

IN HOT PURSUIT of Federal Criminal Justice

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Internet Bans in Federal Criminal Sentencings: A Split in the Circuits and the Future

Geoffrey T. Cheshire

I. Introduction

The use of internet bans—banishment from cyberspace—raises a number of difficult questions. As people spend more time in digital worlds, they bring all their vices with them: greed, aggression, lasciviousness. And when such misconduct is brought before the courts for resolution, the temptation arises to ban the miscreants from online computer use.

However, as more of our essential services and communities migrate to cyberspace, internet bans could represent virtual penal colonies, exiling convicts from modern society almost as completely as the islands or distant colonial territories of the eighteenth century. Further, it is increasingly difficult as a practical matter of enforcement to determine what is a “computer,” and what “online” means. Even the most humble cell phones have modest compute capabilities and some measure of data connectivity. More sophisticated devices, such as Apple’s iPhone and Google’s Nexus One, are nothing short of pocketable computers with ubiquitous connectivity.

II. Internet Bans as Conditions of Supervision in Federal Courts

Conditions of Supervised Release are subject to the factors set out in 18 USC § 3583(d): a judge can set conditions of release which are “reasonably related” to § 3553(a)(1), (2) and involve “only such deprivations of liberty or

property as are reasonably necessary for the purposes indicated in Section 3553(a) (2).” The legislative history of supervised release further provides that its purpose is not punitive or to incapacitate, but rather to facilitate transition back into the community and assist rehabilitation. S. REP. NO. 98-225, at 124 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3307.

The most common internet bans imposed by federal courts in the United States stem from sex offense convictions, where there is a circuit split on the scope of permissible internet bans. A recent law review analysis found that the Fourth, Fifth, Eighth, Ninth, and Eleventh Circuits generally approve of complete or nearly complete prohibitions of internet access, while the Second, Third, Seventh, and Tenth Circuits require more narrowly tailored restrictions. 58 CATH. U. L. REV. 779.

For example, The Eleventh Circuit’s recent unpublished decision in *United States v. Dove*, No. 08-12642 (11th Cir. Aug. 24, 2009), upheld a life term of supervised release with a special condition that he “refrain from possessing or using a computer with Internet service.” Under an 18 USC § 3553(a) analysis, the defendant’s “history and characteristics, the need to protect the public, and the need to provide appropriate treatment,” justified a lifetime ban from the internet,

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Message From the Chair

Mike Sklaire

On behalf of the section’s Board of Directors, it is my pleasure to provide you with the Winter 2010 edition of In Hot Pursuit. This newsletter highlights the talents of our section’s attorneys and hopefully provides some useful information for federal court practitioners. The Criminal Law Section has a number of exciting events planned for this year and we hope that you will take advantage of these opportunities. In June, The Federal Lawyer will be publishing an issue dedicated to criminal law issues, and we are fortunate to have received dozens of suggestions and drafts from our members. The U.S. Sentencing Commission will hold its annual conference in New Orleans in June and we look forward to seeing you at a reception the section will sponsor at that event. In September, the section will be putting on two CLE programs at the FBA’s Annual Meeting and Convention: one on immigration and worksite enforcement and one on corporate fraud.

Throughout the year, the section will be sponsoring meet and greet receptions with the new U.S. attorneys throughout the country, kicking off with a reception in the Eastern District of Virginia. These receptions will be coordinated with the local chapters and will allow us to meet local practitioners and recruit new members. Please let us know if you would like to participate in setting a reception up in your district.

We are actively recruiting section members to sit on our Board of Directors. Each board member sits for a two-year term and is tasked with functions ranging from outreach to coordinating CLE programs to newsletter editing. Please contact me if you are interested in serving the section. In addition, we are soliciting articles for upcoming issues. Please let me know if you have an idea or a short piece that you would like published.

As always, we welcome your input as to how we can be useful to our members, so please feel free to email me at sklairem@gtlaw.com with any questions, concerns and most importantly, ideas.

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and found that such a restriction was not overly broad nor an abuse of discretion.

In *United States v. Heckman*, No. 08-3844 (3d Cir. Jan. 11, 2010), the Third Circuit considered in more detail a similar special condition of lifetime supervised release. Heckman's conditions included that "[t]he defendant is prohibited from access to any Internet service provider, bulletin board system, or any other public or private computer network." In contrast to the Eleventh and other circuits, the court in Heckman found that a lifetime ban of access to any networked computer, without exceptions, constituted plain error. "[W]e remain sensitive to three factors that have guided our prior holdings in this area: (1) the length and (2) coverage of the imposed ban; and, (3) the defendant's underlying conduct." After a thoughtful review of precedential decisions, the specific facts of the case, and the liberty interests at stake, the court held that Heckman's unconditional lifetime ban involved a greater deprivation of liberty than was reasonably necessary in contravention of 18 USC § 3553(d)(2).

We do not hold that limited Internet bans of shorter duration can never be imposed as conditions of supervised release for this type of conduct, but when placed within the context of related precedents, the unconditional, lifetime ban imposed by the District Court in this case is so broad and insufficiently tailored as to constitute "plain error."

Although most reported federal cases involving internet bans relate to convictions for sex offenses, such conditions have not been, nor are likely to remain, confined to such cases. Fraud and theft convictions have also supported internet bans or restrictions. For example, in *United States v. Mitnick*, 145 F.3d 1342 (9th Cir. 1998), in a case involving a violation of 18 USC § 1029(a)(3), possession of unauthorized access devices with the intent to defraud (computer hacking), the Ninth Circuit affirmed in an unpublished decision the imposition of special conditions of supervised release restrict-

ing employment where Mitnick might access computers and computer-related equipment without prior approval of the probation officer, finding such restrictions reasonably related to the offense of conviction and reasonably necessary to protect the public.

Similarly, *United States v. Suggs*, 50 Fed. Appx. 208 (6th Cir. 2002) upheld a complete ban from accessing personal computers at all following a conviction for mail fraud, wire fraud, and money laundering. In *United States v. Leigh*, 276 F.3d 1011 (8th Cir. 2002) the defendant plead guilty to witness tampering in connection with a wire fraud conviction and the court upheld a condition of probation prohibiting the defendant from possessing or accessing any type of computer system with online capabilities.

Federal courts have also attempted to restrict or prohibit internet access in convictions involving drug trafficking, kidnapping, tax avoidance, and for felon in possession of a firearm. See 4 A.L.R.6th 1 for a more complete list of cases.

III. Global Internet Bans

In Europe, the Asia-Pacific region, and more recently North America, copyright holders are pushing for, and in some cases getting passed, laws requiring service providers to terminate internet access to suspected infringers. These so-called "three strikes" laws add internet exile to the legal tool belt of content companies, augmenting referrals for criminal prosecution and the personally devastating but industry-tarnishing civil suits employed in past years by America's music industry association, the RIAA. (In June 2009, Jammie Thomas-Rasset, a 32-year-old Minnesota mother of four and tribal natural resources coordinator, lost a federal civil jury trial for illegally trading 24 songs on a now-defunct peer to peer network. *Capitol Records v. Thomas-Rasset*, CV 06-01497-DMN-MJD. The jury awarded \$80,000 in statutory damages for each track, for a total verdict of \$1.92 million.) In December 2008, the RIAA announced its inten-

tion to abandon the lawsuit strategy and instead seek to have service providers disconnect violators from the internet in most cases.

In November 2009, at negotiations in Seoul, South Korea on the multinational "Anti-Counterfeiting Trade Agreement" (ACTA), the US government submitted provisions aimed at "enforcement in the digital environment." While no public text was released, media reports and leaked documents indicate the inclusion of three-strikes internet disconnection among the available enforcement mechanisms. Unclear in this murky negotiation process what due process digitally exiled individuals would be entitled to, and what standard copyright owners would have to meet to prove persistent infringement.

Recent experience with Digital Millennium Copyright Act (DMCA) and similar bills in other countries is less than reassuring. (In a recent example, 4,500 websites were disconnected from the internet in December after net-pranksters the Yes Men and thousands of innocent bystanders on the same German web servers were hit by a takedown request from a Canadian government ministry.)

IV. Looking to the Future

The digital world and society at large are integrating, and it is increasingly difficult to view the internet as separate from our daily lives. What was once a novelty has become as necessary as the automobile, debit cards, and mobile telephones. Moreover, the lines between regular electronics and networked computers are blurring as more devices become "smart" and are plugged-in to the global internet. Courts and litigants must therefore engage in a fact-specific analysis before prohibiting internet access, and must also educate themselves about legitimate access needed to function in a digitally dependent society while at the same time guarding against recidivism and protecting the public.

The Supreme Court Re-examines its Decision in Jackson

Kathy Massing

In *Montejo v. Louisiana*, 556 U.S. ___ (2009), the Court overturned its opinion in *Michigan v. Jackson*, 475 U.S. 625 (1986), which provided prophylactic protection to criminal defendants by forbidding police to initiate the interrogation of a criminal defendant once counsel had been requested at arraignment or a similar proceeding.

Defendant Jesse Montejo appeared for arraignment on a charge of first-degree murder, where an indigent defender was appointed to represent him. Following that appointment, but before the appointed attorney had an opportunity to meet with Montejo, detectives visited Montejo in jail and asked him to accompany them to locate the weapon he used to perpetrate the crime. Montejo agreed to accompany the detectives and the detectives read Montejo his Miranda rights, before leaving. While on the excursion, Montejo wrote an inculpa-

tory letter to the victim's family.

At trial, the Montejo's attorney argued that the inculpatory letter should be suppressed because the officers had unlawfully interrogated Montejo in violation of Jackson. The Louisiana Supreme Court rejected Montejo's argument, reasoning that the prophylactic protection afforded in Jackson was not triggered unless and until a defendant actually requests a lawyer, or otherwise asserts his Sixth Amendment right to counsel.

In reviewing the Louisiana Supreme Court's decision, the U.S. Supreme Court distinguished Jackson, which it explained addresses only whether a court must presume a waiver is invalid under certain circumstances. The Court explained its holding in Jackson was meant to prevent police from badgering defendants into changing their minds about their rights.

In departing from Jackson, the Court explained that the relevant analysis when creating a prophylactic rule in order to protect a constitutional right, is to weigh the rule's benefits against its costs. The Court reasoned that the marginal benefits of Jackson were dwarfed by the substantial costs of hindering the compelling societal interest in finding, convicting, and punishing those who violate laws.

The Court pointed out that overlapping prophylactic measures in *Miranda*¹, *Edwards*², and *Minnick*³ ensure that a defendant who does not want to speak to police without counsel present, need only say so.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

² *Edwards v. Arizona*, 451 U.S. 477 (1981).

³ *Minnick v. Mississippi*, 498 U.S. 146, 151 (1990).

New Year, New Rates

New Rates—Congress authorized and provided funds to raise the non-capital hourly panel attorney compensation rate from \$110 to \$125 and the maximum hourly capital rate from \$175 to \$178 (for federal capital prosecutions and capital post-conviction proceedings). The case compensation maximums increased as well and are as follows:

- \$9,700 for felonies at the trial court level and \$6,900 for appeal (previously \$8,600/\$6,100);
- \$2,800 for misdemeanors at the trial court level and \$6,900 for appeal (previously \$2,400/\$6,100);
- \$9,700 for non-capital post-conviction proceedings under 18 U.S.C. §§ 2241, 2254 or 2255 and \$6,900 for appeal (previously \$8,600/\$6,100);
- \$2,100 for most other non-capital representations and \$2,100 for appeal (previously \$1,800/\$1,800).

The new hourly compensation rates and the new case compensation maximums apply to work performed on or after Jan. 1, 2010. Where the appointment of counsel occurred before this effective date, the new compensation rates apply to that portion of services provided on or after Jan. 1, 2010.

Supreme Court Updates

Beard v. Kindler

130 S. Ct. 612 (Dec. 8, 2009)

After a jury convicted Kindler of capital murder and recommended the death sentence, defense counsel filed post-verdict motions while his client escaped to Canada. When Kindler eventually was caught and extradited to the United States, the Pennsylvania trial court refused to reinstate the post-verdict motions, which it had dismissed under the state's fugitive forfeiture rule. The state courts affirmed, finding no abuse of discretion, but the federal habeas court held that the fugitive forfeiture rule was not an adequate and independent state law ground for the state court decisions and therefore did not bar federal merits review. Under federal law, a state rule is adequate if it is "firmly established and regularly followed." The federal district court and the Third Circuit held the fugitive forfeiture rule did not meet this criterion because it was discretionary. The Supreme Court disagreed: "We hold that a discretionary state procedural rule can serve as an adequate ground to bar federal habeas review." A contrary holding would encourage state legislatures to pass mandatory procedural rules, preventing the judicial system from taking advantage of the trial court's ringside perspective.

Michigan v. Fisher

130 S. Ct. 546 (Dec. 7, 2009)

Responding to a complaint of a disturbance, police officers saw a pick-up truck with smashed windows and blood on the hood in front of the house. Through the window, officers saw Jeremy Fisher inside the house, screaming and throwing things. They knocked; Fisher did not answer, but officers saw that Fisher had a cut on his hand so they asked if he needed medical attention. Fisher did not answer, so one of the officers pushed open the front door and went inside. He saw Fisher pointing a long gun at him so he left. Fisher was ultimately charged with assault with a dangerous weapon. The trial court, however, suppressed the gun, finding that the officer's entry violated

the Fourth Amendment. The Michigan courts affirmed. The U.S. Supreme Court granted certiorari and reversed. It held the entry was reasonable under the "emergency aid exception" to the Fourth Amendment, explained in *Brigham City v. Stuart*, 547 U.S. 398 (2006). The officers found a tumultuous situation, with Fisher screaming and throwing things. "It would be objectively reasonable to believe that Fisher's projectiles might have a human target (perhaps a spouse or a child), or that Fisher would hurt himself in the course of his rage," the Supreme Court stated. "Officers do not need ironclad proof of a likely serious, life-threatening injury to invoke the emergency aid exception."

Porter v. McCollum

130 S. Ct. 447 (Nov. 30, 2009)

On federal post-conviction review of a state capital conviction, the district court held that defense counsel's failure to adduce mitigating evidence during the penalty phase violated Porter's Sixth Amendment right to counsel. The Eleventh Circuit, however, reversed on the basis of the Florida high court's belief that counsel's deficient performance did not prejudice Porter. The Supreme Court reversed the Eleventh Circuit, finding that "it was objectively unreasonable to conclude there was no reasonable probability the sentence would have been different" had the judge and jury heard the mitigating evidence defense counsel failed to discover.

Presley v. Georgia

(No. 09-5270) (Jan. 19, 2010)

The trial court excluded the public from the courtroom during juror voir dire to avoid the risk of prospective jurors overhearing prejudicial remarks. Assuming *arguendo* that this was a sufficient reason to limit a defendant's Sixth Amendment right to a public trial, the Supreme Court held that the trial court nevertheless erred by failing to consider alternative seating arrangements in the courtroom. Trial courts have an obligation to consider alternative ways of satisfying interests counter to the right to a public

trial, even if the party opposing closure does not present any such alternatives.

Wellons v. Hall

(No. 09-5731) (Jan. 19, 2010)

After his client was convicted in Georgia state court and sentenced to death, defense counsel learned of unreported *ex parte* contacts between the jury and the judge. Either during or immediately after the penalty phase, some jurors gave the trial judge chocolate shaped as male genitalia. Defense counsel was unable to get discovery and a hearing on these events. On direct appeal, the state courts found the record inadequate; on state collateral review, the state courts found the claims *res judicata*; on federal post-conviction review, the district court and the Eleventh Circuit found the claims procedurally barred. The Supreme Court granted cert., vacated and remanded, concluding that the Eleventh Circuit's position was error. Under *Cone v. Bell*, 556 U.S. ____ (2009), "when a state court declines to review the merits of a petitioner's claim on the ground that it has done so already, it creates no bar to federal habeas review." Although the Eleventh Circuit also rejected the claim on the merits as speculation and surmise, it did not address whether the defendant was entitled to discovery or an evidentiary hearing to present proof of his claim.

WRITS OF CERTIORARI GRANTED

Barber v. Thomas

No. 09-5201 (cert. granted Nov. 30, 2009, decision below at 533 F.3d 800 (9th Cir. 2008))

The federal good time credit statute provides for credits "up to 54 days at the end of each year of the prisoner's term of imprisonment." BOP applies the credit at the end of each 365 days of actual confinement. Is this correct, or does the statute mean that the credit counts as a component part of each year of the sentence, such that a defendant entitled to 54 days credit gets the credit after serving 311 days?

United States v. O'Brien

130 S. Ct. 49 (cert. granted Sept. 30, 2009, decision below at 542 F.3d 921 (1st Cir. 2009))

The mandatory minimum under 18 U.S.C. § 924(c)(1) increases to 30 years from five when the firearm possessed by a defendant is a machine gun. Is the nature of the gun an element of the offense which must be proven to a jury beyond a reasonable doubt, or sentencing factor to be found by a judge by a preponderance of evidence? This cert. grant revisits *Harris v. United States*, 536 U.S. 545 (2002), where the Supreme Court held that *Apprendi* does not apply to mandatory minimums.

McDonald v. City of Chicago

130 S. Ct. 48 (cert. granted Sept. 30, 2009, decision below unpublished)

Does the Second Amendment right to keep and bear arms apply to the States?

Carr v. United States

130 S. Ct. 47 (cert. granted Sept. 30, 2009, decision below at 551 F.3d 578 (7th Cir. 2009))

May a person be prosecuted for failure to register as a sex offender under SORNA, 18 U.S.C. 2250, when the defendant's underlying offense and his travel in interstate commerce both predated SORNA's enactment? Does the Ex Post Facto Clause prohibit punishment in such circumstances?

United States v. Comstock

129 S. Ct. ___ (cert. granted June 22, 2009, decision below 551 F.3d 274 (4th Cir. 2009))

Does Congress have constitutional authority to enact 18 U.S.C. § 4248, which authorizes federal courts to order civil commitment of "sexually dangerous" persons in BOP custody who are coming to the end of their federal prison sentence and "sexually dangerous" persons in the AG's custody because they've been found incompetent to stand trial?

Padilla v. Kentucky

129 S. Ct. 1317 (cert. granted Feb. 23,

2009, decision below at 253 S.W. 3d 482 (Ky. 2008))

Counsel incorrectly advised his client that pleading guilty to trafficking in marijuana would not affect his immigration status. He was wrong; the offense was an "aggravated felony," which triggered mandatory deportation of non-citizens. Are deportations consequences of a criminal conviction collateral, thereby relieving counsel from affirmative duty to investigate and advise? If so, is counsel's gross misadvice grounds for setting aside the guilty plea?

Hunter v. United States

No. 09-122 (Jan. 19, 2010)

The Supreme Court granted cert., vacated and remanded a case from the 11th Circuit. Hunter was sentenced to 188 months as an Armed Career Criminal, based in part on two prior convictions for carrying a concealed weapon. The Solicitor General agreed that Hunter's claim (on a 2255) presented a "substantial showing" that his sentence under the ACCA, in light of *Begay* and *Archer*, violated due process because it was in excess of the ten-year statutory maximum otherwise applicable in 18 U.S.C. 922(g) cases. The Supreme Court vacated the Eleventh Circuit's order denying Hunter's certificate of appealability and remanded "for further consideration in light of the position asserted by the Solicitor General in her brief."

Vazquez v. United States

No. 09-5370 (Jan. 19, 2010)

The Supreme Court granted cert., vacated and remanded an 11th Circuit case. Judge Presnell originally sentenced Vazquez to 110 months' incarceration, reduced from the 210-262 month range for the career offender guideline. The Eleventh Circuit reversed, finding the sentence procedurally unreasonable, because it rested on the district court's "disagreement with the guidelines, which was impermissible."

At resentencing, J. Presnell found that "it may be" that the career offender guideline "is immune from the policy criticisms otherwise permissible,"

because the crack guidelines involved an "implied congressional policy" while the career offender guideline "is a product of direct congressional expression." The court resentenced Vazquez to 180 months' imprisonment, concluding: "[I]f I were allowed to consider what I consider to be the unjust application of 4B1.1 in this case, I would impose a sentence lower than 180 months."

On appeal (by Vazquez), the Eleventh Circuit held that the district court's refusal to consider its policy disagreement with the career offender guideline was not procedurally unreasonable. The court believed itself bound by *United States v. Williams*, 456 F.3d 1353 (11th Cir. 2006), which held that the district court impermissibly ignored congressional policy by generally disagreeing with the career offender guideline. The court stated that district courts may vary from guidelines based on policy disagreements only "where Sentencing Commission policy judgment, not Congressional direction, underlies the Guideline at issue," and "where that policy judgment did not arise from the Commission's exercise of its characteristic institutional role."

Vazquez sought rehearing en banc. In his petition, Vazquez showed that the Eleventh Circuit was alone in its position (as none of the cases cited by the court really supported its position). Additionally, Vazquez cited to the fact that the Solicitor General had taken a position inconsistent with the Eleventh Circuit's opinion. The Eleventh Circuit denied rehearing.

In his petition for writ of certiorari, Vazquez reiterated the points raised in his petition for rehearing. The Solicitor General agreed that the Eleventh Circuit opinion was wrong, and asked that the Supreme Court remand the case to the Eleventh Circuit so it could affirmatively know the Solicitor General's position. The Supreme Court granted cert, vacated the Eleventh Circuit opinion, and remanded for further proceedings based on the Solicitor General's position.

Department of Justice Issues New Discovery Guidelines for Prosecutors

On Jan. 4, 2010, Deputy Attorney General David W. Ogden issued three memoranda to federal prosecutors regarding the Department of Justice's criminal discovery practices. These new discovery guidelines follow the recommendations of a working group convened by the department to explore its policies, practices, and training related to criminal case management and discovery. This effort was undertaken following several setbacks the department suffered last year as a result of discovery violations—including the failed prosecution of Ted Stevens, former Alaska senator.

The most significant and substantive of the memoranda is entitled "Guidance for Prosecutors Regarding Criminal Discovery," and sets out detailed

steps prosecutors are to follow regarding discovery. The guidance memorandum first requires federal prosecutors to identify the members of their "prosecution team" to determine what documents must be reviewed for disclosure. It then includes a detailed list of areas that should be covered by the discovery review. While delegation of the review process to agents, paralegals, or others is permitted, the guidance memorandum makes clear that the prosecutor will ultimately be held accountable for all disclosure determinations. Finally, the guidance memorandum covers the disclosure process and encourages prosecutors to provide discovery broader and more comprehensive than their constitutional obligations under Brady and Giglio.

In the two other memoranda, Ogden directs that each U.S. Attorney's Office shall have a "discovery coordinator" and develop a discovery policy consistent with the law and local rules and practices. That policy must be in place by March 31, 2010. He also reminds federal prosecutors of Justice Sutherland's observations over 70 years ago—that a prosecutor's duty in a criminal prosecution "is not that it shall win a case, but that justice shall be done."

The three memoranda are available at: www.justice.gov/dag/discovery-guidance.html, www.justice.gov/dag/dag-to-usas-component-heads.html, and www.justice.gov/dag/dag-memo.html.

U.S. Supreme Court Scrutinizes Honest Services Fraud

Kathy Massing

On Dec. 8, 2009, the U.S. Supreme Court heard oral argument in *Black v. United States* and *Weyhrauch v. United States*, two cases which challenge 18 U.S.C. § 1346, known as the federal honest services fraud law. The Court will hear arguments on a third case involving the same law, *Skilling v. United States* in March 2010.

The honest services fraud law provides that "whoever, having devised or intending to devise, any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretense, representations or promises" shall be fined, imprisoned not more than twenty years, or both. The law fails to define what a "scheme or artifice to defraud" is.

Prosecutors have used the law to prosecute both public officers and corporate executives who have deprived citizens or shareholders of their right to honest services. However, the law has been the target of criticism for being vague and unfair. Though frequently

it has been used by prosecutors as a powerful tool to charge individuals who abuse their position of power, critics believe its broad usage criminalizes behavior which fails to otherwise merit the weight of federal prosecution.

The three cases the Court will address involve three very different issues. In *Black*, former media mogul Conrad Black was convicted of three counts of fraud and one count of obstruction of justice relating to a \$5.5 million dollar payout he received from a subsidiary of his company, Hollinger International. Black argues the law should not apply to him because he never contemplated "economic harm" to his company.

In *Weyhrauch*, the Court will examine whether the law requires a violation of state law to support a conviction. Weyhrauch, a former member of the Alaska House of Representatives, was convicted of failing to disclose a conflict of interest involving his attempts to procure future employment with an oil company, prior to voting

for legislation that would benefit the company. Weyhrauch claims he cannot be convicted under the statute because Alaska only requires disclosure of an actual conflict, not a potential conflict. In *Weyhrauch*, the Court will determine whether the government must first prove that a defendant violated a state law before it can prosecute under 18 U.S.C. § 1346.

In *Skilling*, the Court will review the conviction of former Enron executive, Geoffrey Skilling who was convicted of 19 counts of conspiracy, securities fraud, insider trading, and lying to auditors. Skilling argues that his actions were not motivated by private gain, but rather to advance Enron's interests. Skilling asserts that 18 U.S.C. § 1346 cannot support a conviction where personal gain has not been asserted.

The Court is expected to narrow and define the law that has been a valuable tool in fighting both public and private corruption.

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	State/District: _____ Original Admission: / /

Tribal	Court of Record: _____
	State: _____ Original Admission: / /

Foreign	Court/Tribunal of Record: _____
	Country: _____ Original Admission: / /

Students	Law School: _____
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<input type="checkbox"/> Bankruptcy Law..... \$10	<input type="checkbox"/> Labor and Employment Law..... \$15
<input type="checkbox"/> Criminal Law..... \$10	<input type="checkbox"/> Social Security..... \$10
<input type="checkbox"/> Environment, Energy, and Natural Resources..... \$15	<input type="checkbox"/> State and Local Government Relations..... \$5
<input type="checkbox"/> Federal Litigation..... \$10	<input type="checkbox"/> Taxation..... \$15
<input type="checkbox"/> Government Contracts..... \$20	<input type="checkbox"/> Transportation & Transportation Security Law..... \$20
<input type="checkbox"/> Health Law..... \$10	<input type="checkbox"/> Transportation Security Law..... \$20
<input type="checkbox"/> Immigration Law..... \$10	<input type="checkbox"/> Veterans Law..... \$10
<input type="checkbox"/> Indian Law \$15	

Career Divisions

<input type="checkbox"/> Federal Career Service (past/present employee of federal government).....N/C
<input type="checkbox"/> Judiciary (past/present member or staff of a judiciary).....N/C
<input type="checkbox"/> Corporate & Association Counsels (past/present member of corporate/association counsel's staff)..... \$10
<input type="checkbox"/> Senior Lawyers* (age 55 or over)..... \$10
<input type="checkbox"/> Younger Lawyers* (age 36 or younger or admitted less than 3 years)N/C

*For eligibility, date of birth must be provided.

Sections and Divisions Total: \$ _____

Chapter Affiliation

Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location.
*No chapter currently located in this state or location.

<p><u>Alabama</u></p> <input type="checkbox"/> Birmingham <input type="checkbox"/> Mobile <input type="checkbox"/> Montgomery <input type="checkbox"/> North Alabama <p><u>Alaska</u></p> <input type="checkbox"/> Alaska <p><u>Arizona</u></p> <input type="checkbox"/> Phoenix <input type="checkbox"/> William D. Browning/ Tucson-\$10 <p><u>Arkansas*</u></p> <input type="checkbox"/> At Large <p><u>California</u></p> <input type="checkbox"/> Central Coast <input type="checkbox"/> Inland Empire <input type="checkbox"/> Los Angeles <input type="checkbox"/> Northern District of California <input type="checkbox"/> Orange County <input type="checkbox"/> Sacramento <input type="checkbox"/> San Diego <input type="checkbox"/> San Joaquin Valley <p><u>Colorado</u></p> <input type="checkbox"/> Colorado <p><u>Connecticut</u></p> <input type="checkbox"/> District of Connecticut <p><u>Delaware</u></p> <input type="checkbox"/> Delaware <p><u>District of Columbia</u></p> <input type="checkbox"/> Capitol Hill <input type="checkbox"/> D.C. <input type="checkbox"/> Pentagon <p><u>Florida</u></p> <input type="checkbox"/> Broward County <input type="checkbox"/> Jacksonville <input type="checkbox"/> North Central Florida <input type="checkbox"/> Orlando <input type="checkbox"/> Palm Beach County <input type="checkbox"/> South Florida <input type="checkbox"/> Southwest Florida <input type="checkbox"/> Tallahassee-\$25 <input type="checkbox"/> Tampa Bay	<p><u>Georgia</u></p> <input type="checkbox"/> Atlanta-\$10 <p><u>Hawaii</u></p> <input type="checkbox"/> Hawaii <p><u>Idaho</u></p> <input type="checkbox"/> Idaho <p><u>Illinois</u></p> <input type="checkbox"/> Chicago <p><u>Indiana</u></p> <input type="checkbox"/> Indianapolis <p><u>Iowa</u></p> <input type="checkbox"/> Iowa-\$10 <p><u>Kansas</u></p> <input type="checkbox"/> At Large <p><u>Kentucky</u></p> <input type="checkbox"/> Kentucky <p><u>Louisiana</u></p> <input type="checkbox"/> Baton Rouge <input type="checkbox"/> Lafayette/ Acadiana <input type="checkbox"/> New Orleans <p><u>Maryland</u></p> <input type="checkbox"/> Maryland <p><u>Maine*</u></p> <input type="checkbox"/> At Large <p><u>Massachusetts</u></p> <input type="checkbox"/> Massachusetts-\$10 <p><u>Michigan</u></p> <input type="checkbox"/> Eastern District of Michigan <input type="checkbox"/> Western District of Michigan <p><u>Minnesota</u></p> <input type="checkbox"/> Minnesota <p><u>Mississippi</u></p> <input type="checkbox"/> Mississippi <p><u>Missouri*</u></p> <input type="checkbox"/> At Large <p><u>Montana</u></p> <input type="checkbox"/> Montana <p><u>Nebraska*</u></p> <input type="checkbox"/> At Large <p><u>Nevada</u></p> <input type="checkbox"/> Nevada <p><u>New Hampshire*</u></p> <input type="checkbox"/> At Large	<p><u>New Jersey</u></p> <input type="checkbox"/> Central Jersey Shore <input type="checkbox"/> New Jersey <p><u>New Mexico*</u></p> <input type="checkbox"/> At Large <p><u>New York</u></p> <input type="checkbox"/> Eastern District of New York <input type="checkbox"/> Southern District of New York <p><u>North Carolina</u></p> <input type="checkbox"/> Western District of North Carolina <p><u>North Dakota*</u></p> <input type="checkbox"/> At Large <p><u>Ohio</u></p> <input type="checkbox"/> John W. Peck/ Cincinnati/ Northern Kentucky <input type="checkbox"/> Columbus <input type="checkbox"/> Dayton <input type="checkbox"/> Northern District of Ohio-\$10 <p><u>Oklahoma</u></p> <input type="checkbox"/> Oklahoma City <input type="checkbox"/> Northern/Eastern Oklahoma <p><u>Oregon</u></p> <input type="checkbox"/> Oregon <p><u>Pennsylvania</u></p> <input type="checkbox"/> Eastern District of Pennsylvania <input type="checkbox"/> Middle District of Pennsylvania <input type="checkbox"/> Western District of Pennsylvania <p><u>Puerto Rico</u></p> <input type="checkbox"/> Hon. Raymond L. Acosta/ Puerto Rico-\$10 <p><u>Rhode Island</u></p> <input type="checkbox"/> Rhode Island <p><u>South Carolina</u></p> <input type="checkbox"/> South Carolina	<p><u>South Dakota*</u></p> <input type="checkbox"/> At Large <p><u>Tennessee</u></p> <input type="checkbox"/> Chattanooga <input type="checkbox"/> Memphis <input type="checkbox"/> Mid-South <input type="checkbox"/> Nashville <input type="checkbox"/> Northeast Tennessee <p><u>Texas</u></p> <input type="checkbox"/> Austin <input type="checkbox"/> Dallas-\$10 <input type="checkbox"/> Del Rio-\$25 <input type="checkbox"/> El Paso <input type="checkbox"/> Fort Worth <input type="checkbox"/> San Antonio <input type="checkbox"/> Southern District of Texas-\$25 <input type="checkbox"/> Waco <p><u>Utah</u></p> <input type="checkbox"/> Utah <p><u>Vermont*</u></p> <input type="checkbox"/> At Large <p><u>Virginia</u></p> <input type="checkbox"/> Northern Virginia <input type="checkbox"/> Richmond <input type="checkbox"/> Tidewater <p><u>Virgin Islands</u></p> <input type="checkbox"/> Virgin Islands <p><u>Washington*</u></p> <input type="checkbox"/> At Large <p><u>West Virginia*</u></p> <input type="checkbox"/> At Large <p><u>Wisconsin*</u></p> <input type="checkbox"/> At Large <p><u>Wyoming</u></p> <input type="checkbox"/> Wyoming
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Chapter Total: \$ _____

Payment Information and Authorization Statement

TOTAL DUES TO BE CHARGED

(membership, section/division, and chapter dues): \$ _____

Check enclosed, payable to Federal Bar Association
Credit: American Express MasterCard Visa

Name on card (please print)

Card No.

Exp. Date

Signature

Date

By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application and/or the immediate termination of my membership. I also understand that by providing my fax number and e-mail address, I hereby consent to receive faxes and e-mail messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.

Signature of Applicant

Date

(Signature must be included for membership to be activated)

*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5% which is used for congressional lobbying and is not deductible. Your FBA dues include \$14 for a yearly subscription to the FBA's professional magazine.



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The Ritz-Carlton



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