

## U.S. High Court Rejects State's Appeal in Bonistall Murder

The U.S. Supreme Court has rejected an appeal by Delaware prosecutors aiming to restore the conviction and death sentence of James Cooke in the 2005 rape and murder of University of Delaware student Lindsey Bonistall, according to a report from the Associated Press.

On Feb. 22, the justices rejected a petition for certiorari from Attorney General Beau Biden's office challenging the Delaware Supreme Court's reversal of Cooke's conviction and death sentence, the report said.

In a rare split decision in July 2009, the state Supreme Court reversed Cooke's conviction and sentence and remanded the case for a new trial, finding his constitutional right to a fair trial had been violated because defense counsel pursued a verdict of guilty but mentally ill, even though Cooke had vociferously protested against it.

The public defenders representing Cooke at the time chose this path in the hope that Cooke would have mental illness as a mitigating factor during the penalty phase, court papers said.

Defense counsel's choice, while made in good faith, "so undermined the proper functioning of the adversarial process contemplated by the Sixth Amendment and the Due Process Clause that the trial cannot be relied upon as having produced a just result," the majority opinion of the Delaware Supreme Court said.

The state filed a petition for certiorari in November because the case raised complex legal issues that have been subject to debate among legal authorities and could affect other prosecutions, according to a statement released by the state's Department of Justice.

The main issue was whether the choice to pursue a verdict of "guilty but mentally ill" can be made by defense counsel, or if it is more akin to a guilty plea, a choice only the defendant has the right to make.

## Del. Expertise Featured in Seminar on Dutch Business Law

Attorneys in the Netherlands recently reached out to include some Delaware expertise in their seminar on the possible

introduction of a statutory one-tier board model in their country.

Chief Justice Myron T. Steele of the Delaware Supreme Court and Ellisa Habbart, co-founder of Wilmington firm the Delaware Counsel Group attended the conference held in Amsterdam on Jan. 29. The event was hosted by Dutch firm NautaDutilh N.V. and organized by Willem J.L. Calkoen, an attorney with the firm.

Steele was a keynote speaker at the conference, along with Sir Adrian Cadbury, the CEO of Cadbury Schweppes, who is described as a "pioneer of corporate governance codes" in materials about the seminar. Habbart was invited to participate because of her experience with corporate boards.

The topics covered during the seminar were how to get the best out of non-executive directors, whether an independent chairperson is a desirable thing, and the duties and liabilities of boards.

"Whether you choose a one- or two-tier board, the focus should needs to be on the substance of how the board performs rather than its form," Habbart reported saying during the panel discussion at the conference. "In other words, no matter what tier a board member is assigned to, the collective board must provide the necessary fiduciary oversight for the company."

Habbart noted concerns regarding the two-tier structure, such as when the interests of one tier are not aligned with the interests of the second tier.

"In the final analysis, you have to ask whether or not a board functions much differently if it is a one- or two-tier board," Habbart said. "You must also weigh the potential challenges of a two-tier board against, according to the Europeans, the perception that a two-tier board works better."

Calkoen, who planned the seminar, is writing a book comparing the functioning of one-tier boards in the United States and the United Kingdom, and considering how they might be used as an alternative to the two-tier model of Dutch corporate law. In researching the book, he had been consulting with Steele and Cadbury, along with Ira M. Millstein, a senior partner at Weil Gotshal & Manges in New York. These discussions led to the planning of the seminar, which also featured Vino Timmerman, advocate general of the Netherlands Supreme Court.

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