



Criminal Justice Section Newsletter

Volume 18, Issue 3 Spring 2010

PRACTICE TIPS

Practice Pointers for the Criminal Defense Attorney in the Aftermath of *Padilla v. Kentucky*

By Sara Elizabeth Dill and Robert J. McWhirter

A deportation may result in “loss of both property and life; or all that makes life worth living.” *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922).

The United States has an extraordinary number of non-citizens. On occasion, these individuals come into contact with the criminal justice system, often for very minor offenses. However, under current immigration laws, even misdemeanor offenses and some diversionary programs can still subject the individual to deportation. In the recent decision of *Padilla v. Kentucky*, 559 U.S. ____ (March 31, 2010), the United States Supreme Court addressed the question of whether an alien was denied effective assistance of counsel, and thus entitled to reversal of the conviction based on the failure to warn or advise of the immigration consequences of a conviction. The Court, in a 7-2 decision, held that deportation is uniquely severe and that the immigration consequences of criminal convictions are inextricably linked to criminal proceedings. Further, the Sixth Amendment requires defense counsel to provide affirmative, competent advice to a non-citizen defendant regarding the immigration consequences of a guilty plea and, absent this advice, a noncitizen may claim ineffective assistance of counsel.



Sara Elizabeth Dill and Robert J. McWhirter are co-chairs of the ABA Criminal Justice Section's Immigration Committee.



Although this practice pointer is only able to flag a few issues, it can provide a good starting point for criminal defense attorneys in effectively representing the non-citizen defendant. For a more detailed analysis, see, ROBERT J. McWHIRTER, *A CRIMINAL LAWYER'S GUIDE TO IMMIGRATION LAW: QUESTIONS AND ANSWERS*, 2D ED. *Chapter 4: Immigration Consequences of Criminal Convictions* (2005).

Some key points for defense attorneys to consider post-*Padilla*:

- Deportation is a penalty, not a collateral consequence of the criminal proceeding, thus the direct vs. collateral distinction does not apply
- Professional standards for defense lawyers (such as the ABA standards) provide guiding principles for what constitutes effective assistance of counsel
- The 6th Amendment requires affirmative, competent advice regarding immigration consequences, non-advice/silence is insufficient/ineffective
- The Court endorses “informed consideration” of deportation consequences by both the defense and prosecution in plea-bargaining
- Attorneys need to investigate and advise about immigration consequences of plea alternatives
 - NLADA Guideline 6.2(a) and ABA Pleas of Guilty Standard 14-3.2(f)
 - Counsel should be familiar with basic immigration consequences that flow from different types of pleas to different offenses

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Inside This Issue:

**How You Can Help with
Collateral Consequences
in Your State (p. 2)**

After Padilla, How Your Involvement Can Help

By Chris Gowen, CJS Senior Staff Attorney

The American Bar Association Criminal Justice Section received a grant from the National Institute of Justice to conduct a comprehensive state-by-state study and report of the collateral consequences of criminal convictions. A major goal of the study is to provide defense attorneys with accurate information about collateral consequences when advising their client during plea negotiations. This issue made national headlines recently with the Supreme Court's decision in *Padilla v. Kentucky*.¹

The facts in the Padilla case were straightforward and in line with the goals of this project. The state accused Mr. Padilla, a lawful permanent resident for over 40 years, of drug distribution and Mr. Padilla's attorney advised him that he would not be deported if he accepted the state's plea agreement.² Once Mr. Padilla plead guilty, he discovered that he would in fact be deported as a result.³ Mr. Padilla appealed the case on ineffective assistance of counsel grounds and the Supreme Court ruled that the erroneous advice constituted ineffective assistance of counsel.⁴

Justice Stevens's majority opinion referred to a collateral consequence (deportation) as an "integral part" of the penalty a defendant faces.⁵ Stevens responded to the lower court's assertion that a "collateral consequence" falls outside the scope of the Sixth Amendment by observing that the Court "never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under Strickland."⁶ Stevens also noted that such a distinction is inappropriate where a consequence is difficult to classify as direct or collateral.⁷

The court left several questions unanswered, including: whether "affirmative misadvice" gives rise to ineffective assistance of counsel when the collateral consequence is unrelated to deportation; whether failure to inform rises to ineffective assistance when the client who pleads guilty

is affected by a non-deportation collateral consequence. And also, if non-deportation collateral consequences do give rise to ineffective assistance, what is the applicable standard for determining whether the consequence is "unique" and "intimately related to the criminal process" so as to imply a criminal defense attorney's constitutional duty to inform.

While it remains doubtful that courts will mandate accurate advice regarding collateral consequences, this decision arguably creates a new standard of care for defense attorneys to be aware of collateral consequences and to properly advise their clients about them. For this reason, the ABA's collateral consequences research study is exceptionally timely. Locating all of the collateral consequences a client faces is an extremely burdensome task for a defense attorney. These consequences are rarely available in a central resource for defense attorneys to find them.

Once complete, the ABA study will provide that central resource for defense attorneys. They can simply go to the website, input the statute their client is charged under, and obtain a complete list of the collateral consequences their client faces. The attorney can then easily print that document out for the client and ensure proper notification. The Criminal Justice Section is extremely grateful for all the help and support that has been provided by its members and would like to welcome all of the CJS members to get involved with this important project. The project is always looking for people with local knowledge about the collateral consequences in their home jurisdiction. If you would like to become a part of this project, please email to gowenc@staff.abanet.org.

Endnotes

¹ *Padilla v. Kentucky*, 2010 U.S. LEXIS 2928 (US Mar. 31, 2010).

² *Padilla v. Kentucky*, 2010 U.S. LEXIS 2928, at *1 (US Mar. 31, 2010).

³ *Padilla v. Kentucky*, 2010 U.S. LEXIS 2928, at *6 (US Mar. 31, 2010).

⁴ *Padilla v. Kentucky*, 2010 U.S. LEXIS 2928, at *1 (US Mar. 31, 2010).

⁵ *Padilla v. Kentucky*, 2010 U.S. LEXIS 2928, at *15 (US Mar. 31, 2010).

⁶ *Padilla v. Kentucky*, 2010 U.S. LEXIS 2928, at *17 (US Mar. 31, 2010).

⁷ *Padilla v. Kentucky*, 2010 U.S. LEXIS 2928, at *18 (US Mar. 31, 2010).

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Update: THE ABA'S ADULT COLLATERAL CONSEQUENCES PROJECT

By Erin Margary, CJS Research Consultant

The ABA Adult Collateral Consequences project is an extraordinary undertaking that will impact every stakeholder in the criminal justice system, from defense attorneys, prosecutors and judges, to defendants, lawmakers, and the public at large. This project, funded by the National Institute of Justice, seeks to catalog every collateral consequence of a criminal conviction, and then create a database allowing users to determine exactly what consequences follow from particular criminal offenses. The Supreme Court's recent decision in *Padilla v. Kentucky* arguably makes this project, or one like it, a constitutional necessity. (See "After Padilla," *infra*)

The probable result of this decision will be its expansion to other collateral consequences, such as sex offender registration and restrictions on public housing. For instance, under federal housing assistance laws, an individual can be excluded from public housing for simple drug possession. This creates a dilemma for the convicted person whereby he must choose between keeping his family together and forgoing public housing or separating himself from his family so that they may keep it. For a citizen living with a family who depends on public housing, this consequence is arguably as severe as deportation is to a non-citizen.

In order to conform to *Padilla* and its likely progeny, defense attorneys must be capable of finding and interpreting the consequences applicable to defendants. This places an enormous burden on the defense bar to advise clients of these consequences where few resources exist to discover them. The ABA Adult Collateral Consequences project will help defense attorneys meet this burden by providing a database containing all these collateral consequences. The free online resource will allow users to input the charged criminal statute and view all of the collateral consequences attaching to a conviction.

The three-year project is in its first year and currently in the gathering phase. The project has met with Advisory Board members and subject-matter experts Jack Chin and Rich Cassidy to develop the standards for collecting and categorizing this material. The team has also developed a sophisticated database and input system for collecting these statutes, and as it makes progress, will use the database to create more efficient search methodologies. Project partner LexisNexis has been providing 50-state surveys and expert guidance on making the process as efficient as possible. In April, the project partners completed a blind experiment

where expert LexisNexis researchers and ABA research attorneys independently cataloged one state, and the team is now improving its collection methods by implementing the findings.

Research attorneys and interns on the project are using previously created compilations, where available, and combing through the states' statutes and regulations using LexisNexis to locate each consequence. This is an extremely labor-intensive process, requiring researchers to read thousands of pages of statutes. Already, the team has uncovered numerous collateral consequences omitted from the most comprehensive studies available. Minnesota has one of the best; the Minnesota state legislature required the revisor of statutes to compile all collateral sanctions into one chapter of the criminal code, chapter 609B, including cross-references to the laws creating the sanction. However, the team's research uncovered many collateral consequences in Minnesota's statutes that were omitted from this comprehensive study.

Currently, the project database holds partial or complete compilations for Arizona, Maryland, Mississippi, New Hampshire, and Washington; well over a thousand consequences have already been collected. The next step will be to begin the coding phase, in which the team will classify the gathered consequences and associate them with triggering criminal statutes. When the project ends on September 30, 2012, *Padilla* and its eventual progeny will still bind attorneys. Therefore, it is critical to locate a caretaker to maintain and update this essential resource when the project is completed. For more information, please contact Chris Gowen at 202-662-1511.



Tamika Langley Tremaglio, Huron Consulting Group; Edward J. Westerman, LECG Consulting Services; Shawn M. Wright, Blank Rome LLP; Meredith S. Auten, Morgan, Lewis & Bockius LLP; and Robert M. Stephenson, Locke Lord Bissell & Liddell LLP participated in the "Nuts & Bolts: How to Conduct an Effective Ethical Internal Investigation" at CJS-sponsored **Second Annual National Institute on Internal Corporate Investigations and Forum for In-House Counsel** on May 5-7 in Washington, D.C.

Collateral Consequences for Youth Involved in the Juvenile Court

The American Bar Association Criminal Justice Section, in collaboration with the Juvenile Justice Committee, the Standing Committee on Legal Aid and Indigent Defense, and the Government and Public Sector Lawyers Division, embarked upon the Collateral Consequences for Youth Involved in the Juvenile Court Project. This project will provide legal and policy materials to judges, juvenile defenders, prosecutors, probation officers, police, and youth across the United States. These material aids will work to increase these individuals' consideration and understanding of the ramifications of collateral consequences, as well as increase awareness of the extent of these consequences with the goal of decreasing the impact of collateral consequences of being involved in the juvenile court. This project will yield an interactive and current website, informational cards, a policy brief, and an educational forum to disseminate ideas.

The Collateral Consequences for Youth Involved in the Juvenile Court Project commenced in the summer of 2009, and has continued to make significant progress where it is currently at the halfway mark of completion. The project has successfully assembled a broad-based, and continually growing, coalition of juvenile justice professionals and individual experts to work together on the issue of juvenile collateral consequences. The project has worked to systematically locate and invite juvenile experts whom encompass positions as judges, defenders, prosecutors and scholars in each state to vet the research templates and chapters to ensure promoting the projects availability and existence while ensuring the accuracy of each state chapter.

The information collected regarding the collateral consequences of each state during the first phase of the project is now being transformed into "chapters" for publication. Each chapter is the basis of the information presented on the website and summarized on the *Think About It!* cards which will be given to youth as a quick synopsis of the prospective collateral consequences they may endure. Moreover, collection and review of the states' various approaches to collateral consequences gives the American Bar Association a unique perspective and opportunity to comment on the different levels of protection of juvenile records and juveniles' futures. The Section is working with the Justice Policy Institute to prepare a policy brief that examines the variation of juvenile collateral consequences among the states and their impacts on youth.

St. John's Univ. School of Law Wins the 20th National Criminal Justice Trial Advocacy Competition

The law student team from St. John's prevailed in a field of 20 law school teams that came from all parts of the nation to compete in the 2010 National Criminal Justice Trial Advocacy Competition. In the championship round, St. John's edged out a strong team from Barry University, Dwayne O. Andres School of Law (FL). Barry's Margaret Garner won the competition's best advocate award. St. John's Cindy Espinosa won the Terence MacCarthy Best Cross-examination trophy.

Former CJS Council member Stephen Komie, along with Chicago attorneys Joseph Morris and Mary Wilson Barry, sat as juror-evaluators; David Schippers presided.

Inaugurated in 1991, the Competition is sponsored by the ABA Criminal Justice Section and The John Marshall Law School in Chicago. Over 150 different law schools from all parts of the nation, as well as from England, Ireland, New Zealand, and even India, have come to Chicago to compete in what is widely regarded as the premier law school trial advocacy competition. The Competition won the ABA's "Best of the Sections" award in 1998. John Marshall Law Professor Ronald C. Smith (CJS Chair, 2001-2002), with support from many prominent members of the Section, directs the event and writes most of the trial materials. Each year some 125 Chicago-area judges and attorneys, sitting in the jury courtrooms of the Richard J. Daley Center and the Dirksen Federal Building, evaluate the competitors. Over the years almost 2,000 law students have participated. Stetson has won the Competition six times, Harvard twice, and Albany (coached by Professor Ken Melilli, who also won when coaching Creighton) twice.



CJS Chair Joe Hynes (center) with the St. John's Law School student team (L. to R.: Michelle Frangella, Cindy Espinosa, Anthony Liberatoscioli, and Daniel Minucci).

Section Works for Racial Justice

By Salma S. Safiedine, CJS Staff Attorney

The ABA Criminal Justice Section initiated the *Building Community Trust* initiative, in partnership with the ABA Section of Individual Rights and Responsibilities and the ABA Council on Racial and Ethnic Justice. A *Model Curriculum and Instructional Manual* was developed by consultant Catherine Beane, through a grant provided by the ABA Board of Governors Enterprise Fund, and has been tested during two two-day trainings and revised based on feedback. The National Judicial College has been particularly helpful in improving the curriculum.

This curriculum provides leaders of judicial, prosecutorial, and defense agencies with the information, resources, and training tools they need to support educational efforts in cultural competency. We hope these educational efforts will improve the effectiveness of cross-cultural communication between justice agencies and the communities they serve, and build community trust and confidence in the integrity and reliability of the criminal justice system.

The American Bar Association will hold a training conference in Washington D.C. on June 17th and 18th for the “Building Community Trust: Improving Cross Cultural Communication in the Criminal Justice System” project to utilize this curriculum. Catherine Beane along with Wayne McKenzie and Ed Burnette will conduct the training. Approximately forty individuals from prosecutor, judicial, and defense settings are invited to attend to initiate further development of the cause.

In addition, the curriculum will be utilized to support an even larger project the Criminal Justice Section is embarking upon, entitled the Racial Justice Improvement Project. The Racial Justice Improvement Project will aid four jurisdictions to develop a Racial Justice Task Force Model to address the racially disparate impact of the local criminal justice system. The project will facilitate and provide resources to each pilot jurisdiction to implement the model and then evaluate the model’s effectiveness in engaging community stakeholders by developing stakeholder consensus regarding the racial justice issues that exist in each jurisdiction, creating a work plan to address a specific racial justice issue(s), and implementing a sustainable plan for the Racial Justice Task Force beyond the pilot period of approximately two years. In addition the project will develop written materials to support replication in other jurisdictions.

The Racial Justice Improvement Project, funded by the Bureau of Justice Assistance, will soon begin inviting applications for one of four mini-grant sites that will implement a local racial justice improvement task force focused on addressing community problems that contribute to the racially disparate impact of the criminal justice system.

The advisory board for this project has been created and is comprised of 17 judicial, prosecutorial, defense, and scholarly players in the criminal justice community. The advisory board members include William Dressel, Debra Gammons, Laura Hankins, Winston Peters, Robert Johnson, Theodore McKee, Wayne McKenzie, Lance Ogiste, Joe Cassilly, Marguerite Downing, Edwin Burnette, John Firman, Ronald Hampton, Jorge Montes, Ernestine Gray, Nkechi Taifa, and Cynthia Orr. For more information on these efforts, contact Salma S. Safiedine at safiedis@staff.abanet.org



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After Padilla, continued from page 1

- Counsel must investigate, research, and specifically advise
- Attorneys need to investigate and advise about immigration consequences of sentencing alternatives
 - Some immigration consequences are triggered by the length of prison sentence – reducing sentence by one day can make a huge difference (the 365 vs. 364)
 - Diversion Programs and Required “pleas” with subsequent dismissal/vacating plea

At the commencement of work on a criminal case, a lawyer should determine the current immigration status of the client (e.g. no status, pending application, non-immigrant visa, lawful permanent resident, temporary protected status, or U.S. Citizen). This initial inquiry is vital, as it will guide the remainder of the representation. An individual’s status strictly determines what immigration penalties will result from a conviction. Part of this inquiry also involves discussion of the individual’s family in the United States, as the presence of a lawful permanent resident or U.S. Citizen family member may allow an individual to gain lawful status, or make an individual eligible for a waiver, should the criminal case result in a conviction.

The following are questions that a defense attorney should ask the client at the initial interview:

- Where were you born?
- How did you enter the United States (at an airport, border crossing station, or undetected)?
- List all immigration statuses ever held (e.g. student visa, tourist visa, business/employment based visa, refugee, asylee, family-based visa, lawful permanent resident)?
- How and when did you obtain this status?
- Do you have any pending applications for immigration status?
- Are your parents, siblings, or children lawful permanent residents or citizens?
- Have you ever been ordered deported or been subject to immigration court proceedings?
- Have you previously been arrested or charged with a crime?
- Did you plead guilty to a criminal offense prior to 1996? If yes, this may trigger the relief available under *INS v. St. Cyr*.
- If you previously pled guilty to a criminal offense, did your attorney discuss your immigration status and/or any possible immigration consequences with you? If no, then it may be possible to vacate the conviction.

One important thing to keep in mind at the outset is that the definition of “conviction” for immigration purposes is different than what is used in the criminal justice system and for other purposes. *See* 8 U.S.C. § 1101(a)(48). A “conviction” is a formal judgment of guilty of the noncitizen entered by a court, or if adjudication of guilt has been withheld, where a judge or jury has found noncitizen guilty or plea of guilty or nolo contendere entered or admission of sufficient facts to warrant finding of guilt and the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty. For example, a “withhold of adjudication” or suspended entry of sentence, while not considered a conviction for most purposes, will be considered to be a conviction for immigration. A conviction also includes court-ordered drug treatment, values, anger management or domestic violence counseling alternative to incarceration disposition is a conviction if a guilty plea is taken (even if later vacated). Deferred adjudication dispositions without a guilty plea and youthful offender adjudications are not considered “convictions” for immigration purposes.

Title 8 U.S.C. § 1227 lists the following as grounds for deportation:

- Criminal acts without conviction showing the alien is a certain type of person, such as a drunk, addict, gambler, prostitute, or polygamist;
- A crime of “moral turpitude” (CIMT) misdemeanor if the alien is convicted of two or more crimes not involving a single scheme or a CIMT felony if the alien is convicted within 5 years of admission into the U.S. For a listing of CIMT, *see* NORTON TOOBY, CRIMINAL DEFENSE OF IMMIGRANTS’ VOLUMES I & II (2003) or NATIONAL LAWYER’S GUILD, IMMIGRATION LAW AND DEFENSE (3D ED. 1995);
- Weapons convictions, including misdemeanors, under 18 U.S.C. § 922(g)(1); 18 U.S.C. § 922(g)(5); 18 U.S.C. § 922(j) or analogous state provisions (trafficking in weapons is an aggravated felony, which will guarantee deportation, *see* 8 U.S.C. § 1101(a)(43)(C));
- Domestic violence convictions including stalking, child abuse, child neglect, child abandonment, or a violation of a protective order;
- Convictions for alien smuggling, immigration fraud, and alien voting;
- Drug convictions of any type unless the conviction is for simple possession of 30 grams or less of marijuana for personal use; and
- Any “aggravated felony” listed at 8 U.S.C. § 1101(a)(43).

Therefore, because attorneys are now required to give affirmative advice regarding immigration consequences, it is important that they keep on hand some basic resources. Both the ABA amicus brief and the decision in *Padilla* list books, online sources, and even state-specific guides to help determine whether a conviction for a particular offense will lead to deportation. These guides can instantly alert the defense attorney that there may be immigration consequences. At this point, it is the duty of the attorney to investigate further or hire an immigration attorney to evaluate the case and render an opinion. Many immigration attorneys are willing to work on an hourly or fixed fee basis to evaluate a client's immigration status, the nature of the criminal charges, and develop an opinion and strategy as to how to proceed and advise the client as to possible outcomes.

Currently many organizations are developing new resources to further help guide criminal defense attorneys in meeting their obligations under *Padilla*, and protecting the vital right to the effective assistance of counsel. The ABA Criminal Justice Section has posted on its web site a *Padilla* Resource page with links to various documents to assist lawyers in meeting their obligations at <http://new.abanet.org/sections/criminaljustice/CR109200/Pages/default.aspx>.

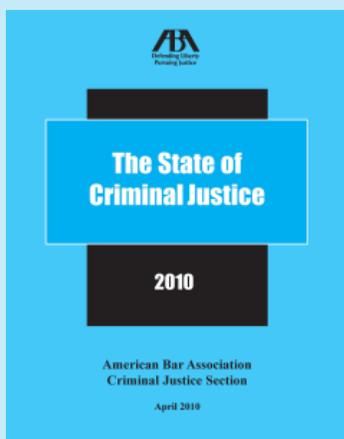
Coming Soon.... New Publication

Careers in Criminal Law

The forthcoming Criminal Justice Section book, *Careers in Criminal Law*, edited by attorney Ellen C. Brotman of Montgomery, McCracken, Walker & Rhoads, LLP, in Philadelphia, will describe the variety of career options available to lawyers and law students interested in the criminal justice field.

The book will include articles by authors whose careers present an wide and impressive array of choices beyond that of defense and prosecution, including, for example, mitigation expert, victim advocate, and post-imprisonment re-entry specialist. Despite the diversity of career paths these authors have taken, they all have one important thing in common: their passion and commitment to what they do. Expected publication date is June/July 2010. Please check the Section website for availability.

NEW BOOK



The State of Criminal Justice 2010

Edited by Myrna Raeder

Authors from across the criminal justice field provide essays on topics ranging from white collar crime to international law to juvenile justice. This annual publication examines and reports on the major issues, trends and significant changes in the criminal justice system. As one of the cornerstones of the Criminal Justice Section's work, the publication serves as an invaluable resource for policy-makers, academics, and students of the criminal justice system alike.

The 2010 volume contains 19 chapters focusing on specific aspects of the criminal justice field, with new addition of full text and reports of all of the adopted official ABA policies passed in 2009-2010 that address criminal justice issues.

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LEGISLATIVE UPDATE

American Bar Association advocacy during the 111th Congress has advanced a number of policies originally sponsored by the Criminal Justice Section. Top Association and Section leaders, in cooperation with the ABA Governmental Affairs Office, brought ABA policy to the attention of all three branches of the federal government on issues affecting the criminal justice community. Bruce Nicholson of ABA Governmental Affairs has worked tirelessly on these issues and has closely coordinated with the Section on all of them, while Director Jack Hanna and the staff of the Criminal Justice Section have missed no opportunity for the Section to be heard on the issues we care about.

Some of those issues include: the federal sentencing disparity between crack and powder cocaine offenders, the need for the authorization of a national commission on criminal justice, supporting gang violence prevention, promoting effective prisoner reentry, advocating juvenile justice reform, and recommending an increase in indigent defense funding. Bruce Nicholson's legislative report recounting the status of major legislation and advocacy initiatives is available at <http://new.abanet.org/sections/criminaljustice/PublicDocuments/legislativeupdate.pdf>.

On March 17, CJS Sentencing Committee Co-Chair Jim Felman submitted written testimony and spoke to the U.S. Sentencing Commission on behalf of the ABA. The written testimony proposed amendments to the Sentencing Guidelines regarding alternatives to incarceration, and highlighted the need for judicial discretion in imposing non-prison sentences. Mr. Felman's testimony as well as a more in-depth write-up of his testimony can be found at <http://www.abanow.org/2010/03/aba-urges-sentencing-guidelines-change-to-allow-greater-judicial-discretion/>.

POLICY UPDATE

POLICY BEING SUBMITTED TO THE ABA HOUSE OF DELEGATES IN AUGUST 2010

Entire text of the resolutions can be found at the ABA Criminal Justice Section Policy Page at www.abanet.org/crimjust/policy

Attorney Error v. Attorney Misconduct

This Recommendation recognizes that the term "prosecutorial misconduct" has become a term of art in criminal law that is sometimes used to describe conduct by the government that violates a defendant's rights

whether or not that conduct was or should have been known by the prosecutor to be improper and whether or not the prosecutor intended to violate the Constitution or any other legal or ethical requirement. It addresses and urges trial and appellate courts reviewing the conduct of prosecutors, while assuring that a defendant's rights are fully protected, to use the term "error" where it more accurately characterizes that conduct than the term "prosecutorial misconduct."

Funding for Indigent Defendant Immigration Advice

This Recommendation urges local, state, territorial, tribal and federal governments to provide funding to state and federal public defender offices and or other criminal defense legal aid programs specifically for the provision of advice concerning immigration consequences in criminal cases for indigent non-U.S. citizen defendants. It addresses the need for entities of all levels to provide training in the immigration consequences of criminal convictions, and in the duty of defense attorneys to counsel defendants about the immigration consequences according to the United States Supreme Court decision in *Padilla v. Kentucky* and to provide pro bono or reduced fee support services to public defender organizations in counseling indigent defendants as to the immigration consequences in a particular case.

National Academy of Sciences Report on Forensic Science

The recommendation urges that the American Bar Association supports the funding and other legislative efforts necessary to strengthen the forensic science community in its mission of providing accurate, timely, reliable and scientifically valid evidence to the nation's criminal justice system as outlined in the National Academy of Sciences report, *Strengthening Forensic Science in the United States: A Path Forward*. The proposed policy suggests eight specific steps for to be considered in order to improve the work of the forensic science community, and be better able to respond not only to resolving issues related to criminal investigations but also to provide aid and assistance in times of natural and man-made mass disasters.

Transparency of the DOJ Office of Professional Responsibility

This Recommendation supports (a) the ongoing commitment of the United States Department of Justice (the "Department") to investigate allegations of professional misconduct on the part of Department lawyers; (b) the Department's release of as much information regarding completed individual investigations as possible, consistent with privacy interests and law enforcement confidentiality concerns; and (c) the

Department's publication of annual reports of completed investigations that provide sufficient detail for the public to know the conduct of government lawyers that has been found to be proper or to constitute misconduct; and (d) reporting by the Department to relevant state and federal disciplinary agencies when there is substantial evidence of conduct that was a violation of the rules of professional conduct of the jurisdiction(s) where the lawyer is admitted to practice. It also addresses the work of the Office of Professional Responsibility (OPR), the office within the United States Department of Justice (DOJ) that investigates alleged misconduct by federal prosecutors and other DOJ personnel.

POLICY APPROVED BY THE ABA HOUSE OF DELEGATES IN FEBRUARY 2010

The ABA Criminal Justice Section sponsored with various other entities, the below recommendations submitted to the House of Delegates for consideration at the 2010 Midyear Meeting in Orlando, Fla.:

REPORT 102A (Collateral Consequences for Juveniles)

REPORT 102B (Standardized Miranda Warnings for Juveniles)

REPORT 102C (Misdemeanor Prosecutions)

REPORT 102D (Judicial Role in Avoiding Wrongful Convictions)

REPORT 102E (Impact of Incarceration on Mother/Child Relationship)

REPORT 102F (Need for Legal Services for Prisoners on Family Law Issues)

REPORT 102G (Lawyers and Politics)

REPORT 102I (Prisoner Standards)

REPORT 102J (John R. Justice Prosecutors and Defenders Incentive Act of 2008)

Feedback Welcome

Send to
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Lanny Breuer, US Assistant Attorney General for the Department of Justice's Criminal Division speaks at the **National Institute on White Collar Crime** (Miami, Feb. 24-26, 2010).



The WCC Institute's "Developments and Trends in Securities Fraud Enforcement" panelists: (standing, from left to right) Leslie R. Caldwell, Morgan, Lewis & Bockius LLP; David A. Markowitz, Investor Protection Bureau, Office of the New York Attorney General; Gary P. Naftalis, Kramer Levin Naftalis & Frankel LLP; Denis McInerney, DOJ Fraud Section; (sitting) Robert S. Khuzami, SEC Enforcement Director, and Randall R. Lee, Wilmer Cutler Pickering Hale and Dorr LLP.



Ronald Machen, U.S. attorney for the District of Columbia, addresses the crowd as Sherri Schornstein, CJS White Collar Crime Committee D.C. Region co-chair, looks on during the "Meet The New US Attorney: A Program With Ronald C. Machen Jr." event held on April 22 at the ABA Washington Office.

Momentous Collaboration with NDAA at CJS Spring Meeting

By Robert Snoddy, CJS Outreach Coordinator

The Criminal Justice Section Spring Meeting took place on April 8-11 at the Francis Marion Hotel in Charleston, S.C. This year's event was an extraordinary happening, as the Section met in conjunction with the National District Attorneys Association.

"The historic joint meetings of Committees from the Criminal Justice Section and the National District Attorneys Association in Charleston fulfilled a dream I have had for several years," said CJS Chair Joe Hynes, who has been an NDAA member since 1990. "It has long seemed to me that the ABA through – through the Criminal Justice Section – and the NDAA could collaborate to seek Justice and fairness in the Criminal Justice System without doing damage to their differing advocacy roles. It is my hope that the exchange of ideas in Charleston, will lead to continued dialogue between these two organizations."

NDAA President Chris Chiles shared similar sentiments: "Having had the pleasure of serving as NDAA's representative on the ABA Commission on Effective Criminal Sanctions for three years and as a member of the Criminal Justice Section Council for a number of years, it was truly an honor, during my term as President of NDAA to have a part in the historic joint meeting of the NDAA Board Meeting and the ABA Criminal Justice Section Council Meeting," he said. "A few years ago, Joe Hynes and I were part of the first historic joint ABA/NDAA resolution supporting most of the recommendations of the ABA Commission on Effective Criminal Sanctions. To have now had this first ever joint meeting, again under the leadership of Joe Hynes, I hope signifies the beginning of these two great Associations coming together in the future to find areas of common ground on matters of importance to the entire criminal justice system."

During the Spring Meeting the following Committees gathered: Ethics, Gideon and Professionalism (joint meeting with NDAA); Victims (joint meeting with NDAA); Re-entry & Collateral Consequences (joint meeting with NDAA); Science, Technology and Forensics; Alternatives to Incarceration and Diversion; Parole & Probation; Prosecution Function; and Defense Function.

The CJS Council convened on Saturday, April 10, to debate and discuss, amongst other things, proposed policy on issues such as Revisions to M.R. 1.6, Privatization of

[Criminal Justice Section Newsletter](#)



NDAA Executive Director Scott Burns, CJS Chair Joe Hynes, NDAA President Chris Chiles, CJS Section Director Jack Hanna, and ABA House of Delegates Chair William Hubbard pose with the "Resolution of Appreciation" presented to the NDAA on behalf of the Section.



CJS Chair Joe Hynes awards Pima County (Arizona) Attorney Barbara LaWall with the 2010 *Norm Maleng Minister of Justice Award*, during the CJS/NDAA joint luncheon at the CJS Spring Meeting.



CJS Racial and Ethnic Justice & Diversity Committee Co-Chair Wayne McKenzie offers-up sage career advice to a law student during the "Professions Within Criminal Justice" panel discussion presented by the Section at the University of South Carolina School of Law in conjunction with the 2010 CJS Spring Meeting.

Juvenile Detention Facilities, Attorney Error v. Misconduct, and Guilt Negating Evidence Disclosure. Following the meeting, the Council held a luncheon with the NDAA Board of Directors, where Section Chair Hynes presented Pima County (Arizona) Attorney Barbara LaWall with the 2010 *Norm Maleng Minister of Justice Award*.

In conjunction with the Spring Meeting, the Section held a panel discussion titled “Professions Within Criminal Justice” at both the University of South Carolina School of Law (April 8) and the University of Charleston School of Law (April 9). The Section would like to thank the various leaders who took part in the programs – especially Communications, Awards and Membership Committee Co-Chair Sidney Butcher for organizing and working with the law schools for both events.

New Supreme Court Case Brief Launched

The Section has launched the “Supreme Court Case Brief: Professor Rory Little’s Perspective,” by Rory K. Little, U.C. Hastings College of the Law, San Francisco, who has long presented the “Annual Review of the Supreme Court’s Term” program at the ABA Annual Meetings.

The CJS hopes these summaries will be helpful to members, sent to CJS members immediately after a Supreme Court case decision, because they are different from the average news or blog account, in at least three ways: first, a detailed account of the rationale of all the opinions issued in a case, including nuances found in separate concurring and dissenting opinions; second, an account of the decision that is essentially “neutral” — that is, not really a “perspective” in the sense of the author’s personal opinions, but rather a straightforward account that can be relied upon by lawyers of all stripes; and then third, a bit of “inside baseball” analysis of some of the twists or nuances that are not apparent in the opinion.

State of Forensic Science in Criminal Justice Explored at Conference

On June 4 at Fordham University Law School in New York City, and for the first time in more than eight years, the Section presented a one-day program dedicated to the science and technological aspects of the criminal justice system. *Prescriptions for Criminal Justice Forensics* was a multi-session program which addressed topics such as forensics ethics, pre-and-post trial DNA applications, effective fraud and forensic accounting techniques, and an in-depth examination of the recent National Academy of Sciences report “Strengthening Forensic Science in the United States: A Path Forward.”

Annual Meeting to Take Place in The City by the Bay

The Section’s Annual Meeting in San Francisco (Aug. 5-8) will feature programs covering topics such as privatization of punishment; the shift in focus to individuals in FCPA prosecutions; a review of all criminal law cases argued before the U.S. Supreme Court during the 2009-10 Term; the vast array of ethical issues trial lawyers face; and the ramifications of The Ninth Circuit Court of Appeals ruling on safeguards for subjects of search warrants involving electronically stored information.

Additionally, numerous CJS committees will be meeting and the Section Council will convene Aug. 7. More information on the Annual Meeting – which is continually updated – is available at www.abanet.org/crimjust. See also the schedule on page 16 of this newsletter.

Member & Staff News

Larry Wojcik Honored For His Pro Bono Work

CJS Juvenile Justice Committee Co-Chair Lawrence A. Wojcik has received the 7th Circuit Bar Association’s Pro Bono and Public Service Award for his pro bono work in the US District Courts in the State of Illinois. Wojcik was honored at the Association’s Annual Dinner on May 3 at the InterContinental Hotel in Chicago, where U.S. Supreme Court Justice John Paul Stevens and U.S. Solicitor General Hon. Elena Kagen were speakers. Last year, Wojcik devoted more than 770 hours to pro bono work, leading a team in a major piece of litigation involving prisoners at Tamms Correctional Center, Illinois’ “Supermax” prison facility, and several juvenile justice initiatives related to his position on the American Bar Association’s Juvenile Justice Committee. More information on this prestigious honor can be found at http://www.dlapiper.com/wojcik_release/.

Section Staff Grows

In March, the Section welcomed two new staff members: administrative assistant Michael Gradess and staff attorney Salma Safiedine.

Chris Gowen Welcomes Baby Girl

Senior Staff Attorney Christopher Gowen and his wife Carol welcomed their first child, Madison Michele Gowen, into this world on April 8. The proud papa already sees signs that the little lady is preparing for a career in the field of criminal law: “She is so beautiful and feisty; she has great reflexes and loves to stick her tongue out.”

DOJ Publication Addresses Effectiveness of Juvenile Transfer Laws

The Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice has published “*Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*” as the most recent installment in its *Juvenile Justice Bulletin* series. The Bulletin is authored by Richard E. Redding, J.D., Ph.D., Associate Dean and Professor of Law at Chapman University School of Law. The publication provides an overview of research on the deterrent effects of transferring youth from the juvenile to criminal courts, focusing on large-scale comprehensive OJJDP-funded studies on the effects of transfer laws on recidivism. The Bulletin has been used to date by advocacy groups and defense attorneys. The Bulletin is available online at www.ojp.usdoj.gov.

DOJ Adds Prosecutors and Feds to Battle IP Crime

With the addition of 15 prosecutors and 20 FBI agents, the Department of Justice is strengthening its computer crimes and intellectual property enforcement. The new assistant U.S. attorneys – who will work closely with the Criminal Division’s Computer Crime and Intellectual Property Section – will be spread across the country. The additional 20 FBI agents will be based in four cities – Los Angeles, New York, San Francisco, and Washington, D.C. These new positions are part of the department’s continued commitment to combat the growing number of IP crimes here at home, and abroad. The new AUSA positions will be part of the department’s Computer Hacking and Intellectual Property (CHIP) program. For more information go to www.justice.gov/opa/pr/2010/April/10-dag-480.html.

New Publication Addresses Need for Strengthening Forensic Science in the Courtroom

The National Association of Criminal Defense Lawyers, in support of a call for reforms in the forensic science community, has released “*Principles and Recommendations to Strengthen Forensic Evidence and Its Presentation in the Courtroom*”. The publication calls for “the creation of a ‘culture of science’ in the forensic science community and supporting the establishment of a federal entity independent of law enforcement to oversee and implement necessary reforms to forensic science and its relation to court cases.” A copy of the report may be downloaded or viewed on line at www.nacd1.org/public.nsf/NewsReleases/2010mn05?OpenDocument.

Report Highlights Idaho’s Indigent Defense System

A recent report by the National Legal Aid & Indigent Defender Association found that the state of Idaho fails to provide the level of representation required by the Constitution for those who cannot afford counsel in its criminal and juvenile courts. *The Guarantee of Counsel: Advocacy & Due Process in Idaho’s Trial Courts* details the lack of uniformity from one county to the next regarding who qualifies for a public defender, giving rise to the notion that justice in Idaho may very well depend on what side of a county line one’s crime is alleged to have been committed. The report, one in a line of NLADA reports that focuses on statewide reform of criminal justice systems, points to the practice of delegating to each county the responsibility to provide counsel at the trial level without any state funding or oversight. The report is available at: www.mynlada.org/content/idaho-report.

Vera Institute Creates Center on Victimization and Safety

On March 10, the Vera Institute of Justice announced the launch of its new Center on Victimization and Safety, which will work in partnership with government and nonprofit organizations to help people who experience domestic or sexual violence. The Center aims to prevent and address domestic violence, sexual assault, and related crimes by promoting cross-disciplinary collaboration and by advancing policies and practices that hold abusers accountable and help survivors to heal. For more detailed information on the Center visit www.vera.org/news/vera-launches-center-victimization-and-safety.

Latest NIJ Journal Addresses Elder Abuse Detection and Prosecution and Other Topics

The April 2010 Edition of the *NIJ Journal* features a cover story which focuses on identifying elder abuse as the first step in successfully prosecuting its perpetrators. The article discusses how forensic research is helping investigators distinguish and eliminate the many challenges elder abuse presents to prosecutors — some of which are unique to elder abuse, some of which are familiar issues from child abuse and domestic violence. Other in-depth articles in the publication address “Organizational Learning and Islamic Militancy” and “Preventing Future Crime With Cognitive Behavioral Therapy”. The *NIJ Journal* is published by the Department of Justice’s National Institute of Justice. The April 2010 edition can be found at www.ojp.usdoj.gov/nij/journals/265/welcome.htm.

News from the Field provides updates on activities – ranging from upcoming programs and publications to actions taken on all levels and branches of government – that affect the criminal justice community. If you would like to submit something for consideration, contact Robert Snoddy at snoddyr@staff.abanet.org.

Membership Recruitment Message

From Chair Charles "Joe" Hynes

During the last five years the Criminal Justice Section has enjoyed phenomenal membership growth. The recent economic downturn has slowed our progress which means it's time to double down on our efforts to attract and keep members.

I ask every Council member, Committee chair and member of the Criminal Justice Section to reach out to criminal defense lawyers, prosecutors, judges, and academics inside and outside the ABA and ask them to join our dynamic section. The Criminal Justice Section aims to remain the unified voice for criminal justice in America. Greater lawyer membership numbers will assist the Section to more effectively fulfill that mission.

How can you help? Section members can use and adapt letters found on our Membership web site (new.abanet.org/sections/criminaljustice/Pages/Membership.aspx) to send to their colleagues and associates who are not members of the ABA Criminal Justice Section and encourage them to join us. One letter is for individuals who are not ABA members and one letter is for individuals who are members of the ABA, but not the Criminal Justice Section. (A summary of member benefit and enrollment form can be included in your letter.) The letters should be sent on or after June 1, 2010, because after that date, new ABA members receive membership during the remaining months of this fiscal year ending in August and all of the next year beginning in September.

Thank you in advance for supporting this important Section membership drive.

Those of you in Public Defender, Law Firm or District Attorney Offices should consider taking advantage of the ABA Group Program. (www.abanet.org/groupprogram). Former Chair Robert Johnson, current Section Delegate William Shepherd and I have all taken advantage of this opportunity to bring our lawyers into the ABA and the CJS through this innovative and cost saving program.



CJS Chair Joe Hynes presents victims advocate attorney Jay Howell with the Section's *Frank Carrington Crime Victim Attorney Award* during the ABA Midyear Meeting in Orlando, Feb. 5, 2010.

Get Section E-News?

If you are a member of the ABA Criminal Justice Section and have not opted out on receiving emails from the ABA, you receive monthly **Section E-News**, with latest updates on Section activities, policies, events and resources.

Please contact the Service Center at 800-285-2221 if you do not receive the E-News. You can also see all of *Section E-News* at the CJS website, www.abanet.org/crimjust

CJS Committee E-Newsletters

**Juvenile Justice
Prosecution Function
Re-Entry & Collateral Consequences
White Collar Crime**

See at www.abanet.org/crimjust/committees

ABA Criminal Justice Section Website

www.abanet.org/crimjust

Section News & Announcements, Calendar of Events, Policy, Publications, Resources, Practice Tips ...

UPDATE ON ATTORNEY PROFESSIONALISM AND ETHICS

The *ABA/BNA Lawyers' Manual on Professional Conduct*, a multivolume reference and notification service, is available by subscription through the ABA Web Store at www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=2170002MOPC or by contacting BNA at 1-800-372-1033 or customercare@BNA.com. For a free trial subscription go to www.bna.com/products/lit/mopc.htm.

Interview Notes Must Turned Over to Client If Necessary for Client's Representation

The Ohio Supreme Court's ethics board advised a lawyer's notes of an interview with a client must be shared with the client or former client upon request if, in the lawyer's professional judgment, the notes are reasonably necessary to the client's representation, (Ohio Supreme Court Bd. of Commissioners on Grievances and Discipline, Op. 2010-2, 4/9/10).

The opinion tackles this question: "Are a lawyer's notes of an interview with a current or former client considered client papers to which the current or former client is entitled upon request?" The board located a framework for analyzing the inquiry in Ohio Rule of Professional Conduct 1.16(d), which provides that upon termination of a representation, the client is entitled to "correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to the client's representation." When a client makes a file request, the board advised, the lawyer needs to examine their notes and exercise professional judgment to determine whether they are "reasonably necessary to the client's representation" under Rule 1.16(d). For greater detail, see *ABA/BNA Lawyers' Manual on Professional Conduct*, Vol.26, page 261 (April 28, 2010)

State Court Recognizes Ethics Screens As Method of Avoiding Firms' Disqualification

The California Court of Appeals, Second District, ruled that in some situations law firms may use screening measures to avoid vicarious disqualification based on an incoming lawyer's knowledge of client confidences acquired at another firm. (*Kirk v. First American Title Insurance Co.*, Cal. Ct. App. 2d Dist., No. B218956, 4/7/10).

The court decided that a law firm is not automatically disqualified from continuing to represent the defendants in several related class actions even though a lawyer who

had recently joined the firm had previously learned key confidences of the plaintiffs in a brief conversation with their counsel about serving as a consultant in the litigation. The court concluded that "*automatic* vicarious disqualification is not required, and that, instead, there is a *rebuttable* presumption that the attorney's knowledge of client confidences is imputed to the firm, which can be refuted by evidence that the law firm adequately screened the attorney from the others at the firm representing the adverse party." The court stated, however, that if the tainted lawyer was actually involved in the former client's representation and "switches sides" in the same case, the presumption of shared information is conclusive and cannot be rebutted, even by the most thorough screening measures. For greater detail, see *ABA/BNA Lawyers' Manual on Professional Conduct*, Vol.26, page 239 (April 14, 2010)

Prosecutors' Ethical Disclosure Duty Is No Greater Than Is Required by Law

A prosecutor's duty under the disciplinary rules to disclose information to a criminal defendant is no broader than the legal obligations imposed by criminal procedure rules and the constitutional guarantee of due process, a divided Ohio Supreme Court decided (*Disciplinary Counsel v. Kellogg-Martin*, Ohio, No. 2008-1771, 2/4/10).

In a per curiam opinion, the court dismissed disciplinary charges against a county prosecutor who had not turned over impeachment evidence before a defendant pleaded guilty. There was no ethics violation, the court said, because under the circumstances the lawyer was not legally required to disclose the information.

In dissent, Chief Justice Thomas J. Moyer disagreed that the ethics rule on a prosecutor's duties is, or should be, limited by the scope of a prosecutor's legal duties. Moyer predicted that the majority's approach—which he characterized as "no constitutional violation, no misconduct"—will become the new measure of professionalism for prosecutors.

Kimberly J. Kellogg-Martin, acting as the chief assistant prosecuting attorney of Logan County, Ohio, prosecuted Joshua Giles on charges that he forced a young girl to have sex with him on two occasions. When the victim was 14, she told her therapist that Giles had twice pressured her into sexual intercourse. After the therapist reported the allegation, a social worker interviewed the victim. In her initial report, the social worker said the victim stated that the rapes had occurred in 2001. In 2001, the victim was 13 years old. Because some evidence indicated that

the victim was only 12 years old when the incidents took place, Kellogg-Martin interviewed the victim and her mother, and came to believe that the victim was 12 at the time. Giles was ultimately indicated on four counts of raping a person under the age of 13, and two counts of raping a person under the age of 13 by force or threat of force. Giles ultimately pleaded guilty to a reduced charge. Kellogg-Martin never disclosed the social worker's initial report reflecting the victim's statement that the crimes occurred when she was 13. Nor did she disclose a police detective's report which related the victim's statement that she did not tell Giles to stop or try to fight him during the incidents. For greater detail, see *ABA/BNA Lawyers' Manual on Professional Conduct*, Vol.26, page 137 (March 3, 2010).

City Prosecutor Is Permanently Disbarred For Dismissing Case Against His Own Client

The Louisiana Supreme Court permanently disbarred a former New Orleans assistant city attorney who accepted \$500 in cash to represent a client charged with drunk driving and then dismissed the case in his capacity as prosecutor (*In re Jackson, La.*, No. 09-B-2354, 2/12/10).

Misusing a government position to gain favors for one's own client "amounts to intentional corruption of the judicial process" and calls for permanent disbarment, the court said in its per curiam opinion. Darryl Jackson was convicted in 2006 of violating La. Rev. Stat. §14:134 (malfeasance in office) for accepting \$500 in cash to dismiss a drunken driving case. Jackson was sentenced to 18 months' probation and was ordered to pay fines and fees. The client's mother testified under a grant of immunity that she contacted her church after learning that her son had been arrested and that the church's secretary suggested she call Jackson. She stated that Jackson told her he would handle her son's case in return for a \$500 cash fee. The mother testified that she paid the cash and, before the client was arraigned, Jackson entered a nolle prosequi which effectively dismissed the charges. After analyzing the ABA Standards for Imposing Lawyer Sanctions, the court determined that permanent disbarment was warranted. For greater detail, see *ABA/BNA Lawyers' Manual on Professional Conduct*, Vol.26, page 205 (March 31, 2010).

Executive's Privilege Claim Can Be Lost By Fiduciary Breach, Dual Representation

Communications between a corporate executive and his personal attorney about his outside business transactions are not shielded by the attorney-client privilege if the

exchanges were in furtherance of an intentional breach of fiduciary duty by the executive or if they occurred while the attorney was also representing the corporation itself, the Illinois Appellate Court, Second District, ruled. (*Mueller Industries Inc. v. Berkman*, Ill. App. Ct. 2d Dist., No. 2-09-0134, 3/23/10).

The court concluded that a corporate officer's intentional breach of fiduciary duty may serve as the fraud necessary to establish the crime-fraud exception to the attorney-client privilege. The court also decided that where a corporate officer discusses matters related to the corporation's business with an attorney who is also representing the corporation, the officer cannot claim the attorney-client privilege as to those communications. The court noted that the crime-fraud exception applies when a client seeks the services of a lawyer in furtherance of criminal or fraudulent activity; however, good faith consultation with an attorney regarding the legality of a possible course of action does not trigger the exception. Thus, the primary issue in determining whether the exception applies is the intent of the client in seeking the attorney's services. For greater detail, see *ABA/BNA Lawyers' Manual on Professional Conduct*, Vol.26, page 224 (April 14, 2010)

Judge Strikes Down Waiting Period For Sending Out Targeted Mail to Arrestees

The U.S. District Court for the Western District of Texas ruled a state statute that prohibits lawyers from sending written solicitations to potential clients in criminal or traffic matters within 30 days of their arrest or summons violates the First Amendment, (*McKinley v. Abbott*, W.D. Tex., No. A-09-CA-643-LY, 3/25/10). The privacy concerns that have been invoked to justify waiting periods for written solicitations of accident victims don't apply when it comes to people charged with criminal offenses, the judge stated. A recently enacted Texas statute, Texas Penal Code Section 38.12(d)(2)(C), clamps down on early solicitation of people who have recently been arrested or served with a summons, making it unlawful for attorneys and certain other professionals to solicit employment from an individual or an individual's relative, in writing, by telephone, or in person, concerning the individual's arrest or a summons issued to the individual, within 30 days of the arrest or summons. Shortly before the law took effect on Sept. 1, 2009, a Houston-based attorney filed a federal lawsuit contending that the statute violates their First Amendment rights by prohibiting him from sending written solicitations to people who have recently been arrested or received a summons. For greater detail, see *ABA/BNA Lawyers' Manual on Professional Conduct*, Vol.26, page 195 (March 31, 2010).

**2010 ABA Criminal Justice Section
Annual Meeting Schedule
San Francisco, August 5-8, 2010**

All Section events will be held at the Stanford Court Renaissance, Nob Hill (Section Headquarter Hotel), unless otherwise noted

Friday, Aug. 6

10:00 a.m. – 12:00 p.m.: Corrections Committee

12:00 p.m. – 2:00 p.m.
Committee Chairs/Division Directors Luncheon

2:00 p.m. – 5:00 p.m.: Prosecution Function Committee

2:00 p.m. – 4:30 p.m.
Annual Survey of Supreme Court Decisions (CLE)

2:00 p.m. – 5:00 p.m.
Privatization of Punishment (CLE)

2:00 p.m. – 3:30 p.m.
Plain View, Yet Out of Sight: The 9th Circuit Ruling on Electronic Evidence (CLE)

3:45 p.m. – 5:15 p.m.
The Shift in Focus to Individuals in FCPA Prosecutions (CLE)
Moscone Center West

Comprehensive Sponsors: LECG, Huron

5:30 p.m. – 7:00 p.m.: Welcome Reception

Saturday, Aug. 7

8:30 a.m. – 11:00 a.m.: Council Meeting

11:00 a.m. – 12:00 p.m.: Membership Meeting

12:30 p.m. -2:30 p.m.: Juvenile Justice Committee

2:00 p.m. – 3:30 p.m.
Putting Power Behind Your Words (CLE)
Moscone Center West

3:45 p.m. – 5:15 p.m.
Hot Ethics Issues for Trial Lawyers (CLE)
Moscone Center West

Sunday, August 8

9:00 a.m. – 12:00 noon
Division Directors and Committee Chairs
Breakfast Meeting

For latest details, please visit www.abanet.org/crimjust



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