Drinkard. But for his efforts all three would now be dead. Each of these cases is chronicled in *Quest For Justice*. I was co-counsel in one of them.

There is a statement in the closing chapter particularly written to criminal defense lawyers:

"Always in the thick of battle looms the trial warrior, misunderstood, perpetually preparing for the next conflict and unsure of the outcome, especially when the decisions flow from elected political officials or from the belly of a jury made up of twelve strangers."

The next capital case I try, I hope to have at least one juror who has read *Quest For Justice* and sees it for its truth. The death penalty is not a deterrent and the execution of a human being does not bring "closure" to anyone. The United States is currently the only industrialized nation in the western hemisphere that still imposes the death penalty on its citizens.

Near the end of the book Richard says:

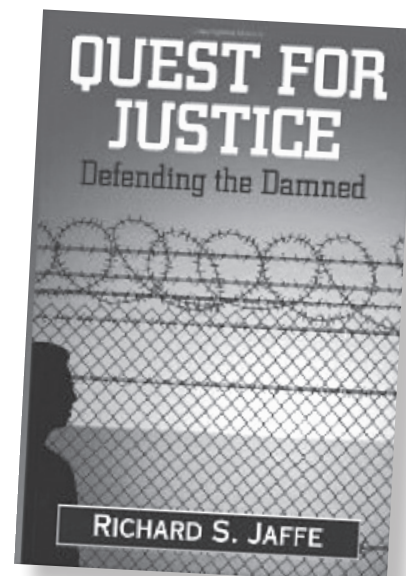
"Since the death penalty's reinstatement in 1976, about 1200 people have been executed. We will never know how many were either innocent or at some stage of redemption." The Supreme Court has ruled that capital punishment does not apply to juveniles or to the mentally retarded due to "evolving standards of decency" but I strongly feel it to be indecent to execute even the worst of us. ●

"*Quest for Justice*" Now Available On Line! A Portion of These On Line Sales Helps ACDLA

Richard Jaffe's new book, *Quest for Justice*, is now available for sale on line. If you are interested in purchasing a copy, just go to ACDLA's website at <http://acdla.org> and look for the *Quest for Justice* book cover in the lower right hand side of the page. Click on the link there which will take you directly to Amazon to purchase the book.

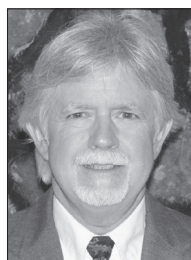
As an Associate Partner with Amazon, ACDLA will only receive a portion of all book sales if you use our homepage web link. Ordering directly through Amazon does not benefit the Association in any way.

Of course if you are in a hurry to pick up a copy, you might try your local bookdealers.



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PRESIDENT

Montgomery

Montgomery attorney **Jeff Duffey** is a graduate of Auburn University and Thomas Goode Jones Law School. Jeff was admitted to the Alabama Bar in 1978. He is admitted to practice in all U.S. District Courts in Alabama, the U. S.

District Court for the Northern District of Florida and the U.S.

District Court for the District of Arizona. He is also admitted to practice in the U.S. Court of Appeals for the 4th, 5th, 6th, 8th, and 11th Circuits, and the U. S. Supreme Court. Jeff is a former law clerk and staff attorney for the Court of Criminal Appeals. He is active in many professional organizations and is a former President of the Federal Bar Association-Montgomery Chapter, the Montgomery County Bar Association, the Federal Defenders for the Middle District of Alabama and the Hugh Maddox American Inn of Court. He is currently a Bar Commissioner for the 15th Judicial Circuit.



PATRICK M. TUTEN
IMMEDIATE PAST PRESIDENT

Huntsville

Patrick M. Tuten has been in practice in Huntsville since 1996. His practice is dedicated almost exclusively to criminal defense matters. He is licensed to practice in all State and Municipal Courts in Alabama, the Federal District Courts for

the Northern and Middle Districts of Alabama as well as the Eastern District of Tennessee and the 11th Circuit and 6th Circuit Courts of Appeal. Patrick is a member of the Alabama State Bar, the Huntsville/Madison County Bar Association, the National Association of Criminal Defense Lawyers, the American Inns of Court and he is a Life Member of the Alabama Criminal Defense Lawyers Association. He serves as a part-time municipal judge, a CJA panel attorney in the Northern District of Alabama and has served on Chief Justice Cobb's Judicial Study Commission on Indigent Defense since 2008.



DONALD L. COLEE, JR.
NEXT PAST PRESIDENT

Birmingham

Birmingham attorney, **Donald L. Colee, Jr.**, began his legal career in 1976 upon graduation from Cumberland School of Law. He served as a Deputy District Attorney in Jefferson County from 1976 to 1983 where he prosecuted felony

and misdemeanor offenses in District and Circuit Court. He was also a class instructor for the Birmingham Police Academy, as well as an advisor and instructor for the Rape Response Program. From 1983 to the present, Mr. Colee has been in the private practice of law. His practice is primarily criminal law and he has handled all types of cases

from death penalty to misdemeanors, trials and appeals, both State and Federal. Since 2008, Mr. Colee has served as a part time municipal judge for the City of Gardendale and since 2009 to 2010, he was a professor at the Birmingham School of Law. Don is active in the Birmingham Bar Association, is immediate past president of the Alabama Criminal Defense Lawyers Association, a charter member of the Greater Birmingham Criminal Defense Lawyers Association and is a member of the National Association of Criminal Defense Lawyers. He also has served since 1988 with the Department of Youth Services Chalkville Advisory Board since 1988, working with juveniles. In 2010, the Greater Birmingham Criminal Defense Lawyers Association presented him with the 2010 Lifetime Achievement Award. On June 17, 2011 Mr. Colee was awarded ACDLA's top honor, the Roderick Beddow Award, for outstanding service in a career of criminal defense work.



AMBER LYNN LADNER
PRESIDENT ELECT

Birmingham

Amber received her B.A. with honors in Psychology and Social Science from William Carey College in 1998, her educator's license from the State of Mississippi with endorsements in Psychology and Social Studies in 2003 and her

J.D. from the Birmingham School of Law in 2003. Amber is a partner with Bradford, Ingram and Ladner, LLC. She has a general law practice with an emphasis in the area of Federal and State Criminal Justice. Her practice includes criminal defense in Federal and State criminal courts including Family Court. She routinely sits as a special District Court Judge in the criminal division of Jefferson County. She is Past President of the Greater Birmingham Criminal Defense Lawyers Association and Vice President of Alabama Criminal Defense Lawyers Association in which she is a Life Member and Chair of the Association's CLE committee. She is a recipient of both the Merit and President's Awards from the Alabama Criminal Defense Lawyer's Association for her outstanding contributions to the Association and in the representation of a criminal client. She is a member of the National Criminal Defense Lawyers Association, Birmingham Bar Association's Criminal Justice, Women's, Small Firms and Solo, and Young Lawyer's Sections, and has been a member of the Inns of Court of Birmingham. She is an adjunct faculty member at the Birmingham School of Law where she teaches criminal procedure. She is a graduate of the National Criminal Defense College in Macon, Georgia. She also participates in various outreach programs including *pro bono* legal advice to the homeless, speaking to small community groups concerning the criminal justice system and in schools to explaining the legal profession to students. Her civic activities include Past President of the Home and School Board of Saint Francis Xavier School, Girl Scout Leader, Sunday school teacher and Fundraiser for the American Heart and Muscular Dystrophy Associations. She is also an accomplished Tennis and Softball player when she is not raising her two beautiful daughters.



WILLIAM H. "BILL" BROOME
VICE PRESIDENT

Anniston

William H. "Bill" Broome has been a solo practitioner in Anniston since 1977. Bill's practice is limited to the defense of individuals accused of criminal offenses from capital murder to misdemeanors in all state and federal courts.

Bill graduated from Auburn University in 1973 and the University of Alabama School of Law in 1977. He is serving his fourth term on the Board of Bar Commissioners of the Alabama State Bar and was on the Bar's Executive Council in 2006-2007. Bill serves on the Bar's Governmental Liaison Committee and Appointed Counsel and Indigent Representation Committee. He is President of the Opportunity Center Foundation of Northeast Alabama and is a member of the Alabama Law Institute Council and Criminal Code Revision Committee. He is a member of the Indigent Defense Advisory Board for the Seventh Judicial Circuit. Bill is active in the American Bar Association-Criminal Justice Section, NACDL, American Inns of Court, Calhoun-Cleburne County Bar Association, Civitan Club of Anniston and Calhoun County Quarterback Club. He serves as a CJA Panel Attorney for the Northern District of Alabama. Bill is a past President of the Board of Directors of Legal Services Alabama and currently serves on its Executive Committee.



R. HAYS WEBB
SECRETARY

Tuscaloosa

R. Hays Webb is a former Marine, serving his country from 1985-1989. He is a graduate of The University of Alabama School of Law and was admitted to the Alabama State Bar in 1997. From 1997 until 2001, Hays served as a Public

Defender in the Tuscaloosa County Public Defenders' Office. In 2001 he became a partner in the Tuscaloosa law firm of Turner, Webb and Roberts. Hays' practice areas include DUI/DWI, criminal law, personal injury and family law. He has spoken at numerous seminars around the state for Alabama Bar Institute for Continuing Legal Education (ABICLE) and Alabama Criminal Defense Lawyers Association (ACDLA). He is an active member of ACDLA, the National Association of Criminal Defense Lawyers (NACDL), the Tuscaloosa County Bar Association, the National College of DUI Defense, as well as the Alabama State Bar.



LINDA F. COATS, Huntsville
TREASURER

Huntsville Attorney, **Linda F. Coats**, graduated from the University of Alabama in Huntsville in 1988 with a BA in Political Science. She graduated from the University of Alabama School of Law in 1991. Linda has been a solo practitioner in Huntsville for the past 20 years in

the areas of criminal defense and domestic relations. She is a member of the National Association of Criminal Defense Lawyers (NACDL) and a graduate of the National Criminal Defense College (NCDC). Her other

professional associations include the Family Law Section of the Alabama State Bar and the Madison County Bar Association. She is a past president of the Madison County Young Lawyers. Linda has four times received the President's Award from ACDLA and she currently serves as the Co-Chair of the Legislative Committee of the ACDLA. She is a past board member of Big Brothers Big Sisters and a past board member of the Huntsville Downtown Rescue Mission. Linda was elected to the Madison County Republican Executive Committee in the 2006 Republican Primary and she was re-elected in the 2010 Republican Primary. She is serving her third term as President of Huntsville's Twickenham Republican Women. She is also the Legislative Chairman for the Alabama Federation of Republican Women and she currently serves on their executive board. Linda is also active in local charities as a member of the Junior League of Huntsville and a member of the Hunt's Spring Chapter of the Daughters of the American Revolution. She is the Republican nominee for the upcoming General Election in November for District Court Judge in Madison County. Linda is running without opposition and in all likelihood will be leaving us to assume her duties as District Court Judge in January, 2013.

RONALD W. SMITH, Huntsville and BRIAN M. WHITE, Decatur
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Serving Colbert, DeKalb, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall and Morgan Counties.



Ronald W. Smith earned his B.S. degree in Justice Sciences with a minor in Spanish from the University of Alabama at Birmingham in 1998. He received a J.D. at the University of Alabama in December 2000 and was admitted to the Alabama State Bar in March of 2001. After graduation, Mr. Smith was a prosecutor for the Madison County District Attorney's office until 2003 when he began practicing with Ables, Baxter, Parker & Hall n/k/a Ables, Baxter, Parker, & Smith. He is admitted to practice in the United States District Court for the Northern District of Alabama (2003). Ronald's practice is concentrated in general civil litigation and criminal defense



Brian M. White is a native of Decatur, Alabama. He graduated magna cum laude in economics from Birmingham-Southern College. While at Birmingham-Southern, Brian was elected to Phi Beta Kappa. Brian is a veteran of the Persian Gulf War with service in 1990 and 1991. After returning from deployment in Saudi Arabia, Brian earned his JD at the University of Alabama. In 1998, Brian completed the National Criminal

Defense College in Macon, Georgia. Brian's practice is focused on criminal trial and appellate work and divorce and custody litigation. For more than fifteen years, Brian has represented defendants in criminal trials from murder cases to misdemeanors. Brian's practice is primarily in Morgan, Lawrence, Limestone, Madison and Marshall Counties. In addition to practicing in state courts all over North Alabama, Brian is also admitted in the U.S. District Court, the 11th Circuit Court of Appeals, and the U.S. Supreme Court.

Continued on page 14

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Dani V. Bone was born and raised in Gadsden, Alabama. He graduated from Gadsden High School in 1975 and from Jacksonville State University in 1979 with a BS degree and a major in Marketing. In 1980, he went to work in the Veterinary Pharmaceutical business and eventually managed a sales force for the Eastern United States. He then followed his dream of becoming an attorney, attended law school and

graduated from the Birmingham School of Law in 1996. After practicing for one year with his brother, Gary Bone, he opened his own firm in 1998 and has been a solo practitioner ever since. He is a member of the Etowah County Bar Association, the Alabama Trial Lawyers Association, the American Bar Association and the ACDLA. He is admitted to practice in the U.S. District Court Northern District of Alabama, U.S. Court of Appeals for the 11th Circuit, the Supreme Court of the U.S., as well as all Alabama State Courts. He has devoted a large portion of his practice to criminal defense, but also handles personal injury cases, and family law matters.



David L. Johnston, Jr. is a partner in the law firm of Brooks, Harmon & Johnston, LLC. The firm concentrates in the areas of criminal defense and personal injury litigation. Mr. Johnston has handled a wide variety of both criminal and personal injury matters in the course of his practice. The cases Mr. Johnston has handled and tried range from Capital Murder cases wherein the death penalty was sought to any

number of personal injury matters. Mr. Johnston is a member of both the Alabama Criminal Defense Lawyers Association and the National Association of Criminal Defense Lawyers. In addition to his active criminal and civil practice, Mr. Johnston also has been a lecturer at Continuing Education Seminars sponsored by the Alabama Criminal Defense Lawyers Association. Mr. Johnston has also been a guest lecturer at the University of Alabama to speak to students in the Social Work Department regarding the role of Social Work in the mitigation aspect of Capital offenses. Mr. Johnston is licensed to practice law in both the State of Alabama and the State of South Carolina. In addition to those State Bar admissions, Mr. Johnston is licensed to practice in the Northern and Middle Districts of Alabama in the United States District Court - Eleventh Circuit as well as the Eleventh Circuit Court of Appeals. He is a graduate of Grove City College and Cumberland School of Law and was admitted to the Alabama State Bar in 1997 and to the South Carolina Bar in 2002.



Michael P. Hanle is a sole practitioner and trial attorney in Birmingham, Alabama. His practice is limited to defending individuals charged with criminal conduct in federal, state, and municipal court including DUIs, state and federal drug possession, distribution, and trafficking cases, violent felonies, white collar crimes, sex offenses, state and federal appeals, and all misdemeanors and traffic violations. Mr. Hanle has tried

numerous cases in both Federal and State Courts. Mr. Hanle is the Immediate Past President of the Greater Birmingham Criminal Defense Lawyers Association, a member of the Alabama State Bar, the Alabama Criminal Defense Lawyers Association and the National Association of Criminal Defense Lawyers. He is currently the District II Vice President, the chair of the Indigent Defense Subcommittee and a member of the Legislative Committee for the Alabama Criminal Defense Lawyers Association. He is admitted to practice in the 11th Circuit Court of Appeals and the United States District Courts for the Northern, Middle and Southern Districts of Alabama. He graduated with a BS degree from Louisiana State University and a JD degree from Southern University. He has been married to Donna J. Hanle for 24 years and has three wonderful children: Rachel (19), Jonathan (17), and Jackson (9)

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Jeremy W. Armstrong is a native of Phenix City, Alabama. He graduated from Auburn University in 1993 with a BS degree in Public Administration. In 1994, while attending Jones School of Law, Jeremy was employed with the Alabama Attorney General's Office and was assigned as a member of the prosecution team that prosecuted Walter Leroy Moody, Jr., for the bombing-murder of 11th Circuit Court of

Appeals Judge Robert S. Vance. In May, 1998, then AG Bill Pryor, appointed Jeremy as an Assistant Attorney General with the Alabama AG's Office where was assigned to the Capital Litigation Division, representing the State of Alabama in death penalty proceedings and federal habeas proceedings. In August, 1999, Jeremy was appointed Deputy District Attorney for the Montgomery County District Attorney's Office. In October 2000, Jeremy moved back to his hometown of Phenix City, Alabama and began a private practice as a criminal defense attorney. Jeremy's wife, Melissa, is a forensic drug chemist with the Alabama Department of Forensic Sciences. They have four children. Jeremy is an active member of the Alabama Republican Party and is advisory legal counsel for the East Alabama Republican Party. Jeremy and his family are active members of Holy Family Catholic Church in Columbus, Georgia.



I.M. "Mike" Winter has practiced law since 2000. He received his BA from Vanderbilt University and his JD, magna cum laude, from the Thomas Goode Jones School of Law. In law school, he served as the President of the Student Bar Association, was an editor on the Law Review for two years, and received the award as the most outstanding graduate. He is admitted to practice in the state and federal bars in

Alabama. In his first legal job, Mike served as the law clerk to the Chief Justice of the Alabama Supreme Court. In 2005, he began his private practice as a solo practitioner with Winter Legal Strategies LLC. He has represented clients throughout Alabama in criminal, civil, and appellate cases. He currently serves on the Board of ACDLA, the Federal Bar Association, and is President of the Montgomery County Bar Association. He received a Merit Award from the ACDLA in 2007 and a Presidents Award in 2008. He serves as a Panel Attorney for the Federal Defender's Office for the Middle District. He has lectured at national conferences on elder law rights.

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Russell Bergstrom is a native of New York City with a B.S. in Criminology from Florida State University and his J.D. from Loyola University School of Law, New Orleans. He has worked for the Chevron Corporation in Land Development in New Orleans and with several civil law firms in that same city. In 2002, he went into private practice in Mobile, Alabama with an emphasis on criminal defense. He holds licenses to

practice in both Alabama and the State of Louisiana. Russell is a member of the Mobile Bar Association, the Mobile Criminal Defense Lawyers Association, the American Bar Association as well as the Alabama Criminal Defense Lawyers Association. He has received awards for his work with indigent clients.



Robert Hagler, Jr.'s areas of practice include criminal defense, consumer bankruptcy, and domestic relations. He has over twenty years of varied experience across a wide variety of industries, including manufacturing, banking, and health insurance. He has also served on several non-profit boards and is active in the community. He is admitted to the State Bar of Alabama and the United States District Court

for the Northern, Middle and Southern Districts of Alabama. He is a graduate of the Birmingham School of Law (2007) and holds an MBA from The University of Alabama in Birmingham, as well as a B.S. in Computer Sciences (1990) from The University of Alabama in Birmingham.



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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 for most of his 30 plus year career. Paul has received a number of awards and accolades for his achievements as a criminal defense attorney. In 1994, he received the State Bar's prestigious Clarence Darrow Award for unselfish service in the field of criminal law. In 2009, Paul received ACDLA's highest honor, the Roderick Beddow Award. He has also received three Presidents Awards from ACDLA. Paul served as president of the Coffee County Bar Association from 1987 to 2003 where he has been recognized for his fifteen years of service as bar president. His solo practice specializes in criminal defense, domestic relations and personal injury.



**PAUL W. WHITEHURST, Tuscaloosa
DISTRICT VI VICE PRESIDENT**

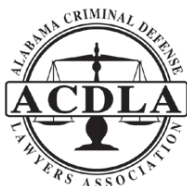
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J. Paul Whitehurst practices law with his wife Kitty in Northport. He graduated from the University of Alabama Law School and was admitted to the bar in 1979. He has a general law practice. His main outside activity is Kentuck which is an arts and crafts organization in Northport. He's a regular vegetable gardener. He writes songs under the name Elmonte Slim. All their children have four legs (except one that has three).



**ALLISON TAYLOR, Tuscaloosa
Tuscaloosa County Public Defenders Office
PUBLIC DEFENDER REPRESENTATIVE**

Allison Taylor joined the Tuscaloosa County Office of Public Defender as an Assistant Public Defender in 2003. She received her undergraduate degree from Samford University in Birmingham, Alabama and is a cum laude graduate from the Cumberland School of Law. At Cumberland, Allison was awarded a Presidential Scholarship. She was named the Chief Judge of the Trial Advocacy Board and was selected as a member of Cumberland's National Trial Teams. Allison was also a Research and Writing Editor of the American Journal of Trial Advocacy. As an attorney, Allison's practice has included misdemeanors and DUIs as well as felonies and capital cases. She is an alumna of the National Criminal Defense College in Macon, Georgia and the Death Penalty College in Santa Clara, California. Allison is a member of the Tuscaloosa County Bar Association and is a graduate of the 2011 Alabama State Bar Leadership Forum Class. Allison is married to Drew Brislin and they are active members of Canterbury Episcopal Chapel at the University of Alabama in Tuscaloosa. ●



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