

## Criminal Justice Section Weekly News Round-Up

Produced by the ABA Criminal Justice Section

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**"Appointments,"** *Birmingham News*, "Anthony A. Joseph, a shareholder in the Birmingham office of law firm Maynard Cooper & Gale PC, has been elected chairman of the **American Bar Association** Criminal Justice Section."

**"Business Notes,"** *The Miami Herald*, "Carlton Fields announces that Miami shareholder Michael S. Pasano was selected to receive the Charles R. English Award bestowed by the **American Bar Association's** Section of Criminal Justice. The award is given to lawyers who exemplify the highest standards of professional ethics and service to the criminal justice system. Pasano focuses his practice primarily on complex criminal and civil litigation in both federal and state court."

**"Nearly 500 Teens Serving Life Terms in Pa. Prisons,"** *Pittsburgh (Pa.) Post-Gazette*, "Pennsylvania leads the nation in teen lifers -- prisoners serving life without parole for crimes they committed as minors -- and last week legislators met to examine the issue for the first time. In a courtroom in Pittsburgh, 18-year-old twins Devon and Jovon Knox faced exactly that fate -- life without parole -- for killing 18-year-old Jehru Donaldson in a botched car-jacking in July 2007, when they were 17. They join the 444 teen lifers currently held in Pennsylvania prisons, which is about a fifth of the nation's total and 110 more than runner-up Louisiana, according to a May 2008 report by Human Rights Watch. Sen. Stewart Greenleaf, R-Montgomery, who chairs the Senate Judiciary Committee and called the hearing, said he was startled to learn that Pennsylvania held the No. 1 spot and that the United States is the only country in the world that regularly imprisons youths for life. 'That got my attention,' he said. 'I felt a responsibility to look at [the issue] ... which is why we held the hearing.' Some states have considered laws that would reduce mandatory minimum sentences for juveniles or that would eliminate the penalty altogether. ... Pennsylvania may be the only state that has a mandatory sentence of life without parole for both first- and second-degree murder, said **James Fellman**, a Tampa, Fla.-based attorney and the co-chairman of the **American Bar Association Criminal Justice Section's Sentencing Committee**. 'It makes no sense at all,' he said. ... There needs to be different sentences for different crimes." **For a complete copy of this article e-mail [Robert Snoddy](mailto:Robert.Snoddy@abacriminaljustice.org).**

**"Copyright Owners Stress Mob, Money to Sell Criminal Cases,"** *Consumer Electronics Daily*, "Entertainment companies must emphasize organized crime connections to infringement and broad economic effects from it in order to get law enforcement to investigate, said MPAA and Entertainment Software Association executives. 'I can't go in and talk about counterfeit pills that kill,' said Chun Wright, vice president of anti-piracy legal affairs at the ESA, an electronic-games industry group. 'I know that I'm always going to be competing for resources' in seeking action by

prosecutors and government investigators. So the ESA stresses grave threats from economic sabotage and from 'organized crime groups that are engaged in a variety of crimes that do involve health and safety' as well as infringement, Wright said Friday at an **American Bar Association Criminal Justice Section** conference on criminal enforcement of intellectual property rights. ESA groundwork is paying off, Wright said. Judges are imposing substantial prison sentences of up to four years, she said. 'That's pretty incredible.'" **For a complete copy of this article e-mail [Robert Snoddy](mailto:Robert.Snoddy).**

**"Study: Juror Questions, Limits on Lawyer Presentations Enhance Jury Trial Process,"** *National Law Journal*, "A 7th Circuit Bar Association study that tested alternative trial concepts, including allowing jurors to ask questions of witnesses during trials and limiting presentations by lawyers, generally showed that the new techniques enhanced the jury trial process. The study, conducted by the 7th Circuit Bar Association American Jury Project Commission during 50 civil jury trials in the circuit's courts from October 2005 to April 2008, took into account survey results from 434 jurors, 86 lawyers and 22 federal trial judges who were involved in the trials. The report was released Thursday. The seven concepts tested, in addition to the two mentioned above, were providing jurors with preliminary instructions before evidence was presented, using 12-person juries in civil trials (as opposed to fewer than that number), allowing counsel to make interim statements to the jury between witnesses during the evidence phase of the trial, having jurors fill out questionnaires for the jury selection process and providing jurors with guidance about how to conduct their deliberations. 'Overall, the judges, attorneys and jurors who participated found the use of the tested concepts to be relatively effective in enhancing juror understanding and to have increased the overall satisfaction of the trial process,' the final report concluded."

<http://www.law.com/jsp/article.jsp?id=1202424834469>

**"Justices Poised for Full Docket,"** *Washington Times*, "The Supreme Court reconvenes next week to hear cases on a wide variety of issues, such as government involvement in religion, 'dirty words' on broadcast television and the treatment of Muslim terrorism suspects. 'A wide range of national security issues are percolating in the lower courts and could end up before the Supreme Court this term,' said Brad Berenson, a partner in the Washington law firm of Sidley Austin and an observer of the high court. One of the 43 cases on the court's docket is *Ashcroft v. Iqbal*, a lawsuit brought by Javaid Iqbal, a Pakistani Muslim who says he was mistreated after being imprisoned when the FBI classified him as a "person of interest" with regard to suspected terrorism. ... Religious doctrine is on the docket with *Pleasant Grove City v. Summum*, in which the Supreme Court is asked whether the city of Pleasant Grove, Utah, can display the Ten Commandments on a monument in a city park as a matter of free speech. ... In *Fox Television Stations Inc. v. the Federal Communications Commission*, the court agreed to decide whether 'fleeting' uses of expletives - or so-called 'dirty words' - are acceptable under FCC guidelines." <http://www.washingtontimes.com/news/2008/sep/29/justices-poised-for-full-docket/>

**"No Grand Jury for Gonzales: Report to Call for Continued Probe of U.S. Attorneys' Firings,"** *Washington Post*, "Former attorney general Alberto R. Gonzales

will not be referred to a federal grand jury for his role in the 2006 firings of nine U.S. attorneys, but a long-awaited report to be released today will recommend that a prosecutor continue to probe the involvement of lawmakers and White House officials in the episode, according to two people familiar with the case. Justice Department Inspector General Glenn A. Fine and Office of Professional Responsibility Director H. Marshall Jarrett, who wrote the report, will not absolve department officials of blame but will recommend that efforts to resolve unanswered questions continue, said the sources, who spoke on the condition of anonymity because the findings had not been made public. Attorney General Michael B. Mukasey is preparing to name a prosecutor from within the department to address the questions, ensuring that the politically charged issue will extend into the next administration, the sources said."

<http://www.washingtonpost.com/wp-dyn/content/article/2008/09/28/AR2008092801057.html?sub=AR>

**"New Rules for the FBI,"** *Washington Post* (editorial), "Since the terrorist attacks of Sept. 11, 2001, the Federal Bureau of Investigation essentially has been remaking itself into an intelligence agency that would rather thwart terrorist plots than apprehend perpetrators after they've struck. To that end, the bureau and the Justice Department have crafted guidelines that allow FBI agents as much flexibility to deter terrorist strikes as they have to disrupt the crimes they traditionally handle. We've had a chance to review the guidelines; we believe they are reasonable and include safeguards that should protect against intrusions on privacy and civil liberties. The new rules appropriately consolidate several directives that separately governed criminal probes and national security inquiries. A cohesive set of standards should increase accountability, since agents will no longer have reason to be confused about which sets of guidelines govern what situations."

<http://www.washingtonpost.com/wp-dyn/content/article/2008/09/28/AR2008092802172.html>

**"McCain, Obama Criticism of High Court Child Rape Case Cited in Rehearing Request,"** *Legal Times*, "In an unusual move, the negative reactions of presidential candidates John McCain and Barack Obama to a recent Supreme Court decision have been placed before the justices to support a request that the Court reconsider its ruling. The state of Louisiana included the candidates' statements in its latest filing seeking rehearing of *Kennedy v. Louisiana*, in which the justices said it is unconstitutional to execute those convicted of child rape when the victim survives. Soon after that June 25 decision was handed down, a military law blogger noted that the justices and all the parties neglected to mention that Congress had recently passed legislation that calls for the death penalty in such cases under the Uniform Code of Military Justice. Louisiana, arguing that the omission skewed the Court's assessment of the national consensus on the issue, asked the Court to take the almost unheard-of step of rehearing the case to take the new information into account. ... The Court is expected to take up the rehearing request at its first fall conference on Monday, and its decision could be announced soon after."

<http://www.law.com/jsp/article.jsp?id=1202424770213>

**"Guantanamo Prosecutor Quits, Says Evidence Was Withheld,"** *Washington Post*, "A military prosecutor involved in war crimes cases here has quit his position, citing ethical concerns about his office's failure to turn over exculpatory material to attorneys

for an Afghan detainee scheduled to go to trial in December. Army Lt. Col. Darrel Vandeveld, a reservist, who declined to be interviewed, filed a declaration with a military court here Wednesday, laying out his concerns about the case and procedures in the military prosecutor's office, according to defense attorneys. 'My ethical qualms about continuing to serve as a prosecutor relate primarily to the procedures for affording defense counsel discovery,' wrote Vandeveld in his filing. 'I am highly concerned, to the point that I believe I can no longer serve as a prosecutor at the Commissions, about the slipshod, uncertain 'procedure' for affording defense counsel discovery.' Vandeveld's departure is the latest blow to the military trials process and a prosecutor's office that has been buffeted by resignations over issues of fairness."

<http://www.washingtonpost.com/wp-dyn/content/article/2008/09/24/AR2008092402101.html>

**“ABA Wants FASB Loss Contingency Standard Delayed,”** *WebCPA*, “The American Bar Association is urging the Financial Accounting Standards Board to delay implementing a proposed standard for loss contingencies arising from business combinations, warning of harmful, unintended consequences. **ABA President H. Thomas Wells Jr.**, wrote a letter to FASB Chairman Robert Herz, referring to earlier comments sent by the ABA's former president and other organizations criticizing the measure. The proposed amendment to FASB Statements 5 and 141(R), which is scheduled to go into effect for fiscal years beginning after Dec. 15, 2008, will require recognition and disclosure of loss contingencies assumed or acquired in connection with a business combination that are more likely than not to be incurred. ... The ABA believes the measure could lead to erosion of the attorney-client privilege and the work product doctrine during the audit process. ‘If adopted, the proposed amendments will have very profound and far-reaching effects on the business community, as well as the legal and accounting professions,’ wrote Wells.”

<http://www.webcpa.com/article.cfm?articleid=29294&print=yes>

**“DOJ's Latest Gambit,”** *National Law Journal* (written by N. Richard Janis, founding partner of Washington-based Janis, Schuelke & Wechsler), “On Aug. 28, Deputy Attorney General Mark R. Filip announced that the U.S. Department of Justice had (once again) revised its corporate charging guidelines. Unfortunately, this ‘new’ version of the Principles of Federal Prosecution is simply a disingenuous effort to forestall congressional action on pending legislation by paying lip-service to the sanctity of the attorney-client privilege while articulating governmental policies that completely undermine it. ... At the heart of the newest iteration of DOJ's policy is the canard that DOJ doesn't really want waivers of privilege; it just wants organizations to provide ‘facts.’ Of course, the only way any responsible organization will obtain those facts is to have its attorneys conduct interviews of its employees, interviews which are protected by the attorney-client privilege. Thus, the only way that the organization can provide the ‘facts’ is to waive its attorney-client privilege. ... In sum, this ‘new’ iteration of DOJ policy is, in some respects even worse than its earlier statements. Currently, a broad coalition of business and legal organizations (including the **American Bar Association**, the American Civil Liberties Union and the U.S. Chamber of Commerce) has been lobbying Congress to enact legislation to protect the attorney-client privilege. That

legislation has passed the House, and the Senate bill introduced by Senator Arlen Specter, R-Pa., currently has 13 bipartisan co-sponsors. ... We urgently need to get the legislation passed.” <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202424778144>

**“Panel Says DHS Botching Cyber Security,”** *Washington Times*, “Members of a bipartisan commission said Tuesday that Congress should strip the Department of Homeland Security of its lead role in protecting U.S. computer networks, as a government auditor said the department's efforts have been ‘completely ineffective.’ ‘Our view is that any improvement in the nation’s cyber security must go outside of DHS to be effective,’ said James Lewis, of the Commission on Cyber-Security for the 44th Presidency, an effort to develop recommendations for the next administration on an issue increasingly seen as a vulnerability for the U.S. Testifying before the House Homeland Security Committee, David Powner of the Government Accountability Office bluntly told lawmakers DHS is not meeting its mandate for defending the nation’s cyber networks and coordinating with the private sector, which owns almost all of the U.S. Internet infrastructure. ... DHS was given the lead role in defending the nation’s civilian computer networks when the department was formed by a merger of 22 federal agencies in 2003, but it has struggled to make progress. The issue has been highlighted over the last 18 months by several cyber attacks on small former Soviet nations, allegedly instigated by Moscow, and by extensive data theft from U.S. government systems, which officials have said originates in China.”

<http://www.washingtontimes.com/news/2008/sep/17/panel-says-dhs-botching-cyber-security/>

**“Bin Laden's Driver Still a Test Case of Sorts,”** *Miami Herald*, “Some days, America's lone convicted terrorist here amuses himself by calling out ‘All rise,’ like a court bailiff, as guards pass his cell. Mostly, Salim Hamdan passes the time with photos of family from home in Yemen. It's been six weeks since a military jury made Hamdan a war criminal for working as Osama bin Laden's \$200-a-month driver in Afghanistan, and the Pentagon has yet to say precisely when his 66-month prison sentence ends. Or where he will go. What to do with Hamdan illustrates how much the Pentagon is still improvising war-on-terror detention policy -- six years after the Bush administration opened the prison camps here in remote southeast Cuba. ... ‘One reason why you don't see a lot of long-term planning for this issue is that the commissions process itself has really been lurching from one problem to the next,’ says Columbia University law professor Matthew Waxman, the first of three deputy assistant secretaries of defense for detainee affairs to serve the Bush administration. ... At issue is how to interpret the Geneva Conventions, an issue that has dogged this offshore detention and interrogation center from the start. On the one hand, the treaty that seeks to regulate warfare worldwide forbids holding prisoners of war in the company of convicts. But above all the conventions are meant to make sure captives are held humanely. Which is why prison camp commanders have insisted for years that there is no such thing as solitary confinement at Guantánamo. Even for a category of one. ‘This has been a make-it-up-as-you-go-along system from the very beginning,’ says Miami defense attorney Neal Sonnett, who watches the Guantánamo trials for the **American Bar Association.**”

<http://www.miamiherald.com/news/nation/story/697457.html>

**“Former Collin Judge, Prosecutor's Intimacy May Affect More than a Single Death Row Case,”** *Dallas Morning News*, “Recent confirmation of a long-rumored romance between a former Collin County district attorney and a former judge could lead to allegations of unfair trials in hundreds of cases, but legal experts differ over what should happen next. In court depositions sought by attorneys trying to get a new trial for death row convict Charles Dean Hood, Judge Verla Sue Holland and prosecutor Tom O'Connell reportedly admitted to a years-long affair that Mr. Hood's attorneys say prevented him from getting a fair trial in 1990. At least one other man, Timothy David Nixon, was found guilty of murder while Judge Holland was on the bench and Mr. O'Connell tried the case. He was sentenced to 99 years in prison for allegedly killing his mother. ... As a death row inmate, Mr. Hood has had an army of attorneys, including state-paid appellate attorneys and pro bono attorneys, to champion his cause. But many convicts, like Mr. Nixon, may not even be aware of the relationship and that it could affect their cases. ... Lawrence Fox, former chair of the **American Bar Association** Ethics Committee, said sweeping steps may be necessary to preserve confidence in Texas' criminal justice system. Not only does he think the district attorney is obligated to bring the cases to the attention of the court, he suggested that the state should provide attorneys for defendants to challenge their convictions.”

[http://www.dallasnews.com/sharedcontent/dws/news/politics/local/stories/DN-shadycases\\_28met.ART0.Central.Edition1.27068f5.html](http://www.dallasnews.com/sharedcontent/dws/news/politics/local/stories/DN-shadycases_28met.ART0.Central.Edition1.27068f5.html)