

NEWSLETTER

COMMITTED TO THE PRINCIPLES OF LEGAL EXCELLENCE, COMMUNITY SERVICE, AND INCREASED MINORITY PARTICIPATION IN THE PRACTICE OF LAW

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FROM THE PRESIDENT'S DESK



Sharon Y. Christmas-DeBerry

In today's volatile financial markets, change is everywhere. The way we lived a few years ago is now drastically different. During this time of economic crisis, we must remain positive and look beyond our

difficulties to the better life that awaits us.

For many in private practice, whether in a large, medium, small or solo firm, we are feeling the effects of the economy. Business is slow and overhead remains unchanged. In this time of recession, we must all join together to help one another. If you receive a call for legal assistance in an area of law in which you do not practice, refer it to one of your fellow members who practices in that area. In these economically troubled times, a source like the Bourne Pages could be just the boost you need. If you have not yet signed up, I encourage you to do so.

The Bourne Pages provide an opportunity for you to advertise your business and serves as referral

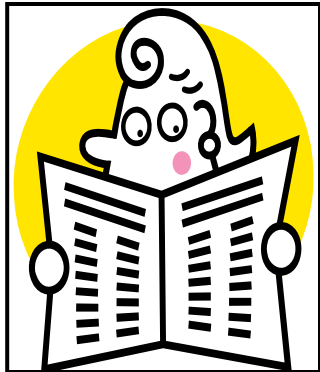
resource for your fellow members. The Bourne Pages is also now listed in the Community Legal Services' Guide to Legal Services, which is distributed by courtroom bailiffs to litigants in need of counsel. For more information on The Bourne Pages, contact Joel Braithwaite at joel.braithwaite@gmail.com, Holly Reed at hollyreed3@msn.com, or visit the website at www.bournepages.com

Becoming involved is also a way to let your colleagues know who you are and the areas of law in which you practice. If you would like to serve on a committee, please visit our website at www.bournebar.org to see a list of committees with which you can become involved.

For all of you experiencing the effects of the economy, hang in there. We live in a resilient country. There is light at the end of the tunnel! Adversity breeds success!

Sharon Y. Christmas-DeBerry
President
J. Franklyn Bourne Bar Association

Coming soon to the JFB Newsletter -- Classified Advertisements. Stay tuned for more info!



JUDICIAL INDEPENDENCE

Our constitutional system of government is separated into three branches of government; the executive, legislative and the judiciary. One thing that remains special about the judiciary is the fact that it is the domain of lawyers; all judges are lawyers for the most part. Judicial review plays an essential role in ensuring that each branch of government powers are limited to its proper role as delegated by the Constitution. Judicial review protects civil rights and liberties that do not comport with the Constitution. As a necessary part of separation of powers, the doctrine of judicial independence allows the judiciary to effect these duties.

Judicial independence requires that the judiciary be above politics. Judicial independence acts as a buffer to the improper influences of the executive and legislative branches of government. Over the past 200 years, the courts have been instrumental in protecting the rights and liberties of all Americans from unconstitutional infringements. Since these infringements often have come from government, the independence of the judiciary was/is necessary for the courts to have not only the authority, but also the ability, to

declare such actions unconstitutional. In essence, by protecting our Constitutional rights, the courts have helped to ensure the survival of our constitutional system of government. For these reasons, all Americans have a stake in the preservation of an independent judiciary.

This constitutional lesson is all theoretically well and good until a judge rules against us or exercises their judicial discretion in a manner that we as attorneys do not agree with. Then the Lawyer v. Judge cannibalization begins. While one can have reasonable disputes with a judge's ruling, there are proper venues to resolve that dispute, namely the Courts. Motions for reconsideration, notices of appeals and the like, all have a place in the practice of law. Lawyers should use all available means to vindicate the objectives of their client (within the bounds of the Rules of Professional Responsibility of course).

Should lawyers pursue means outside of the Court to advance our client's objectives? Hmm... We'll see. Stay tuned for Discretion, Discretion, Discretion in next month's issue where I will explore the bounds of our professional discretion as attorneys and judges.

[Joel Braithwaite, Esq.](#)

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The **JFB Newsletter Committee** strives to insure that the *JFB Newsletter* provides a valuable resource to its members. But we need your help. The Newsletter Committee invites your participation as a Committee member or as a contributor. We welcome articles and information on topics of interest to JFB members. For further information, please contact **Joel Braithwaite**. (See above.)

CHRISTMAS IN APRIL

It's that time of year again! Christmas in April will be held on April 25, 2009. This year we will be renovating the home of a senior in Capital Heights, MD who takes care of her 101 years-young mother and disabled son. We will need cleaners, painters, drywall installers, and any of you that are ambulatory. J If you think you can give us a few hours of your time, I promise you will be richly rewarded when you see the pleasure on our homeowner's face. If you're interested, please contact Maurene Epps-Webb via email at mewebb@co.pg.md.us or telephone at 301-952-3644.

BITS & BRIEFS

We will have another insightful CLE at our general membership meeting on April 16, 2009. The topic will be "Criminal Motions" CLE's are presented to provide members with an opportunity to acquire practical tips and/or knowledge on the given topic. There is always something to learn – for the new, as well as seasoned lawyer. See you there!

SAVE THE DATES

Party Around the World April 2, 2009. Party Around the World is a collaboration of the Bar Association of Montgomery County and specialty bars from all over Maryland to celebrate diversity in the legal profession. The celebration is a casual evening of ethnic, music, dancing, food, beer and wine, and enjoyment at the Women's Club of Chevy Chase located at 7931 Connecticut Avenue. The cost is \$35 in advance and \$45 after March 30. Food, soda, beer and wine are included!

Retirement Celebration for the **Honorable William J. Rowan, III**, Circuit Court for Montgomery County, will be held on April 7, 2009 at the Far East Restaurant in Rockville, MD. Judge Rowan's letter of thanks and invitation is attached.

A **JFB Membership Drive** will be held on April 24, 2009 from 5:30 p.m. to 8:30 p.m. at the home of the Honorable Herman C. Dawson. If you have never attended one of **Judge Dawson's Seafood Feast**, you'll be in for a real treat!

The *JFB Newsletter* is published monthly except July. All rights are reserved but articles may be reprinted without permission, provided proper credit is given. JFB members receive this newsletter at no cost. Statements expressed herein are those of the authors and do not necessarily reflect the views of the **J. Franklyn Bourne Bar Association, Inc.** or its officers.

The *JFB Newsletter* invites letters and articles. Submissions should be sent by E-mail, in MS Word format, to joel.braithwaite@gmail.com. Editor reserves the right to shorten any submissions to meet space limitations. Deadline is the 29th of each month.

DUE PROCESS: 6TH AMD. & BAIL HEARINGS

Due Process: From whom much is taken much is required. I'm not trying to invent a new idiom or even recast Spiderman's charge from Uncle Ben, "To whom much is given, much is required." Rather, I write to draw attention to the fact that in Maryland, the law perceives no right to legal counsel for criminal defendants at bail hearings. Under the Sixth Amendment, a suspect is afforded the assistance of counsel "in all criminal prosecutions." This right attaches when adversarial judicial proceedings commence. Under federal law, these critical stages include formal charges, indictment, information, arraignment, and preliminary hearings. Supreme Court jurisprudence states Sixth Amendment functions "to 'protect] the unaided layman at critical confrontations' with his 'expert adversary,' the government, *after* 'the adverse positions of government and defendant have solidified' with respect to a particular alleged crime." *United States v. Gouveia*, 467 U.S. 180, 189 (1984); See also 27-644 Moore's Federal Practice -- Criminal Procedure § 644.30. The Supreme Court has opined that the stage from arraignment until trial is "the most crucial period" for investigating criminal charges, preparing a defense and consulting an attorney. *Powell v. Alabama*, 287 U.S. 45, 57 (1932).

While the Fourteenth Amendment incorporates and applies the Sixth Amendment to the States, Maryland law affords criminal defendants less than full constitutional protection. The shortcoming does not rest on any actual prohibition in the law. For example, the Maryland Declaration of Rights, Article 21, requires "that in all criminal prosecutions, every man ... (is) to be allowed counsel..." The Court of Appeals has stated that "The right to counsel provisions of Article 21 of the Maryland Declaration of Rights are in *pari materia* with the sixth amendment." *State v. Campbell*, 385 Md. 616, 627 (Md. 2005). Further legal support for the extension of the right to counsel in bail hearing is arguably found in the Maryland Code governing the Office of the Public Defender which provides that the defender "shall" provide legal representation in "any...proceeding where possible incarceration may result." Maryland Public Defender Act, Md. Code Ann., Crim. Proc. Art. §16-201 et seq. Some have argued that the appointment of a public defender, or other counsel, at the Rule 4-213(a) Initial Appearance is not required because it is a non-adversarial, primarily administrative proceeding, that is neither adversarial nor formal. There is support for that position in Supreme Court jurisprudence, *Gerstein v. Pugh*, 420 U.S. 103, 122 (1975) (stating that Fourth Amendment probable cause determination is not a critical stage of the criminal process), and Maryland law, *Campbell, supra*. However, it cannot be denied that criminal defendants facing potential deprivation of liberty without counsel in Maryland are only doing so after the Government's adverse position to the defendant has solidified with respect to a particular alleged crime. *United States v. Gouveia*, 467 U.S. 180, 189 (1984) (Holding the neutral role of government ceases after criminal proceedings begins). In sum, nothing can be more adversarial than a proceeding where the judicial officer can deprive you of liberty without the assistance of counsel. Nothing. We all await the decision of the Court of Appeals in *Richmond v. District Court of Maryland*, CA No. 54 (Sept. 2008 Term) (argued January 9, 2009). [Joel Braithwaite, Esq.](#)

VIEWS FROM THE BENCH

On March 19, 2009, we were honored to have the **Honorable William D. Missouri, Chief and Administrative Judge of the Circuit Court for Prince George's County and the Seventh Judicial Circuit, the Honorable Michele D. Hotten, the Honorable Maureen M. Lamasney and the Honorable Nicholas E. Rattal**, all Judges of the Circuit Court for Prince George's County, present a CLE: "Best Practices: A view from the bench."

They presented us with some of their pet peeves as well as advice on courtroom etiquette. They all expressed the importance of knowing your judges before you appear before them. Recapped below is some of their pet peeves, expectations and/or advice. We thank them for their time, insights and comments.



Judge Missouri

- Get the Court's permission to face the jury – don't just turn your back on the court.
- Never address the court while seated.
- Never get emotional about a case because it will cause you to address opposing counsel instead of the court.
- Cite your case, but accept the court's ruling. Don't argue with the court.
- If you cite a case, make sure it is current and that you read it – not just the headnotes. DO NOT cite to the Atlantic Reporter. If you do, make sure you cite to the Maryland Reports as well.
- Judge Missouri stated that he is always more observant of Bourne members because despite advances, people will still judge you differently. If you are a young attorney or not in court a lot, let him know. His forgiveness of your errors will be much greater.
- Do not jeopardize your case by reducing your scheduled time to present your case. If a judge says there is not a enough time to present the case in the time initially scheduled, ask for another judge or that it be reset. You can not represent your client effectively if you don't have time.
- Get involved in other bars associations.
- For those interested in judgeships, take advantage of the Mentoring Programs such as the MSBA and ABA.



Judge Lamasney

- Be on time! On time is at least an hour early.
- Call if you are going to be late.
- Be prepared to lose an argument and ready for your next move.
- Be prepared to defend your exhibits.
- Do not ignore the jury – they should see your exhibits and visuals – they are not just for the court.



Judge Rattal

- Your job as a lawyer is to teach and educate judges.
- Know your judge – what they will and will not allow.
- If you are going to cite a case, give it to the court in advance – especially if it is an unfamiliar topic.
- Be realistic in giving the court an estimate of how long your case will take (it affects the overall administration of the court's calendar)
- Speak in a language that the jury and the court will understand
- Be polite and use proper etiquette. It goes a long way with the jury and how they feel about you. If a decision is a close call and the jury likes you as counsel, that could very well tip the scale in your favor



Judge Hotten

- Be prepared and organized.
- Help the judge to help you (The judge can't try the case for you)
- Know the rules of evidence and procedure.
- Don't be hesitant – show confidence. Even if you are not– don't let anyone know it.
- Respect the authority of the court.
- Get the jury to like you.
- Evaluate your case from the beginning – NOT WITH EMOTION. Make the decision to take a case based on its strength and logic.
- Prepare your client for weaknesses in their case.
- Advise your client of the proper way to dress for court .
- If your case is being mediated, have a packet ready for the mediator.
- Don't let opposing counsel shape your case – don't be wed to your notes. If you can't get something into evidence, know alternatives to getting it in.

DUVALL WING RE-OPENING



On November 3, 2004, while the historic Duvall Wing of the Prince George's County Courthouse was undergoing restoration, a fire broke out in the attic of Courthouse. The damage caused by the fire, smoke, water and mold led to the demolition of the building. Reconstruction was well underway when fire broke out again on January 26, 2007. However, the fire was quickly extinguished with minimal damage. Reconstruction continued.

After years of rebuilding, the Grand Re-Opening Ceremony for the Duvall Wing of the Circuit Court for Prince George's County Court was held on March 12, 2009. The event was attended by many state and local dignitaries. The Building Committee and the Grand-Reopening Committee were both chaired by former Bourne President, the Honorable Sheila R. Tillerson Adams.

For those of you who were in practice before restoration began, you will notice that while there are some added additions, including larger courtrooms, a children's waiting room, and a coffee shop, the overall layout of the Duvall wing is reminiscent of the old wing. For those who did not take the tour, the layout of the Duvall Wing is as follows: Ground Floor: Clerk of the Circuit Court Offices--Child Support, Paternity, Microfilm, File Room. First Floor: Office of the Sheriff Building Security; Trust Clerk; Clerk of the Circuit Court Offices--Appeals, Accounting, Human Resources, Civil Law & Equity, Civil Domestic, Auditor, Judgment/Index; Children's Waiting Room; Police Lounge. Second Floor: Judge's Chambers; Courtrooms; Bailiff's Lounge. Third Floor: Court Reporters; Prince George's County Bar Association Lounge; State's Attorneys Grand Jury Screening Unit, Economic Crime Unit/Gun Unit. Fourth Floor: Register of Wills; Orphans' Court; Orphans' Court Judges' Chambers. The Duvall Wing is expected to open for business some time in the next few months.

J. FRANKLYN BOURNE BAR ASSOCIATION, INC.

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Important Dates to Remember

JFB's Montgomery County Committee

Sat., Apr. 4, 9:30 a.m. - 11:30 a.m.

Montgomery County Bar Association

27 West Jefferson Street, Rockville, MD

Holly Reed (301) 587-9480

Breakfast will be served.

JFB General Meeting

You are cordially invited to attend

On April 16, 2009

CLE: "Criminal Motions"

Organized by the Honorable Michele D. Hotten

Location: TBA

SCHOLARSHIP DONATIONS

In November of each year, we hold our **Annual Scholarship Awards Banquet**. Proceeds from the banquet are used to award scholarships to law students to help defray the cost of law school tuition. However, contributions can be made to the fund year round.

In keeping with JFB's commitment to increased minority participation in the practice of law, please join with us in those efforts by making a donation to the Scholarship fund. Donations are tax deductible and any amount would be appreciated. Checks should be made payable to **J. Franklyn Bourne Bar Association Scholarship Fund, Inc. and mailed to P.O. Box 1121, Upper Marlboro, MD 20773.**

MEMBERSHIP DUES

Many of you still have not paid your dues. Please complete the attached membership application and return it immediately. The Association needs your support!

MEMBERSHIP INFORMATION — DUES NOW BEING ACCEPTED.



Membership classes are:

Active: An "active member" shall be any attorney who is a member in good standing and is licensed to engage in the practice of law in the State of Maryland. **Dues: admitted to the Bar for less than 5 years — \$50; 5 years or more \$100.**

Associate: An "associate member" shall be any professor of law or person who is a member in good standing and is licensed to practice law in any jurisdiction other than Maryland and who

lives in either Montgomery or Prince George's County. **Dues: admitted to the Bar for less than 5 years — \$50; 5 years or more \$100.**

Student: A "student member" shall be any student matriculating at any accredited school of law located in Maryland or Washington Metropolitan Area who supports the principles and objectives of the Association and who, upon application and approval of the Board of Directors, pays the applicable membership fee. **Dues: \$10.**

New Admittees: Admitted to practice in Maryland in the last 12 months. **Dues waived for the first year.**