

# The Sentinel

## NEWS FROM THE COURTHOUSE

TASC PRETRIAL SERVICES  
ROOM 809  
JEFFERSON COUNTY COURTHOUSE

TASC Pre-Trial Services will assist in making Judicial Bonds in Jefferson County (Bessemer and Birmingham). Will consider any charge and bond amount (except Capital Murder). We request that attorneys assist in approaching Judges in cases with a high bond/serious charge (high-risk offenders).

Any questions, please call Suki Akins - TASC Pre-Trial Program Coordinator:

(325-5109/325-5110, ext. 237).

(MARI MORRISON, ESQ.)

### 10% BONDS

At the urging of our organization, the Jefferson County Criminal Judges recently approved a new procedure on making bonds. This is commonly referred to as a 10% bond. What this basically means is that when a bond is set in a specific amount, the Defendant, instead of going through a bonding company or posting property in the full amount of the bond, may request the Court to approve a posting of cash in the amount of 10% of the total bond with the Clerk of the Court to ensure his appearance in Court. If you have a client who has a \$10,000.00 bond, rather than spending money with a bonding company or having to obtain property to make a bond, he could post cash in the amount of \$1,000.00 with the Clerk's Office. It is important to note that the bond is still subject to the approval of

THE OFFICIAL  
NEWSLETTER  
OF THE GREATER  
BIRMINGHAM CRIMINAL  
DEFENSE LAWYERS'  
ASSOCIATION

the Judge. A Judge is under no requirement to approve these bonds. We have all experienced situations wherein clients call us wanting us to represent them, but tell us they just paid a bondsman \$2,000.00 to make a bond. The 10% bond would be a good way to see that money goes somewhere other than to a bonding company. The money must be posted in the name of the Defendant. That money would be subject to the court attaching for any fines, costs, restitution, etc.... Even if another person actually pays the money for the 10% bond, the Court will still be able to use it for payment of any fees. Also, a client could execute an assignment paying you whatever funds are available at the conclusion of the case.

Fonda Tumlin in District Court should have these forms. If you have a client and want to utilize a 10% bond, you would need to get that form, fill it out, and then go before the Duty Judge, or the Judge who is assigned to the case, for approval. Once the Judge approves the bond, you would then post that money with the Clerk. If anyone would like a sample 10% Bond Motion, you may call me at 592-4332, and I will be glad to fax you a copy.

(DON COLEE, ESQ.)

### **PRE-TRIAL PROBATION OFFICE CONFERENCES ENDED IN THE NORTHERN DISTRICT**

The United States Probation Office for the Northern District of Alabama has ended the former practice of Pre-Trial Probation Conferences. Oscar Stephenson, the Chief Probation Officer for the District, reports that because of the sheer volume of work over the last few years, combined with the problems of scheduling for both the defense bar and the U.S. Attorney's Office, the practice has been ceased. The Probation Office and the Judges of the District apparently made this decision several weeks back and it appears that the practice of Pre-Trial Probation Conferences will not be revived in the future.

Stephenson says the purpose of the conferences was to provide tentative guideline worksheets to both parties, but that over time the parties put too much reliance on the tentative and, many times, incomplete initial calculations. In the end, the Probation Office determined the practice was more problematic than beneficial.

Stephenson assures the Bar that Probation Officers will be assigned by the time of Arraignment and defense lawyers can still contact the Probation Officer assigned to their case for assistance in answering guidelines questions.

(JOHN LENTINE, ESQ.)

#### **PRESIDENT'S COLUMN**

I would like to take this opportunity to thank all the members of the GBCDLA for their support and assistance in this great organization. We have a busy year planned. There will be a CLE in the afternoon of November 21, 2002, at The Crown Plaza Hotel. A general meeting will follow at 5:30 PM. Please mark your calendar for that day.

**CLE FOR CRIMINAL DEFENSE BAR  
NOVEMBER 21, 2002  
(APPLICATION FOR THREE (3) HOURS CLE)**

- 2:00 - DEFENDING KIDDIE PORN AND  
SOLICITATION CASES  
(RICHARD THIGPEN, ESQ.)**
- 3:00 - DUI DEFENSE  
(BILL COLE, ESQ.)**

**4:00 - 4:15 - BREAK**

**4:15 - 5:15 - CHANGES TO THE ALABAMA RULES  
OF APPELLATE PROCEDURE  
(JOHN C. ROBBINS, ESQ.)**

**GENERAL MEETING TO FOLLOW - 5:30 - 6:30**

It has come to my attention that Judge Cahill has voiced a complaint that some of the appointed lawyers are not going to see Defendants who are in jail before their Preliminary Hearing. He said he wanted to inform the lawyers that if this pattern continues, he will be removing their names from the appointed list. He also wanted to remind everyone that unlike what has been rumored in the past, he will approve TASC bonds.

I received a letter in May of this year from Elizabeth Roland concerning a case that had recently settled with the Department of Corrections. David Gespass and Elizabeth were instrumental in setting up a women's boot camp. This will begin October, 2002, on the grounds of Tutwiler Prison as soon as there are twenty (20) women who are eligible. The next class will commence when the first is over and they have twenty (20) more. Please get the word out that this camp is available. Great Work!!

*I look forward to a terrific and productive year.  
Thank you.*

**VIRGINIA MEIGS, ESQ.**

**BIRMINGHAM BAR ASSOCIATION CONTINUING  
LEGAL EDUCATION AND CRIMINAL JUSTICE  
PROCEDURES COMMITTEE CLE SEMINAR**

**FRIDAY, NOVEMBER 8, 2002**

**TO BE HELD ON THE SECOND FLOOR OF THE  
BIRMINGHAM BAR CENTER LOCATED AT:**

**2021 2ND AVENUE NORTH FROM:  
8:40 AM UNTIL 3:35 PM.**

**TOPIC IS "SERVING AS APPOINTED COUNSEL"**

**"ATTENDANCE IS MANDATORY  
FOR APPOINTED CASES"**

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#### U.S. 1st Circuit Court of Appeals

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**US v. AHLERS** (09/30/02 - No. 01-2570/1)

A government motion for a downward departure to reflect a defendant's substantial assistance does not remove the constraint of a statutory minimum sentence and open the door for consideration of departure grounds unrelated to substantial assistance.

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#### U.S. 2nd Circuit Court of Appeals

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**PATEL v. SEARLES** (09/30/02 - No. 00-9552)

In alleging that a police chief and detective concocted and disseminated false evidence about him in a criminal investigation, plaintiff alleged facts sufficient to establish a constitutional violation of his right to intimate association, a right clearly established at the time of defendants' alleged conduct.

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#### U.S. 3rd Circuit Court of Appeals

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**RUGGIANO v. REISH** (10/01/02 - No. 01-3703)

A sentencing court had authority under U.S.S.G. section 5G1.3 to adjust a sentence for time served on a state sentence, in a way that is binding on the Bureau of Prisons.

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**US v. THORNTON** (10/03/02 - No. 02-1324)

A co-conspirator's admission of gun possession provided sufficient evidence to support defendant's offense level enhancement under U.S.S.G. section 2D1.1(b)(1), and a section 3B1.4 enhancement for use of a minor in criminal activity does not require a showing of scienter.

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#### U.S. 4th Circuit Court of Appeals

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**US v. PASQUANTINO** (09/30/02 - No. 01-4463/4/5)

A scheme to defraud a foreign government of tax revenues is not cognizable under the wire fraud statute, 18 U.S.C. section 1343.

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#### U.S. 6th Circuit Court of Appeals

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**HARDAWAY v. WITHROW** (09/30/02 - No. 01-1456/1506)

Michigan Court of Appeals properly found that a trial

judge had not given the jury a new and different instruction on manslaughter, and the jury was informed that they would have to find that a killing was not justified or excused in order to find petitioner guilty of second degree murder.

**ALLEY v. BELL** (10/03/02 - No. 99-8659)

A federal habeas petitioner's allegations fail to present a viable claim of constitutionally-impermissible judicial bias, and are procedurally defaulted. District court did not abuse its discretion in deciding not to conduct an evidentiary hearing on this issue.

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**US v. WEGRZYN** (10/03/02 - No. 00-1712)

Upon successful completion of his probationary sentence, a defendant will no longer be considered ineligible to possess a firearm under the provisions of 18 U.S.C. section 922(g)(9), in light of Congress's deference to states' treatment of disabilities associated with criminal convictions.

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#### U.S. 7th Circuit Court of Appeals

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**BEYER v. LITSCHER** (10/01/02 - No. 01-1583)

A prisoner serving separate, and consecutive, sentences imposed by different state judges at different times for different offenses is entitled to one full and fair opportunity to wage a collateral attack.

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**US v. WILSON** (10/03/02 - No. 01-3014)

Defendant's claim of a Fifth Amendment violation will not be considered on the merits where he exercised his constitutional right to refrain from introducing certain evidence at trial, and cannot now attack a potential introduction of evidence by the government in response to his potential testimony.

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#### U.S. 8th Circuit Court of Appeals

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**US v. TERRY** (09/30/02 - No. 02-1600)

An affidavit submitted in support of a search warrant established probable cause to believe defendant's home contained evidence of child pornography; even if warrant application was insufficient, the search would be lawful under the Leon good faith exception.

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**US v. LEAF** (10/01/02 - No. 02-1131)

District court did not err in departing upwards based on uncharged criminal conduct.



**US v. KNIGHT (10/01/02 - No. 02-1169)**

State trooper conducting a North American Standard Level III inspection of defendant's truck exceeded the scope of a regulatory search when he searched defendant's briefcase.

**US v. LEBRUN (10/03/02 - No. 01-4005)**

Where defendant was interrogated in a police-dominated interview room and received threats of criminal charges, civil lawsuits, and loss of his family and job, defendant reasonably believed he was in custody, and because he did not receive his Miranda rights, the incriminating statements he made were properly suppressed.

**US v. CAMPOS (10/04/02 - No. 01-1770)**

Evidence supported a jury verdict that defendant was guilty of possession of drugs with intent to distribute, and court erred in granting defendant's motion for new trial on the ground that verdict was against the weight of the evidence such that a miscarriage of justice occurred.

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**U.S. 9th Circuit Court of Appeals**

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**US v. CHAVEZ-MIRANDA (09/30/02 - No. 01-50615)**

Under the totality of circumstances, a substantial basis existed for finding probable cause to issue a search warrant, and a reasonable nexus between narcotics trafficking and an apartment that justified searching there.

**US v. GONZALES (09/30/02 - No. 00-10514)**

Admission of pay/owe sheets into evidence was proper as relevant to evidence of drug distribution, and for the purpose of evaluating expert testimony, and a DEA agent's testimony was correctly permitted.

**PAVAO v. PAGAY (09/30/02 - No. 01-15201)**

An officer received implied consent to enter a home under the totality of the circumstances, thus a 42 U.S.C. section 1983 plaintiff failed to meet her burden of establishing that the officer's entry was unlawful.

**US v. HOVSEPIAN (09/30/02 - No. 99-50041/58922, 00-55320, 01-55247)**

District court exceeded its authority in re-sentencing under the Federal Youth Corrections Act, and a preliminary injunction requiring the INS to treat a resident alien under the immigration law as it existed in 1985 violated 8 U.S.C. section 1252(g)'s jurisdictional bar.

**US v. CARBULLIDO (10/01/02 - No. 01-10578)**

Defendant's legal sanity on the day of a currently charged act was within the scope of the issue actually litigated and necessarily decided in a prior prosecution, thus second prosecution violated Double Jeopardy principles.

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**U.S. 10th Circuit Court of Appeals**

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**US v. MERCADO (10/04/02 - No. 01-4238)**

Mere temporary immobility of a car, due to a readily repairable problem while at an open public repair shop, does not remove a vehicle from the category of "readily mobile" under the automobile exception to the search warrant requirement.

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**U.S. 11th Circuit Court of Appeals**

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**MCIVER v. US (09/30/02 - No. 01-10507)**

A successful motion to file an out-of-time notice of appeal is not to be counted as a first petition for the purposes of subsequent collateral proceedings under 28 U.S.C. section 2255.

**NOTE:** The following are summaries of all Federal criminal cases handed down from all US Circuit Courts of Appeal and/or the US Supreme Court during this past week; including links to each case. Bill C. Messick, Mobile, Alabama.

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**U.S. 1st Circuit Court of Appeals**

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**US v. GALLANT (10/15/02 - No. 01-2679)**

Defendant did not forfeit an objection to the trial court's denial of a three-level sentence reduction where defendant consistently argued his entitlement to the reduction, and the government

warned the district court against its eventual ruling.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/1st/012679.html>

#### U.S. 2nd Circuit Court of Appeals

**DELVALLE v. ARMSTRONG** (10/15/02 - No. 01-2675)

State court jury instructions, on the reasonable doubt standard and the presumption of innocence, were not so erroneous as to deprive appellant of his constitutional rights to due process and to a fair jury trial, and do not call for habeas relief under 28 U.S.C. section 2254.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/2nd/012675.html>

**FREDERICK v. WARDEN, LEWISBURG CORR. FACILITY** (10/18/02 - No. 00-2544)

A waiver of collateral attack rights in a plea agreement did not preclude consideration of a habeas petition attacking the plea agreement itself, but an ineffective assistance claim fails where petitioner received requisite notice of conspiracy charge elements through other means after the court's alleged Rule 11(c) violation.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/2nd/002544.html>

#### U.S. 4th Circuit Court of Appeals

**CHAMBERS v. RENO** (10/15/02 - No. 00-8364)

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996's (IIRIRA) repeal of discretionary relief for aggravated felons who have been ordered deported, is not impermissibly retroactive as applied to an alien convicted of an aggravated felony prior to enactment of the IIRIRA.

To read the full text of this opinion, go to:  
<http://laws.findlaw.com/4th/006364p.html>

**FERGUSON v. CITY OF CHARLESTON** (10/17/02 - No. 97-2512)

In an action alleging that a hospital and law enforcement policy of drug testing pregnant women's urine constituted an unreasonable search under the Fourth Amendment, no rational jury could find that patients gave their informed and voluntary consent to testing.

To read the full text of this opinion, go to:  
<http://laws.findlaw.com/4th/972512ap.html>

#### U.S. 5th Circuit Court of Appeals

**US v. GONZALEZ** (10/14/02 - No. 01-11467)

A conspiracy conviction after guilty plea is vacated where the government used information provided by defendant at a debriefing against him, and thus breached a plea agreement.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/5th/0111467p.pdf>

**US v. SANTIAGO** (10/17/02 - No. 01-31338)

A vehicle stop was based on reasonable suspicion of violation of a statute prohibiting flashing lights in non-emergency vehicles, but detention after a records check was completed was unreasonable, and consent to search was a product of that unlawful detention.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/5th/0131338p.pdf>

**BELL v. COCKRELL** (10/17/02 - No. 01-40340)

A capital habeas case, in which petitioner has consistently offered clinical evidence of mental retardation since his first trial in the 1970's, is dismissed without prejudice so that the state can reconsider the case in light of *Atkins v. Virginia*, 122 S. Ct. 2242 (2002).

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/5th/0140340p.pdf>

#### U.S. 8th Circuit Court of Appeals

**US v. SABINO** (10/16/02 - No. 99-3745/3785/3786/3863)

Imposition of an obstruction enhancement, to defendants convicted of conspiracy to defraud the government under 18 U.S.C. section 371, would not amount to impermissible double-counting.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/6th/02a0358a.html>

**US v. TARWATER** (10/16/02 - No. 01-5962)

Testimony and evidence provided a sufficient basis from which a jury could infer that defendant knew that his tax returns were not true and correct as to every material matter. District court's jury instructions did not impermissibly shift the burden of proof in a 28 U.S.C. section 7206(1) violation.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/6th/02a0359p.html>

**US v. PEREZ-GONZALEZ** (10/16/02 - No. 01-3594)  
 Sufficient evidence existed for a reasonable jury to conclude that defendant willfully transported illegal aliens with the specific intent of furthering their illegal presence in the U.S., in violation of 8 U.S.C. section 1324(a)(1)(A)(ii).

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/6th/02a0360p.html>

**US v. KESZTHELYI** (10/17/02 - No. 00-6630)  
 Although a second search of a residence was not a reasonable continuation of a prior search, where contraband inevitably would have been discovered during a third search, such evidence should not be suppressed.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/6th/02a0362p.html>

**GRIFFIN v. ROGERS** (10/18/02 - No. 00-4116)  
 A habeas petition is remanded where petitioner's failure to meet her equitable tolling burden may be a direct consequence of retroactive application of *Palmer v. Carlton*, 276 F.3d 777, and the state's failure to provide materials required under the rules governing 28 U.S.C. section 2254 cases.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/6th/02a0365p.html>

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#### U.S. 7th Circuit Court of Appeals

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**US v. GRAMER** (10/16/02 - No. 02-1551)  
 Imposition of a U.S.S.G. section 2F1.1 after mail fraud convictions was not in error where, based on defendant's thorough involvement in a scheme to defraud, he became liable for all losses that a group's fraudulent activity entailed.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/7th/021551p.pdf>

**US v. SMITH** (10/16/02 - No. 00-4184/4214)

Denial of a motion to sever tax counts from drug conspiracy counts was not an abuse of discretion where evidence presented was "mutually admissible" for both charges and was not prejudicial. A special verdict form reflecting ranges of drug amounts was in accordance with law.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/7th/004184p.pdf>

**US v. FRANKS** (10/17/02 - No. 02-1762)  
 A mail fraud conviction is affirmed where interstate transportation facilitated the repetition of acts that were vital to making a scheme profitable.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/7th/021762p.pdf>

**US v. JONES** (10/17/02 - No. 02-2151)  
 A conviction for violation of the Bomb Hoax Act, 18 U.S.C. section 35(b), does not require allegation or proof that defendant intended to produce physical injury or death.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/7th/022151p.pdf>

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#### U.S. 8th Circuit Court of Appeals

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**US v. SUN BEAR** (10/17/02 - No. 02-1196)  
 Application of a career offender guideline is affirmed where, although a state court conviction for attempted escape did not qualify as a felony crime of violence, attempted theft of a vehicle does qualify because of the risks and dangers inherent in such an offense.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/8th/021196p.pdf>

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#### U.S. 9th Circuit Court of Appeals

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**US v. PARISH** (10/18/02 - No. 01-30017)  
 An eight-level downward sentence departure was not



an abuse of discretion where defendant's conduct was "outside the heartland" of possession of child pornography (because he did not affirmatively download the files on his computer), and defendant would be highly susceptible to abuse in prison.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/9th/0130017p.pdf>

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**Bill C. Messick, Mobile, Alabama.**

#### U.S. 1st Circuit Court of Appeals

##### IN RE QUESTER STERLING-SUAREZ (10/09/02 - No. 02-1907)

Under 18 U.S.C. section 3005, concerning assignment of counsel after a capital indictment, "promptly" means promptly after indictment, not (as the government asserted) only after the Attorney General has made a determination to seek the death penalty.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/1st/021907.html>

##### US v. MANJARREZ (10/11/02 - No. 01-1793)

Defendant knowingly and intelligently waived his right to counsel, where the trial judge questioned him to ensure understanding of the gravity of charges facing him and their potential penalties, and his obligation to comply with court rules when presenting his case.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/1st/011793.html>

#### U.S. 2nd Circuit Court of Appeals

##### US v. ALFISI (10/08/02 - No. 01-1152)

Any ambiguity or failure to spell out adequately, in jury instruction, the difference between bribery and paying unlawful gratuities, was cured by the district court's later description of bribery, which clearly set out the quid pro quo requirement.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/2nd/011152.html>

##### US v. QUINTIERI (10/09/02 - No. 01-1013)

An appeal of a fine after carjacking convictions was not barred by the law of the case doctrine, and the district court erred when it imposed a fine above the amount prescribed by the U.S.S.G. without explaining its reasons for a departure.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/2nd/011013.html>

#### U.S. 3rd Circuit Court of Appeals

##### US v. DIXON (10/09/02 - No. 01-3845/46)

District court did not commit plain error in accepting a guilty plea, by overstating the statutory maximum sentence defendant faced, based on the record and the lack of any representation that he would have pled not guilty if he was properly informed at the time of his plea.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/3rd/013845p.pdf>

##### HUNTERSON v. DISABATO (10/10/02 - No. 01-1805)

In granting a habeas petition, the district court did not conduct its review of 1) a parole board decision revoking probation and imposing a five-year future eligibility term, and 2) a state appellate court's affirmance of that decision, in accordance with the Antiterrorism and Effective Death Penalty Act.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/3rd/011805p.pdf>

##### US v. MYERS (10/11/02 - No. 01-3016)

District court erred in denying a motion to suppress physical evidence where, though a police officer's initial entry into a residence was lawful, he had no probable cause to arrest defendant, and an ensuing search was not shown to be incident to any lawful arrest.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/3rd/013016p.pdf>

## U.S. 5th Circuit Court of Appeals

**US v. JOHN** (10/07/02 - No. 01-80721)

A conviction for sexual contact with a minor is reversed where the district court erroneously failed to instruct the jury that it could consider evidence of defendant's good character.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/5th/0160721p.pdf>

**US v. SOILEAU** (10/11/02 - No. 01-31171)

District court incorrectly concluded that Medicare is a "financial institution" in imposing a four-level enhancement under U.S.S.G. section 2F1.1(b)(8)(B), after a plea of guilty to wire fraud.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/5th/0131171p.pdf>

**US v. SERNA** (10/11/02 - No. 01-40836)

The crime of possession of a sawed-off shotgun under Texas law constitutes a crime of violence under the federal sentencing guidelines.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/5th/0140836p.pdf>

## U.S. 6th Circuit Court of Appeals

**LEWIS v. WILKINSON** (10/07/02 - No. 00-3523)

Where evidence reasonably goes to the issue of a rape victim's consent, as well as her motive in pursuing charges, a habeas petitioner's constitutional right of confrontation has been violated through the exclusion of that evidence.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/6th/02a0350p.html>

**US v. LEACHMAN** (10/09/02 - No. 01-5494)

A sentence was not unconstitutional where a minimum sentencing range was determined by an amount of drugs not proved to a jury beyond a reasonable doubt, because 1) rights prescribed in Apprendi do not apply to factors increasing the statutory mandatory minimum, and 2) defendant waived his right to a jury and to proof as to the amount of drugs.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/6th/02a0353p.html>

**US v. KONE** (10/10/02 - No. 00-2070/2270/2338)

In appeals from convictions arising from visa fraud by entering into sham marriages, 1) motions for acquittal were properly denied, 2) jury instruction regarding materiality was fair and adequate, and 3) court did not abuse its discretion in limiting cross-examination of certain prosecution witnesses.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/6th/02a0355p.html>

**US v. COTTAGE** (10/10/02 - No. 01-4221)

A supplemental petition to set aside a conviction under 28 U.S.C. section 2255 was properly dismissed, where government's failure to turn over entrapment evidence was not an impediment preventing petitioner from bringing the motion within one year of his conviction.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/6th/02a0357p.html>

## U.S. 7th Circuit Court of Appeals

**US v. ANIFOWOSHE** (10/09/02 - No. 01-1761)

In appeal from bank and mail fraud convictions, district court did not err in 1) admitting evidence of a prior state theft conviction, and 2) allowing a non-expert to testify as to similarity of handwriting, where defendant opened the door to such testimony.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/7th/011761p.pdf>

**ABRAMS v. WALKER** (10/10/02 - No. 01-2447)

An attorney's First Amendment retaliation claim arising from his arrest during a client's traffic stop was not actionable, because he had no constitutional right to engage in disobedient and dilatory conduct, and he was not arrested for his speech.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/7th/012447p.pdf>

**CURRY v. US** (10/11/02 - No. 02-2302)

A motion under FRCP 59(e), to alter or amend a judgment, is not subject to the statutory limitations on successive collateral attacks on criminal judgments.



To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/7th/022302p.pdf>

#### U.S. 8th Circuit Court of Appeals

**US v. MCQUISTON (10/07/02 - No. 01-3254)**  
 Under the law in effect at the time of defendant's crime and at the time he was convicted and sentenced, he was not entitled to certified mail notice of his restitution obligation, and he cannot claim that the government's failure to provide such notice deprived him of any right or unfairly burdened him.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/8th/013254p.pdf>

**US v. YOUSIF (10/07/02 - No. 01-2288)**  
 Defendant's consent to a vehicle search at a drug interdiction checkpoint was not sufficiently an act of free will to be deemed voluntary, and defendant's consent did not purge the primary taint of the illegal stop.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/8th/012288p.pdf>

**MATHENY v. MORRISON (10/08/02 - No. 00-3845/3893)**  
 Challenges to Inmate Financial Responsibility Program payments may be brought through section 2241 habeas action in the district in which the prisoners are incarcerated. Where district court sentences a defendant to make payments immediately, Bureau of Prison has discretion to place the defendant in the Inmate Financial Responsibility Plan.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/8th/003845p.pdf>

**US v. WILLIAMS (10/08/02 - No. 01-3649)**  
 In appeal from a "three strikes" conviction, 1) admission of evidence that defendant had committed prior car robberies was proper, 2) erroneous Hobbs Act instruction was harmless, and 3) district court correctly made the finding of defendant's eligibility for three-strikes enhancement.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/8th/013649p.pdf>

**US v. VANHOUTEN (10/08/02 - No. 02-1061)**  
 District court did not err in denying downward departure under the U.S.S.G., as defendant's situation and the circumstances surrounding his offense did not take it out of the heartland of child pornography cases.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/8th/021061p.pdf>

**US v. RAMIRES (10/09/02 - No. 01-3375/3546, 02-1085)**  
 Defendants did not have a reasonable expectation of privacy in the apartment they were visiting, and evidence seized during their arrest was admissible. A brief detention of some of the defendants outside the apartment building was a valid Terry stop.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/8th/013375p.pdf>

**WHITE v. LUEBBERS (10/11/02 - No. 01-3044)**  
 The district court's conclusions, that: 1) prejudice could not be presumed where counsel failed to question jurors during voir dire, 2) a juror's misconduct did not warrant removal, and 3) counsel was not ineffective for failing to object to the prosecutor's closing argument, all affirmed.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/8th/013044p.pdf>

#### U.S. 9th Circuit Court of Appeals

**US v. MALLEY (10/07/02 - No. 01-30069)**  
 Application Note 8 of section 5C1.1 of the U.S.S.G. does not provide independent authority for a district court to depart downward from the applicable U.S.S.G. sentencing range.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/9th/0130069p.pdf>

**US v. GROSS** (10/07/02 - No. 01-50033)

A district court does not have authority 1) under 18 U.S.C. section 3583(e) to modify conditions of a defendant's supervised release based on a claim of illegality, nor 2) to modify supervised release conditions based on the parties' stipulation.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/9th/0150033.p.pdf>

**US v. SUA** (10/09/02 - No. 00-10088/89)

A district court may properly exclude a plea agreement offered for the purpose of establishing the government's belief in a person's innocence, under FRE 403, and such exclusion did not violate the right to confrontation of witnesses.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/9th/0010088.p.pdf>

**US v. PITNER** (10/10/02 - No. 01-30055)

Denial of a severance motion was not an abuse of discretion, considering the nature and timing of a co-defendant's offer to testify on appellant's behalf. An interlocutory appeal after mistrial only interrupts, and does not restart, the Speedy Trial clock.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/9th/0130055.p.pdf>

**US v. MCGUIRE** (10/11/02 - No. 99-30165/6)

District court did not abuse its discretion in finding that electronic surveillance was necessary, and minimization procedures used in fax interception were reasonable under the circumstances.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/9th/9930165.p.pdf>

**GALLEGOS v. CITY OF LOS ANGELES** (10/11/02 - No. 01-56021)

Under the circumstances of a search for a burglary suspect, detention of an individual for up to an hour in order to ascertain whether he was the suspect being sought fell within the bounds of a permissible investigatory stop, and did not violate the Fourth Amendment.

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/9th/0156021.p.pdf>

**CHANG v. IMMIGRATION & NATURALIZATION SERV.** (10/11/02 - No. 01-35626)

Removal of a legal permanent resident convicted of bank fraud was improper, where a plea agreement established that the conviction caused a loss to the fraud victim well below the statutory threshold of an aggravated felony under 8 U.S.C. section 1101(a)(43)(M)(i).

To read the full text of this opinion, go to:[PDF File]  
<http://caselaw.lp.findlaw.com/data2/circs/9th/0135626.p.pdf>

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### U.S. 11th Circuit Court of Appeals

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**BOND v. MOORE** (10/10/02 - No. 00-16544)

A habeas petition was timely under 28 U.S.C. section 2244(d), because the limitations period did not begin to run until the 90-day window, during which petitioner could have petitioned the U.S. Supreme Court for a writ of certiorari, expired.

To read the full text of this opinion, go to:  
<http://laws.lp.findlaw.com/11th/0016544opn.html>

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**CLE - November 21, 2002**  
**The Crown Plaza Hotel.**

**CLE FOR CRIMINAL DEFENSE BAR**  
**(APPLICATION FOR THREE (3) HOURS CLE)**

- 2:00 - DEFENDING KIDDIE PORN AND SOLICITATION CASES**  
**(RICHARD THIGPEN, ESQ.)**  
**3:00 - DUI DEFENSE**  
**(BILL COLE, ESQ.)**  
**4:00 - 4:15 - BREAK**  
**4:15 - 5:15 - CHANGES TO THE ALABAMA RULES OF APPELLATE PROCEDURE**  
**(JOHN C. ROBBINS, ESQ.)**

**GENERAL MEETING TO FOLLOW - 5:30 - 6:30**

**TO REGISTER FOR A PROGRAM, COMPLETE REGISTRATION INFORMATION BELOW:**

**NAME OF REGISTRANT** \_\_\_\_\_

**MAILING ADDRESS** \_\_\_\_\_

**CITY** \_\_\_\_\_ **STATE** \_\_\_\_\_ **ZIP** \_\_\_\_\_

**TELEPHONE** \_\_\_\_\_

**E-MAIL ADDRESS** \_\_\_\_\_

**ALABAMA STATE BAR ID NO.**  
**ASB:** \_\_\_\_\_

**TOTAL AMOUNT ENCLOSED:\$** \_\_\_\_\_  
**\$50.00 FOR NON-MEMBERS**  
**\$25.00 FOR MEMBERS**

**\$35.00 FOR BBA MEMBER**  
**\$50.00 FOR BBA MEMBER(LATE)(AFTER 11-1-02)**  
**\$50.00 FOR NON-BBA MEMBER**  
**\$65.00 FOR NON-BBA MEMBER(LATE)**

**MAIL TO:**  
**VIRGINIA MEIGS, ESQ.**  
**2320 ARLINGTON AVENUE**  
**BIRMINGHAM, AL 35205**

730-9800

**CLE CLE CLE CLE CLE CLE**

**BIRMINGHAM BAR ASSOCIATION CONTINUING LEGAL EDUCATION AND CRIMINAL JUSTICE PROCEDURES COMMITTEE CLE SEMINAR**

**FRIDAY, NOVEMBER 8, 2002**

**TO BE HELD ON THE SECOND FLOOR OF THE BIRMINGHAM BAR CENTER LOCATED AT:**

**2021 2<sup>ND</sup> AVENUE NORTH FROM:**  
**8:40 AM UNTIL 3:35 PM**

**TOPIC IS "SERVING AS APPOINTED COUNSEL"**

**"ATTENDANCE IS MANDATORY FOR APPOINTED CASES"**

**TO REGISTER FOR A PROGRAM, COMPLETE REGISTRATION INFORMATION BELOW:**

**NAME OF REGISTRANT** \_\_\_\_\_

**MAILING ADDRESS** \_\_\_\_\_

**CITY** \_\_\_\_\_ **STATE** \_\_\_\_\_ **ZIP** \_\_\_\_\_

**TELEPHONE** \_\_\_\_\_

**E-MAIL ADDRESS** \_\_\_\_\_

**ALABAMA STATE BAR ID NO.**  
**ASB:** \_\_\_\_\_

**TOTAL AMOUNT ENCLOSED:\$** \_\_\_\_\_

**MAIL TO: BIRMINGHAM BAR ASSOCIATION**  
**2021 SECOND AVENUE NORTH**  
**BIRMINGHAM, AL 35203-3703**

**\*\*\*JUDGE CLYDE JONES WILL BE MOVING INTO THE JEFFERSON COUNTY CIVIL COURTHOUSE EFFECTIVE OCTOBER 31, 2002. ROOM 650\*\*\***

CJC LL6