

Criminal Justice Section Weekly News Round-Up

Produced by the ABA Criminal Justice Section

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“A Coalition on Recidivism and Sentencing Reform,” *National Law Journal* (op-ed by CJS Chair Stephen A. Saltzburg), “The Criminal Justice Section has the unique ability to garner and synthesize expertise to promote a balanced perspective on the issues facing the American criminal justice system by its prosecutor, judicial, academic and defense attorney members. The section has ambitious plans for 2007-08. Working through its Commission on Effective Criminal Sanctions (CECS), the section continues to formulate policies and best practices designed to reduce recidivism and repeat criminal activity by encouraging drug and mental health treatment as alternatives to incarceration...The section is proud of the cooperation that prosecutors, defense counsel and judges demonstrated in carefully examining rising rates of incarceration and their effects upon communities throughout the country. There was general agreement that reducing crime means reducing the number of victims, and widespread support for a variety of cost-effective measures to reduce crime and promote the re-entry of convicted offenders into their communities with jobs, housing and a genuine second chance.”

<http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1186045601474>

“Access Denied: Proposed ABA Resolution Seeks to Limit Public Access to Criminal Records,” *Legal Times*, “A coalition of journalism organizations is squaring off against the American Bar Association over a proposed ABA resolution that seeks to sharply limit public access to criminal records. A letter was sent last week to the chair of the ABA House of Delegates from groups including the Coalition of Journalists for Open Government and the Reporters Committee for Freedom of the Press. The organizations want the 546-member House of Delegates to reject the resolution at the ABA’s annual meeting because ‘the recommendation that criminal case records be automatically sealed when there is no conviction is radical and ill-considered and will do serious damage to the public’s confidence in the judicial system.’ The ABA Commission on Effective Criminal Sanctions ‘has cited no body of law to support its recommendation,’ according to the letter. The commission filed an 18-page recommendation asking the ABA to urge ‘federal, state, territorial and local governments to limit [public] access, to the extent permitted by the First Amendment,’ to records of criminal cases in which charges were dismissed or resulted in acquittals, or when convictions were reversed, vacated, or set aside.” <http://www.law.com/jsp/dc/PubArticleDC.jsp?id=1185959204985>

“Freedoms Threatened on Several Fronts,” *San Diego Union-Tribune* (editorial), “There is a lot going on that threatens your right to know what your government is doing. And you have every right to know about it. As is often the case, a lot of the action is developing in the world's capital of democracy – and what is therefore supposed to be the capital of open government – Washington, D.C.

Last week, the House Judiciary Committee passed a bill that would in many cases shield reporters from court orders requiring them to disclose their sources. That's a good thing...Finally, there is an important policy change to be taken up by the American Bar Association at its annual meeting next week in San Francisco. The proposed policy would recommend that federal, state and local governments immediately limit public access to records in closed criminal cases in which there was no conviction, or possibly even in cases in which there was a conviction if a certain period of time has passed with no new criminal conduct. Were government agencies and the courts to follow those recommendations, the ramifications would be staggering – and staggeringly bad for anyone who cares about crime and the workings of the criminal justice system.”

<http://www.signonsandiego.com/news/op-ed/editorial2/20070806-9999-lz1ed6bottom.html>

“Transparency is Vital,” *Contra Costa Times (editorial)*, “THE American Bar Association's policy-making body is set to act on some resolutions this month that are well-intentioned but misguided and could well set back First Amendment law 40 years. The Bar's House of Delegates will consider a proposal by the Commission on Effective Criminal Sanctions that would require federal, state and local governments to immediately limit access to records of closed criminal cases that did not result in convictions. Only law enforcement officials would be able to see them. The goal, we understand, is to encourage the successful integration of people with criminal records into society. While we respect the motivation, we join the Reporters Committee for Freedom of the Press in protesting this particular proposal as a serious threat to an open and transparent justice system...A wrongly accused person couldn't even have access to the documents clearing his or her name. Passage of this proposal would give police and prosecutors exclusive access to cases that did not result in convictions, including cases of prosecutor or police misconduct...It may seem like a good idea for the accused, but the concept disregards the U.S. Supreme Court's long-recognized belief that allowing public access to criminal justice information is essential to having effective oversight of the legal system.”

“To the Barricades in Defense of Habeas Corpus,” *National Law Journal (op-ed by ABA President Karen Mathis)*, “The American Bar Association's most recent bar year has been built around two themes: service and the rule of law. It has been my privilege to devote significant time to work in these areas. It is in the nature of lawyers to serve, and this year as ABA president, I experienced countless acts of dedication and service by our nation's lawyers...At the national level, the ABA continued its ongoing mission of defending liberty and pursuing justice...Another right that has been under attack is habeas corpus. Of all the rights accorded by the common law, perhaps none matters more — nor has endured longer — than the right of habeas corpus, which guarantees the opportunity to challenge wrongful imprisonment by the government. In the last year, the ABA lobbied Congress to repeal a deeply misguided recent law that prohibits federal courts from considering habeas corpus filings by detainees at Guantánamo Bay, Cuba.”

<http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1186045601062>

“Same Agencies to Run, Oversee Surveillance Program,” *Washington Post*, “The Bush administration plans to leave oversight of its expanded foreign eavesdropping program to the same government officials who supervise the surveillance activities and to the intelligence personnel who carry them out, senior government officials said yesterday. The law, which permits intercepting Americans' calls and e-mails without a warrant if the communications involve overseas transmission, gives Director of National Intelligence Mike McConnell and Attorney General Alberto R. Gonzales responsibility for creating the broad procedures determining whose telephone calls and e-mails are collected. It also gives McConnell and Gonzales the role of assessing compliance with those procedures. The law, signed Sunday by President Bush after being pushed through the Senate and House over the weekend, does not contain provisions for outside oversight -- unlike an earlier House measure that called for audits every 60 days by the Justice Department's inspector general.” http://www.washingtonpost.com/wp-dyn/content/article/2007/08/06/AR2007080601303_pf.html

“DNA Testing,” *Washington Post (editorial)*, “LAST MONTH, Maryland Gov. Martin O'Malley (D) announced progress in reducing the state police's DNA testing backlog. Now the Governor's Office of Crime Control and Prevention is looking into a proposal to expand mandatory DNA testing to include not only convicted felons and certain misdemeanants (as under current law) but everyone arrested in Maryland, pre-conviction. The DNA identifiers could then be run against a national database of DNA evidence for potential matches in unsolved crimes. This proposal would make Maryland's DNA database the most far-reaching in the country. While all states have mandatory DNA testing for certain classes of convicts, only a handful, including Virginia, require DNA testing of some arrestees prior to conviction, and no state tests everyone who is arrested...DNA screening is an exciting police tool that has the potential for great good or for abuse and waste of taxpayer money. Careful monitoring of the administration and the results of these policies will help ensure that more crimes are solved while minimizing intrusions on civil liberties.” <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/06/AR2007080601442.html>

“Georgia Attorney General to Defend Sex Offender Law on Two Legal Fronts,” *Fulton County Daily Report*, “The defense of Georgia sex offender law has placed the state's attorney general in the awkward position of arguing to the state Supreme Court that the law cannot be applied retroactively while arguing in a separate case in federal court that the law's retroactive provisions are legal. The Georgia Legislature's 2006 amendments to the state sex offender law have drawn Attorney General Thurbert Baker into litigation to defend the law on two legal fronts. In one case, Baker is seeking to uphold a 10-year sentence imposed on Genarlow Wilson for having unforced oral sex, when he was 17 years old, with a 15-year-old girl. Baker entered the Wilson fray in June after a judge in Monroe County granted Wilson's civil habeas petition. Citing a 2006 amendment to the sex offender law that reduces aggravated child molestation in some cases of consensual oral sex from a felony to a misdemeanor, Monroe County Superior Court Judge Thomas H. Wilson (who is no relation to Genarlow Wilson) reduced the now 21-year-old Wilson's felony sentence to a misdemeanor and ordered his release.” <http://www.law.com/jsp/article.jsp?id=1186412330969>

“They Must Answer for What They've Done,” *Legal Times* (op-ed by Angela J. Davis is a professor at American University's Washington College of Law), “Prosecutors are the most powerful officials in the criminal justice system. When they misuse their power, people can be gravely harmed, as two infamous cases in recent years make disturbingly clear. In Georgia, a teenage boy was sent to prison for having consensual oral sex with a teenage girl. In North Carolina, three college students were wrongfully accused of a gang rape. For a long time, no one could or would rein in the prosecutor in either case. In a democracy, we hold accountable those to whom we grant power. Yet prosecutors are rarely accountable to the people they serve. Too often, when prosecutors misbehave, justice depends on the defendants’ wealth or the media’s attention. It’s not supposed to work that way...When presented with an opportunity to revise the rules that apply to prosecutors, the American Bar Association’s Ethics 2000 Commission dropped the ball. It’s time to revive that effort...Prosecutors themselves must step up to the plate. Inherent in their discretion is the power to change policies and practices without new laws or rules. The National District Attorneys Association and the Justice Department should establish mandatory training on the ethics rules and the appropriate exercise of discretion. The ABA Commission on Effective Criminal Sanctions has recommended such training; the ABA Standards for the Prosecution Function should be included in the curriculum.”
<http://www.law.com/jsp/dc/PubArticleDC.jsp?id=1185959204368>

“City Is Rebuffed on the Release of ’04 Records,” *New York Times*, “federal judge yesterday rejected New York City’s efforts to prevent the release of nearly 2,000 pages of raw intelligence reports and other documents detailing the Police Department’s covert surveillance of protest groups and individual activists before the Republican National Convention in 2004. In a 20-page ruling, Magistrate Judge James C. Francis IV ordered the disclosure of hundreds of field intelligence reports by undercover investigators who infiltrated and compiled dossiers on protest groups in a huge operation that the police said was needed to head off violence and disruptions at the convention. But at the behest of the city and with the concurrence of civil liberties lawyers representing plaintiffs swept up in mass arrests during the convention, the judge agreed to the deletion of sensitive information in the documents to protect the identities of undercover officers and confidential informants and to safeguard police investigative methods and the privacy of individuals caught up in investigations.”
<http://www.nytimes.com/2007/08/07/nyregion/07police.html?ref=us>