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Criminal Justice Section Newsletter

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Government Loses Sham-Transaction Criminal Tax Case in the Virgin Islands

PRACTICE TIPS

By Charles M. Meadows, Jr., Josh O. Ungerman and Brian W. Portugal

On March 4, 2009, in the federal courthouse in St. Croix, the Defense heard the jury foreperson say “not guilty” 99 times—each count, each defendant—in the largest criminal tax case ever litigated in the U.S. Virgin Islands.

But the Government’s problems began thousands of miles away—first, in Washington, DC and, then, in East St. Louis, Illinois. In 1986, the Congress enacted a special tax credit for Virgin Islanders as part of an effort to develop the Islands’ economy. The Virgin Islands have a “mirror” tax code, which is nearly identical to the Internal Revenue Code, but Virgin Islanders file their returns with and pay their taxes to the U.S. Virgin Islands Bureau of Internal Revenue (“BIR”), rather than the U.S. Internal Revenue Service. The special tax credit entitled bona fide U.S. Virgin Islands residents whose income was “effectively-connected” to the Islands to a take a 90% income tax credit. What the legislation did not do, however, was define the meaning of “effectively-connected.” To this task, Congress set the U.S. Department of the Treasury.

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But the Treasury Department was a bit dilatory—it didn’t promulgate regulations for 18 years. And meanwhile, for purposes of determining where to file a tax return—with the IRS or with the BIR—the tax code defined a “bona fide resident” as a person who was a resident of the Virgin Islands on the last day of the taxable year.

A number of people accepted this Congressional generosity and established residences and service businesses in the Virgin Islands, including a business called Kapok, which provided management services to businesses located on the U.S. mainland. The owners of the mainland businesses established residency on the Islands and joined Kapok as partners. Kapok, in turn, paid the partners

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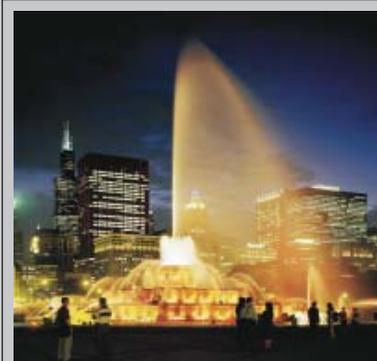


To kick off the CJS Spring Meeting on April 2 in Birmingham, former U.S. Attorneys Jack Selden and Joe McLean were joined by CJS Chair Anthony Joseph, former AUSA for the Southern District of Alabama Michel Nicrosi, and AUSA for the Northern District of Alabama Joyce Vance for a **Town Hall Meeting on Prosecutorial Perspectives on the Obama Justice Department.**

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Save the Date:

Criminal Justice Section Annual Meeting

Chicago, IL
July 30-Aug. 2, 2009

Three Questions

... with Marsha Levick

(Deputy Director and Chief Counsel
at the Juvenile Law Center
in Philadelphia, PA)

By Chris Gowen
(CJS Senior Staff Attorney)



1. What happened this year in Luzerne County, Pennsylvania?

First, as a result of an investigation by Juvenile Law Center, we now know that hundreds – and likely thousands – of youth charged with delinquency in Luzerne County appeared without counsel at a rate as high as ten times that of any other county in Pennsylvania. These youth did not knowingly and intelligently waive their right to counsel as required by the Constitution; they were either actively discouraged from appearing with counsel or not advised of their right to counsel – including appointed counsel if they could not afford to retain counsel of their own. Along with the widespread denial of counsel we also learned that these children then pled guilty to delinquent charges with no colloquy on the record to ensure their pleas were knowing and voluntary and in conformity with due process. As related to us by the youth themselves, these hearings lasted typically only two or three minutes, at the conclusion of which many youth were promptly handcuffed, shackled and led away from the courtroom for immediate transport. Based on what we have learned to date, we also believe that the vast majority of these youth were charged with relatively minor or low level crimes (shoplifting, petty theft, possession of drug paraphernalia) – crimes that in many jurisdictions would likely have been diverted from formal processing. Additionally, it appears that approximately 50-60% of the youth who appeared without counsel were placed out of their homes – again at a rate significantly higher than elsewhere in Pennsylvania.

Second, in January, 2009, the US Attorney for the Middle District of Pennsylvania filed information and a plea agreement charging two judges in Luzerne County, Mark

Ciavarella and Michael Conahan, with engaging in a scheme, since 2003, to receive kickbacks from the developer and owners of two private for-profit child care facilities – one a pre-trial detention center – in exchange for placing Luzerne County youth there. Ciavarella was the juvenile court judge in Luzerne who presided over the cases of many youth who appeared without counsel and entered unlawful guilty pleas. Charges included tax evasion, illegal wire fraud, and theft of honest services. Ciavarella and Conahan have agreed to serve 87 months in federal prison in exchange for their guilty pleas. We are awaiting a formal date for sentencing.

2. What has been the role of the Juvenile Law Center with these cases and what is the current status of the cases?

Juvenile Law Center was central to uncovering the systematic denial of counsel to children appearing before Ciavarella. In the spring of 2007, Juvenile Law Center received a call from a distraught parent, whose daughter was already in placement pursuant to an order by Ciavarella for creating a parody of her high school Vice Principal on MySpace. The 14-year-old had appeared without counsel, with no appropriate waiver of counsel, and entered a guilty plea – again with no appropriate colloquy to test whether she understood the consequences of waiving her right to a trial. The girl was taken away in shackles from the bar of the court.

After getting her daughter's adjudication vacated and securing her release from placement, we began investigating whether this was an isolated case or indicative of a larger problem. After a review of available state data and discussion with other children, we ultimately realized the denial of counsel to youth in Luzerne County was pervasive and persistent over a period of years.

Few legal remedies to redress these widespread constitutional violations were available. For most of the affected children the time to appeal had long since passed; Pennsylvania has no post-conviction statutory remedies available to children. We ultimately concluded that our sole remedy was a special application to the Pennsylvania Supreme Court to exercise its King's Bench—i.e.,

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extraordinary—jurisdiction, to take over and review all of the cases of the affected juveniles with an ultimate goal of vacating and expunging all cases of adjudicated juveniles.

This application to our Supreme Court was filed in April of 2008 with the support of the Pennsylvania Attorney General and the Department of Public Welfare. In early January 2009, the Court denied our application without explanation. Three weeks later the judges were arrested; Juvenile Law Center filed an amended application with the Pennsylvania Supreme Court that week. This time, the Court immediately reversed itself and granted the application. It later appointed a special Master, Judge Arthur Grim, senior Juvenile Court Judge Berks County, Pa., to review and make recommendations regarding the voiding of the tainted adjudications and expungement of records. This process is currently underway. Judge Grim has already issued his first order vacating and expunging records in cases where children appeared without a lawyer and were charged with low-level misdemeanors. We expect further orders over the next few months.

In addition to seeking equitable relief from the Pennsylvania Supreme Court, Juvenile Law Center, along with Philadelphia co-counsel Hangley Aronchick Segal & Pudlin, has filed a federal civil rights class action seeking monetary relief on behalf of children and their families for violations of the children's constitutional rights to counsel, to appear before an impartial tribunal, to be free from compelled self-incrimination and to enter guilty pleas in accordance with constitutional mandates. We are also seeking relief for plaintiffs under civil RICO statutes. Defendants include the two judges, the developer and owners of the for-profit facilities, the corporate entities and other corporate 'shell' companies set up to receive the illegal kickbacks.

3. Looking forward from a policy perspective how can public corruption like this be avoided and to what extent are private detention centers and prisons the problem?

A central issue raised by the Luzerne judicial corruption scandal is the proper role for private for-profit facilities in the juvenile justice system. Particularly troubling about their use in Luzerne was the fact that at least one of the facilities was a juvenile detention center – essentially a facility constructed for the sole purpose of jailing kids for a profit. In Juvenile Law Center's view this is an improper use of private for-profit providers. Whether such for profit providers should be used post-adjudication to provide treatment and programs for adjudicated youth is a question that we believe warrants further study and consideration. On the other hand – private *not-for-profit* providers have been the backbone in many states of the juvenile justice system and we think the two types of private

providers should be viewed separately. In either case, better regulation, evaluation and review of all of these programs is essential to ensuring our juvenile justice system serves and treats – rather than harms – children.

Despite Pennsylvania's juvenile court procedural rules, which should make it difficult for youth to waive their right to counsel, too many Luzerne County youth waived that right. There must be an unwaivable right to a lawyer. This is all the more important because there is so little public oversight of juvenile court. Lawyers provide the first and best measure of accountability.

Transparency is also an issue brought to the forefront by Luzerne. Historically and still in most states the juvenile court is closed to members of the public and members of the media. This preserves the confidentiality of juvenile proceedings and spares youth the consequences associated with adult criminal behavior. Unfortunately, it also means that the daily violations of children's constitutional rights went on behind closed doors. The challenge presented by Luzerne is how to promote greater transparency of juvenile proceedings without sacrificing children's confidentiality. Some states do allow press to attend juvenile court; they are barred however from reporting identifying information about the children whose cases they observe. Other options include Ombudsmen or court watch programs, which give the community access and might ensure greater conformity to the most fundamental of constitutional guarantees, such as the right to counsel. Additionally, all of us who work in the juvenile justice system have a collective responsibility to ensure that children's rights are respected and enforced. Many individuals did have daily access to juvenile court in Luzerne County – district attorneys, public defenders, probation officers and other court personnel, all of whom apparently stood by silently as the injustices against these children mounted. We owe more than silence to these children; when they cannot speak out for themselves, we must do it for them.

Lastly, we must also consider how we may make better use of data to not only give us a picture of our system, but also provoke questions and solutions when we see certain counties or decision makers are plainly outliers. There were indicators of the problems in Luzerne that were popping up in state data summaries; however, too often data collection runs years behind and agencies keeping the data lack resources to be pro-active in identifying and addressing problems. These are issues that are worth trying to solve.

Mediation in Criminal Matters Project Flourishes in Kings County, New York

By *Birgit Larsson*

Overview

The Mediation in Criminal Matters project is funded by a grant from the ABA Board of Governors Enterprise Fund. It is an effort to encourage more innovation and experimentation with time, and money saving innovations that produce a better form of justice such as pre-trial and felony mediation. Ten local “mini-grant” projects received funding and the invaluable opportunity to meet and receive training together, allowing for long-term collaboration and sharing of ideas. Two non-profit recipients of ABA “mini grants” from the ABA’s Criminal Justice Section, are from King’s County, NY.

In 2008, the Safe Horizon Mediation Program began a partnership with the Kings County District Attorney’s Office to provide mediation for misdemeanor cases as an alternative to prosecution in Criminal Court. The focus is on cases involving complaining witnesses and defendants with ongoing relationships (family members and neighbors), as well as victim-driven conferences following assaults between strangers. The program arises at a time of particular interest in the junction of

criminal matters and ADR not only in various parts of the U.S. but especially in Kings County where the District Attorney and incoming chair of the ABA Criminal Justice Section, Charles Hynes, has supported multiple reentry and crime prevention projects. Just down the road from the Safe Horizon Mediation Program, for example, the Vera Institute of Justice is running a program called Common Justice, which facilitates meetings between victims and offenders of high-level felonies from Kings County Criminal Court.

Although the Safe Horizon Mediation Program has been actively mediating community, family, and neighbor issues as well as civil disputes in the courts for more than 25 years, its entry into criminal matters is a relatively recent development. An earlier attempt was made in the late 1990s with disappointing results; complaining witnesses refused the offer to mediate and referrals were scarce. This time, the Criminal Matters Mediation Project launched after seven months of planning including critical input from key stakeholders, the Kings County DA’s office, Brooklyn Defender Services, Legal Aid, and the judges and court personnel in criminal court. The official referral process began in February 2009. In the first three months, the program received fifteen referrals of which only four complaining witnesses and one defendant refused to participate. The types of cases included neighbors involved in a decade long feud; a “susu” finance case among former friends; a cross-complaint stranger assault; a

landlord/tenant assault; menacing amongst neighbors; and assault and/or property damage involving acquaintances and family members.

Referrals

Although cases can be identified as appropriate for mediation by either the District Attorney’s office or the defense, all the cases, so far, have been referred by Assistant District Attorneys. To ensure the continued success of the program, one of the Bureau Chiefs has taken on the role of ADR point-person within criminal court. This has meant that when the Safe Horizon Mediation Program receives a referral, the complaining witness has already been briefed on mediation and its possible benefits. The client is then contacted by a Safe Horizon intake specialist who works in the Criminal Court building. The intake specialist discusses the case with the complaining witness, answers questions, and outlines the benefits of the mediation process. If the complaining witness is still amenable, the defense attorney and defendant are offered the option of mediation on the next adjournment date. The Safe Horizon Mediation Program then contacts the defendant to explain the process and schedule the mediation.

Mediation and Follow up

All meetings take place at the Safe Horizon Brooklyn Mediation Center, located a few blocks away from the Kings County Criminal Court. Unlike many other Criminal Court Mediation Programs, these facilitations are run by co-mediation teams of volunteer and staff mediators. The mediators come from a variety of professional backgrounds but have received years of extensive mediation training, including in Restorative Justice.

Each case is composed of three sessions, beginning with individual, private meetings with the mediators for both the complaining witness and the



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defendant often including support people. During the pre-meeting, the mediators and the client discuss the relationship and the incident, brainstorm crucial discussion topics, work through expectations and possible outcomes, including how the criminal charges might be disposed. A few days after the private meetings, the parties are brought together for a joint meeting.

In standard victim-offender meetings, mediators often expect or even elicit remorse and accountability from the offender and feelings of victimization from the complaining witness. However, it is not uncommon in the cases we've seen, which were selected primarily because the parties were involved in ongoing relationships, for both defendants and victims to express victimization (in part from their interactions with the criminal justice system as well as from the often complex chain of events leading to arrest and charges). A number of the complaining witnesses have surprisingly, during intake, expressed partial accountability. And some defendants have indicated that they could be interested in both giving and receiving apologies. Even though many of our cases don't neatly fit the standard victim-offender model, a decision was made to use key elements of victim-offender procedures such as pre-meetings as well as focusing dialogues on restoring relationships and repairing harm. This pre-work often prepares the parties for a joint meeting that includes multiple stakeholders and protects victims, but also focuses on the reintegration of harmers and healing for their often overlapping communities.

A few weeks after the mediation session, all parties are contacted to make sure the agreements were appropriately implemented. For those cases where there was no agreement, the parties are called and offered another opportunity to re-mediate the matter.

Outcomes

Clarifying events of the past and planning future interactions are frequent outcomes of the criminal court facilitations. In addition, the clients have the opportunity to make recommendations to the judge on the criminal charges. Any resulting agreement from the mediation is written and submitted to the District Attorney's office, the defense attorney, and the judge. Some agreements have focused on restitution (for medical bills or property damage) and all have mentioned the order of protection (either agreeing to drop it or going from a full order to a limited one). One cross-complaint assault case resulted in an outright dismissal of all charges and another assault case resulted in an Adjournment Contemplating Dismissal (ACD) with a limited order of protection. Three mediations resulted in no agreement about the criminal charges, and five are scheduled to take place at the end of April.

In tracking and evaluating the program, we have also been administering a survey to all participants to measure their satisfaction with the process. Out of the first thirteen clients, ten, regardless of whether their mediation resulted in an agreement, stated that mediation was the best way of handling the matter and strongly indicated they would like to use mediation for future disputes. No one expressed dissatisfaction.

Challenges

One of the greatest difficulties so far has been client expectations of outcomes in criminal court. Because mediation in criminal matters is still a relatively new venture and, therefore, may be unfamiliar

to clients, some complaining witnesses prefer to leave decisions to the judge. The District Attorney's office has been working with their clients to realistically explain what might happen to their case should they go back to court versus possible outcomes in mediation. Other difficulties have involved clients with various levels of mental illness. A third category has been the conflation of civil and criminal charges, such as when criminal charges (assaults, property damage, or false police reports) have occurred related to large debts. In these latter cases, clients have not always been ready to make decisions about criminal matters until financial issues have been resolved.

Much of the program's success and expansion will depend on ongoing collaboration between the Safe Horizon Mediation Program, the District Attorney's office, Legal Aid, Brooklyn Defender Services, and the judges in Kings County Criminal Court, not only in identifying and referring appropriate cases but also in presenting mediation as a favorable and credible option. It is our expectation that resolving pending court cases as well as improving and sometimes preserving existing relationships will result in win-win outcome for the parties and the criminal justice system.

Birgit Larson recently served as a panelist at the ABA Section of Dispute Resolution's Annual Spring Conference in New York. The panel was moderated by Criminal Justice Section Director, Jack Hanna. CJS committee chair Karen Gopee also joined the panel.

Get E-News?

If you are a member of the 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.

Section News

Politics and Policy Focus at Spring Meeting

The ABA Criminal Justice Section's 2009 Spring Meeting, held April 2-4 in Birmingham, Alabama, was an overwhelming success, with attendance numbers far exceeding expectations. The three-day event opened with a town hall meeting featuring an in-depth discussion between current and former assistant U.S. attorneys on how they view the Obama administration's Justice Department's approach on law enforcement. The "Ethics Politics and Public Corruption" CLE program explored the boundaries between legitimate political activity and corruption, and the impact of aggressive prosecutions on political conduct.

On April 4, the CJS Council met to discuss, among other things, policy issues including collateral consequences of an arrest and/or conviction for juveniles; transparency of the



CJS Chair Anthony Joseph presents the Frank Carrington Crime Victim Attorney Award to **Richard D. Pompelio**, Executive Director of the New Jersey Crime Victims' Law Center. The award – which recognizes attorneys who have either directly represented specific victims in criminal, juvenile, or appellate courts or who have worked to promote or implement policies to improve the treatment of crime victims in the criminal justice system – was presented during the 2009 ABA Midyear Meeting in Boston.

Department of Justice Office of Professional Responsibility; culturally and developmentally accessible standardized *Miranda* warnings; and a Sectionwide diversity policy. The Council had a lively debate over a proposed policy defining "lawyer misconduct versus lawyer error." This recommendation will be presented before the ABA House of Delegates at the Annual Meeting in August. James Sturdevant, president of the Birmingham Bar, met with Council concerning the Mediation in Criminal Matters (an ABA Board Enterprise project) that is being implemented in Birmingham.

Section Fosters Connections with Students

As part of a new initiative to increase law student membership and involvement—as well as increase retention once they embark on their legal careers—the Criminal Justice Section staff and leadership visited and conducted presentations about careers in criminal justice and the important work of the American Bar Association at two Alabama-area law schools (the University of Alabama School of Law and Samford University's Cumberland School of Law) in conjunction with the Spring Meeting. The Section plans to visit law schools in the Washington, D.C. area in the coming months and will connect with law schools regarding site visits in areas where Sectionwide meetings take place.

Additionally, the Section visited a local high school, a youth church group, and one juvenile detention center as part of its youth outreach initiative. Senior staff attorney Chris Gowen and Reginald Dwayne Betts, a former

juvenile offender turned author, spoke to students about the importance of setting goals and believing in second opportunities. Betts is the living embodiment of a second chance embraced: he spent nine years in an adult prison starting when he was 16 years old. After release, he graduated high school and a community college program with honors and then received full academic scholarships from two higher learning institutions—one of which withdrew the scholarship offer after learning of his arrest. The University of Maryland honored the scholarship and this spring Betts will graduate at the top of his class. Betts is the author of two books, the first is based on his experiences and will be published in the fall, the second is a book of poetry. Betts explained to the youths, all of whom have a troubled past, that they can either spend the next several years blaming people for how they got where they are or they can be accountable for their actions and do something about it. He stressed the power of knowledge that is acquired by reading.

The ABA has since received letters from each of the hosts thanking the Section for the outreach program; the superintendent of the Birmingham Public Schools wants to put a copy of Betts' book in every school as required reading. The youth outreach effort was the idea of Section Director Jack Hanna to encourage members and staff to reach out to youths in the communities the Section visits. Similar events are in the planning stages for Chicago during the 2009 ABA Annual Meeting.

National Institute on White Collar Crime

More than 1,300 prosecutors, defense attorneys, judges, forensic experts, and in-house counsel attended the 2009 National Institute on White Collar Crime, held March 4-6 in San Francisco.

The institute featured a faculty of leading white collar crime experts and panels focused on the hottest issues in white collar crime investigations and prosecutions. The presentations included white collar staples such as money laundering, criminal tax enforcement, and health care fraud and hot issues such as the FCPA, corporate charging guidelines, and mortgage fraud.

Neil M. Barofsky, the special inspector general for the Troubled Asset Relief Program (SIGTARP), gave the luncheon keynote address, which reported on the status of TARP and what is being done to ensure that funds are being used as required.

If you were unable to attend the conference but would like to order the materials, go to www.abanet.org/abastore and search for "white collar crime."

Criminal Justice Congress in Washington, DC

On May 28-29 in Washington, DC, the Section will convene the first Criminal Justice Congress, a new endeavor through which several organizations will join with the Section and other partners to address complex issues concerning the proper and just operation of the criminal justice system.

Representatives from the Department of Justice, Federal Public Defenders, International Association of Chiefs of Police, National Association of Attorneys General, National Association of Criminal Defense Lawyers, National Black Police Association, National District Attorneys Association, the National Judicial Conference, National Legal Aid and Defender Association, and numerous ABA representatives including the president and president-elect will be in attendance.

The initial congress will focus on two primary challenges for the criminal justice system: improving cross-cultural communication and reentry/collateral consequences. The participants will identify ways to enhance four core areas of the criminal justice field related to these issues: policy development, outreach, committee work, continuing legal education and publications.

Section Inks Sponsorship Deal with Huron Consulting Group

The ABA Criminal Justice Section and Huron Consulting Group recently agreed to a three-year comprehensive sponsorship agreement. Huron Consulting Group is a leading provider of independent litigation, financial, and operational consulting services, with more than 1,500 professionals in 20 offices nationwide and internationally. Huron's forensic accountants and fraud investigators team with clients and their counsel to assist in regulatory and internal investigation matters involving asset tracing, BSA/AML and FCPA compliance, reconstruction of accounts and other financial transactions, financial reporting and restatements, and tax

matters as well as providing expert testimony in litigation. Huron's professionals are specialists in fraud detection and a wide variety of forensic accounting and white collar investigations and have an established recognition among federal regulatory and law enforcement agencies for its work in this field. To learn more about Huron and the services they offer, visit www.huronconsultinggroup.com.

Section Programs at Annual

The Section's Annual Meeting in Chicago (July 30-August 2) will feature programs covering topics such as public corruption; the best means to keep criminal or regulatory practice thriving during and after the economic meltdown; a review of all criminal law cases argued before the U.S. Supreme Court during the 2008 term; and an array of juvenile law-related programs.

Additionally, numerous CJS committees will be meeting and the Section Council will convene August 1-2. More information on the Annual Meeting, which is continually updated, is available at www.abanet.org/crimjust/calendar.



Brian Heberlig, U.S. Attorney Alice Martin, Jim Cole, Pam Bucy, and DOJ Public Integrity Section Attorney Justin Shur participated in a panel which addressed the boundaries between legitimate political activity and corruption by public figures at the CJS Spring Meeting in Birmingham, Ala.

When the Debt is Paid

Life After Prison for One 24-Year-Old Young Man

By R. Dwayne Bets

A prison sentence never ends with a release date. When men, and in increasing numbers women, stretch their legs and pull their weight across the threshold of a prison cell for the last time they always carry more than the memories haunting their nights. For most, probation or parole is another pair of handcuffs dangling over their heads as a safeguard against recidivism. For all who are released there is the label: convicted felon that is inescapable. The convicted felon is often required to disclose details of past crimes on job applications and college admissions applications. While these requirements may have been conceived to ensure the safety of institutions and work places, in practice they become a sweeping means of keeping people handcuffed to their crimes. The difficulties are well known and often called collateral consequences, but what is less known is that many juveniles who have either been arrested or convicted of a crime in juvenile court often face the same difficulties as convicted felons.

In most states, the records of juveniles are ostensibly sealed and do not become a part of their permanent record. Unfortunately, like adults who have been arrested for and/or convicted of felonies, juveniles who have been arrested or adjudicated guilty often confront their past on job applications and college admissions forms. Many universities ask not only about adult convictions, but also adjudications and arrests. This aim for transparency is misguided. It rarely takes into account the real needs of both the convicted and of the population at large. Somewhere in this process an employer's right to know about the crime(s) someone has committed in the past became less about maintaining security or evaluating the capability of a person to do a specific job and more about the fear of violence at the workplace and at the universities. In effect, those who have been involved with the justice system begin to be seen by employers and universities as a class of people and not individuals. Once this happens the person who

checks off yes to the question, "Have you ever been charged with or convicted of a crime?" opens himself up to have his application moved to the bottom of the stack forever without ever being able to truly say that the reason he didn't receive the job was due to his lack of qualifications.

Employers will rightly frame this as a public safety issue. They will talk about safety, and the risks to the stability of the work environment; however, this risk is exaggerated. In the case of institutions of higher education, it is more evident that this risk is exaggerated. Most universities in the country are open, and make no

attempt at regulating who comes and goes on the campus. Moreover, research has shown that individuals who pursue a higher education are less likely, not more likely to commit crimes. It is a greater risk to public safety to begin to close the door to people who have committed themselves to change and making a better life for themselves, because the result is a public that loses faith in the justice system's ability to rehabilitate people and individuals with a commitment to change losing all opportunity to do so.

In the case of juveniles in particular, it seems that there are few reasons that disclosure of records that are sealed in many states is necessary. One case in particular is telling. A person attempting to be licensed by the bar in some states is required to disclose all run-ins with the law, from juvenile convictions to arrests that didn't result in

convictions, to convictions that have been sealed and/or pardoned. After spending seven years in school in pursuit of a bachelor's degree and law degree, after having accumulating huge amounts of debt while pursuing this education, after having interned at law firms and shown a fierce commitment to the law these individuals are forced to rehash events in their youth that occurred years in the past. It is hard to believe that there is ever a circumstance where a person's involvement with the juvenile justice system will reveal something about his or her character and ability to do the job that the normal application process would not reveal.



Photo: Rachel Eliza Griffiths

On May 21, 2009, 12 years after being sentenced to nine years in prison, R. Dwayne Bets will give the student commencement speech at the University of Maryland.

Practice Tips

Noisy Withdrawal: Too Loud, Too Soft or Just Right?

By Earl Silbert, Brian S. Chilton and Jamie Hoag

A particularly unsettling sound was just heard in the Stanford fraud investigation: The “noisy withdrawal.”

Billionaire Stanford and his financial entities stand accused of running a “massive Ponzi scheme” defrauding investors of billions. The only criminal charges filed thus far relate to Laura Pendergest-Holt, Stanford Financial Group’s chief investment officer. Pendergest-Holt’s Criminal Complaint describes a January 21, 2009 meeting involving, among others, Pendergest-Holt and “Attorney A,” where “the group agreed that Attorney A would notify the SEC that [Stanford International Bank (“SIB”) Affiliate President and PENDERGEST-HOLT should be the individuals to testify before the SEC about the entire SIB portfolio.” The Complaint then alleges February 3–4 meetings involving Attorney A, Pendergest-Holt, and Stanford executives to prepare for that SEC testimony. Pendergest-Holt is alleged to have made a presentation stating “the value of the assets that she managed . . . was approximately \$350 million, down from approximately \$850 million in June, 2008,” and to have shown the group a pie chart listing \$1.6 billion in fund assets described as “Loan to Shareholder.”

On Tuesday, February 10, Pendergest-Holt testified before the SEC, defended

Earl Silbert, Brian S. Chilton and Jamie Hoag handle, amongst other practice areas, white collar litigation for the law firm of DLA Piper.

by Sjoblom as Stanford Financial Group’s attorney. Despite “being asked directly whom she met with to prepare for her testimony” and what material she had prepared, the complaint says Pendergest-Holt “failed to reveal to the SEC that she met with” the SFG and SIB executives, “Attorney A” and “Confidential Witnesses” prior to her testimony, or the information she had prepared. The Complaint charges that Pendergest-Holt claimed the only person with whom she met in preparation for her testimony was “Attorney A,” and not “anyone else.”

According to press reports, on Wednesday, February 11 Sjoblom notified the SEC that he and Proskauer were withdrawing as Stanford’s counsel, followed

with a Feb. 12 fax to [the SEC’s] Kevin Edmundson, and [] a voice mail message for him the next evening. Finally, Sjoblom typed a note on his BlackBerry to Edmundson a little after 4 p.m. Saturday, Feb. 14. It read: “Kevin, this will advise the SEC, and confirm my voice message last evening, that I disaffirm all prior oral and written representations made by me and my associates . . . to the SEC staff regarding Stanford Financial Group and its affiliates.”

On Monday, February 16, the SEC charged Stanford and affiliated companies with “orchestrating a fraudulent, multi-billion dollar investment scheme.” On February 26, DOJ charged Pendergest-Holt “with obstruction of a proceeding before an agency of the

United States.” On March 27, Pendergest-Holt filed a \$20 million lawsuit against Sjoblom and Proskauer, charging that their malpractice caused her to be wrongfully accused of a crime for which she is “completely and absolutely innocent.”

If the above allegations and press reports are true, and Mr. Sjoblom is the Criminal Complaint’s “Attorney A,” then it is clear he found himself walking through the kind of ethical minefield no lawyer wants to face. NYU Legal Ethics Professor Stephen Gillers assured *Am Law Daily’s* Zach Lowe that under applicable Sarbanes Oxley regulations, “[Sjoblom] did the right thing” by making his “noisy withdrawal.”

The SEC has long claimed authority to regulate attorneys “appearing and practicing” before it under SEC Rule of Practice 102(e), allowing the Commission to bring disciplinary proceedings against lawyers found “to be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or to have willfully violated, or willfully aided and abetted the violation of any provision of the [securities laws].” In 1981, the SEC staff famously charged two lawyers with “unethical or improper professional conduct” for allegedly failing to take appropriate action after their client ignored their disclosure advice and made materially false and misleading statements about its financial condition. Though declining to punish the lawyers due to inadequate notice of the applicable standards, the SEC announced that prospectively “[w]hen a lawyer with significant responsibilities in the effectuation of a company’s compliance with the disclosure requirements of the federal securities laws becomes aware that his client is engaged in a substantial and continuing failure to satisfy those disclosure requirements, his continued participation violates professional

standards unless he takes prompt steps to end the client's noncompliance." In 1982, the SEC's General Counsel clarified that state law standards for attorney behavior controlled Rule 102 proceedings.

That all changed in 2002 with the fall-out from the WorldCom and Enron, and Congress' Sarbanes Oxley ("SOX") response. In SOX Section 307, Congress instructed the SEC to issue rules:

1. requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company . . . to the chief legal counsel or the chief executive officer of the company . . . ; and
2. if the counsel or officer does not appropriately respond to the evidence . . . , requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee . . . comprised solely of directors not employed . . . by the issuer, or to the board of directors.

In November 2002, the SEC proposed what came to be known as the "noisy withdrawal rule," requiring an attorney, after exhausting the "reporting up" options, to then (1) withdraw from the representation in writing; (2) notify the SEC of having withdrawn for "professional consideration"; and (3) disaffirm or disavow any representation made by the attorney that arose out of what the attorney reasonably believed to be a material violation.

This mandatory "noisy withdrawal" proposal was immediately met with howls of protest. Some commentators said it would destroy the trust and confidence issuers had placed, at least

up until then, in their legal counsel, creating divided loyalties and driving a wedge between the attorney client relationship. Others predicted clients would exclude attorneys from discussions to avoid any risk that the attorney would start a reporting up process.

In January, 2003 the SEC withdrew its mandatory noisy withdrawal proposal, alternatively proposing that the company make a public filing with the SEC advising of the attorney's withdrawal, while leaving the attorney the option of doing so if dissatisfied with the company's action. This proposal was met with the previous criticisms, and the additional one that if the company was responsible for publicly disclosing the lawyer's withdrawal, the investing public would be forced to overreact by assuming the worst, to the shareholder's detriment.

To bridge the gap between the SEC and the bar, in August, 2003, the American Bar Association amended Model Rule of Professional Responsibility 1.13, making "reporting up" inside the company mandatory, and "reporting out" voluntary. The Model Rule says that if the company's "highest authority" fails to address a "clear violation of law" in a "timely and appropriate manner," and the lawyer "reasonably believe[s] that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization." The ABA also modified Model Rule 1.6, allowing attorneys to reveal confidential client information to third parties if "necessary" to prevent "serious financial harm" resulting from a client's crime or fraud.

The Commission then tabled its mandatory noisy withdrawal proposal to allow time to see whether the ABA's voluntary approach met its concerns. The SEC's current Rule 205, 17 C.F.R. Part

205, became effective August 5, 2003, and the "noisy withdrawal" debate largely subsided, at least until Mr. Sjoblom's very high profile withdrawal in Stanford.

Section 205.3 maintained the "reporting up" provisions. Section 205.3(d)(2), like Model Rule 1.13, permits, but does not require, that:

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing a material violation that is likely to cause substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer, in a Commission investigation or administrative proceeding from committing perjury . . . suborning perjury . . . or committing any act proscribed in 18 U.S.C. 1001 . . . likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of a material violation by the issuer that caused, or may cause, substantial injury to the financial interest or property of the issuer or investors in the furtherance of which the attorney's services were used.

Differences between the ABA Model Rule and the SEC's Rule 205 (and resulting differences between the 41 states adopting some version of the ABA's rule) create the potential for an

attorney who makes a disclosure under SEC Rule 205 to be subject to sanction under that attorney's state ethics rules. In an attempt to prevent that, SEC Rule 205.6(c) says

(c) An attorney who complies in good faith with the provisions of this part shall not be subject to discipline or otherwise liable under inconsistent standards imposed by any state or other United States jurisdiction where the attorney is admitted or practices.

Some states adopting the model rules, like North Carolina in 2005 Formal Ethics Opinion 9, issued formal ethics opinions advising attorneys that SEC Rule 205 preempts more stringent state law. Other states, like Washington, issued a proposed Interim Formal Opinion opining that its members are under threat of liability and bar disciplinary action for disclosing to the Commission information that the Commission's rules permit them to disclose, and that a Washington attorney could not claim to be complying in "good faith" with the Commission's Rule 205.6(c) if the attorney acts contrary to the formal opinion.

As but one example of the dilemma counsel could face in this area, consider *In re Gonzalez*, 773 A.2d 1026 (D.C. 2001). After a dispute with his client over payment, cooperation and veracity, the lawyer filed a motion to withdraw and included the assertion that the client "had made misrepresentations to her attorneys." The court said that the lawyer had violated his duty to maintain the client's "secrets," as distinguished from "confidences," under Virginia Rule of Professional Responsibility DR 4.1-1(B)(1) by publicly asserting the client had made misrepresentations. Although not disclosure of a privileged communication, the court ruled it was disclosure of a "secret," namely

information gained during that representation that would be embarrassing or detrimental to the client's interests. If, while withdrawing, an attorney reveals "secret" but not "confidential" information implicating an issuer's truthfulness to the SEC, as allowed under SEC Rule 205, will Rule 205's preemption provision protect the attorney from bar discipline? At the very least, having to go through a bar proceeding to find out is a tremendously stressful burden, whether or not ultimately exonerated.

Although the mandatory noisy withdrawal requirement is dead, the permissive and indeterminate environment is no better, and possibly worse, for lawyers in Mr. Sjoblom's position. If a decision is made *not* to disclose or withdraw in the face of facts allowing for such under the SEC's Rule 205, this will provide fertile ground for SEC enforcement or federal grand juries and prosecutors to investigate the lawyer's participation. They can be expected to second guess, on pain of criminal charges, the attorney's decision.

DOJ charges that Stanford's Pendergest-Holt lied under oath during her SEC testimony. If Mr. Sjoblom, who appeared as defense counsel during that testimony, had not withdrawn noisily while disavowing his prior representations, would DOJ also have looked at charging him? Would DOJ rely on his failure to avail himself of the permissive noisy withdrawal provision as indicia of criminal intent? Are these the kinds of concerns that will force attorneys in Mr. Sjoblom's position to make noisy rather than quiet withdrawals?

In this economically driven enforcement environment with its inevitable search for scapegoats, although these questions lack easy answers many more lawyers will lie awake nights pondering them.

Life After Prison

Continued from page 9

student at Howard University. Since that day, I've received a full scholarship to the University of Maryland and a full scholarship to attend graduate school at Warren Wilson College. I have been invited to run my book club by Thomas Jefferson Middle School in Arlington, VA and have been subsequently paid by the parents in the PTA there, who saw the value in what I was doing and deciding I should be paid. My point is that the policy of asking about people's prior convictions and/or arrests results in more losses than gains. Institutions and employers stop looking for information once they know about a felony conviction and there are much better ways to assess risk and responsibility.

Economic Recovery

Resources Portal

(from the American Bar Association)

<http://new.abanet.org/economicrecovery>

Job Search/Networking

Career Transitioning

Practice Management

Stress Management

Professional Development

Savings, Insurance and CLE

Practice Tips

Continued from page 1

management fees. The Virgin Islands' Economic Development Commission had certified Kapok as a beneficiary of the special tax credit. The Government, however, had its suspicions, and in 2002, it launched Operation Island Hideaway, an investigation led by the IRS's Criminal Investigation Division. Undercover special agents met with Kapok participants and Kapok employees, ostensibly for the purpose of determining whether to join Kapok as partners, and recorded over 100 hours of conversations, which led to a search warrant that was executed at Kapok's offices in May 2003, where the Government seized almost 30,000 documents.

After the IRS completed its investigation in March 2007, a group of federal prosecutors in East St. Louis, Illinois obtained a Grand Jury indictment of a Kapok partner who owned businesses in Illinois, along with a number of other Kapok participants and entities—four individuals, one partnership, three corporations, and two LLCs. But the Government suffered a game-changing setback when U.S. District Judge Michael J. Reagan granted the defense's motion to transfer venue to the Virgin Islands. Things never got better for the Government. Not long after the transfer, a special judge was designated to hear the case—Chief U.S. District Judge Harvey Bartle, III of the Eastern District of Pennsylvania. One of Judge Bartle's first tasks was to rule on the defense's motions to dismiss the indictment. The defense argued that the tax law at issue (the Virgin Islands credit) was too vague and ambiguous for the defendants to be subjected to criminal liability for violating it. In a memorandum opinion signed on August 26, 2008, Judge Bartle agreed in large part. Specifically, Judge Bartle

held that, in the absence of clarifying regulations issued by the Treasury Department, the concept of "effectively-connected income" was too vague to support a criminal prosecution. Judge Bartle therefore dismissed 11 of 35 counts of the indictment and limited the Government's theory on the remaining counts, essentially leaving the government to argue that one of the defendants was not a bona fide resident and that the Kapok business was a "tax sham." Undeterred, the Government obtained a Third Superseding Indictment, adding five new counts and identifying over 89 unindicted co-conspirators.

The two-month trial began on Monday, January 12, 2009. Judge Bartle conducted jury selection in a single day and used less than three hours for voir dire. The Government threw a mountain of evidence at the jury, introducing 5,000 exhibits and calling 40 witnesses—including seven IRS special agents, one Kapok partner who had pled guilty to tax evasion, and another Kapok partner who had been granted "pocket immunity." The defense called only two witnesses, focusing instead on attacking the Government's case. The most significant legal fight, though, involved the jury instructions on the sham transaction issue. The Government proposed an instruction, tracking *Wexler v. United States*, 31 F.3d 117, 127 (3d Cir. 1994), that required the jury to view the entire transaction, apart from the transaction's tax consequences, and determine whether the transaction could result in a profit. The defense argued that the sham transaction doctrine was not applicable in criminal cases or, in the alternative, that in the context of a statutory tax incentive program (the Virgin Islands Credit) the transaction must be viewed as a whole, including its after-tax consequences, to determine whether it could result in a profit, citing *In re C.M. Holdings*, 301 F.3d 96, 98-99 (3d Cir. 2002).

The court settled on an instruction that required the jury to consider "whether what was done, apart from the tax benefits, was the thing which the law intended." The court's instruction, while not what the defense wanted, was certainly better than the Government's proposed instruction, and it was more favorable than the instruction given in *United States v. Stein* (the KPMG case), in which the judge instructed the jury that the government had to prove a) that there was no business purpose for entering into the transaction other than its tax benefit and b) that there was no reasonable possibility that the transaction would result in a profit, disregarding any tax benefit. The Kapok instruction allowed the defense to argue that Kapok's business satisfied the intent of the statute generally and that the jury should never reach the pre-tax profit issues. And apparently it worked, because on the morning of Wednesday, March 4, the jury returned its verdict. The foreperson, speaking in a prim British accent, answered "not guilty" 99 times.

The Kapok defense team was led by Charles M. Meadows, Jr. and Josh O. Ungerman of the Dallas-based law firm of Meadows, Collier, Reed, Cousins & Blau, L.L.P. Associates Brian W. Portugal, Marie H. Kim, and Stephanie G. Mongiello assisted with briefing. Representing other defendants in the case were Blair Brown and Lani Cossette (Zuckerman Spaeder LLP); Lee Rohn; Robert "Bob" Webster and Robert R. Smith (Fitzpatrick Hagood Smith & Uhl L.L.P.); Ed Fickess (Andreozzi Fickess LLP); and Gordon C. Rhea (Richardson, Patrick, Westbrook and Brickman, LLC). The Government was represented by two Special Assistant U.S. Attorneys (detailed from East St. Louis, Illinois) and two Department of Justice Tax Division Trial Attorneys.

American Bar Association Legislative Priority
Access to Legal Education

**Loan Repayment Assistance
for Public Interest Lawyers**

By Kenneth Goldsmith (ABA Legislative Counsel)

In the 110th Congress, President Bush signed into law two major Acts (P.L. 110-84 and P.L. 110-315), each holding vital loan assistance for prosecutors and defenders, among others.

Public Service Loan Forgiveness (§401, P.L. 110-84)

This sweeping loan forgiveness program, particularly when partnered with an accompanying repayment option, represents the most significant opportunity for relief for high-debt, lower-income public service lawyers including full-time prosecution or defense, as well as those in government, 501(c)(3)'s and the military. To qualify, loans must be in the William Ford Direct Lending Program, and loans assumed under the FFEL program may be consolidated into Direct, even if they had already once been consolidated within the FFEL program. *Note: Every situation is different and a trusted financial advisor should be consulted before engaging in any substantial assumption of debt or repayment program.*

Under this program, a person enters repayment while in qualifying employment and after 120 monthly payments the balance on all eligible loans is discharged in full, tax free. While standard repayment calls for 10 years of repayment, under this Act a borrower may further choose an Income Contingent Repayment Option, or starting in July 2009, the Income Based Repayment Option, which reduces borrowers' payments to an affordable percentage of their income (20% of Adjusted Gross Income minus Poverty line; or 15% of AGI minus 150% of Poverty line, respectively). For the average law student in public service, this represents a reduction of one's monthly obligation by several hundred dollars.

Because the difference between standard repayment and the modified repayment schedule is recapitalized on the loan, the balance on the loan may actually increase over 10 years and all 120 monthly payments must be completed in order to receive any benefit. For more information on the program and its potential benefits to an individual: www.finaid.org or www.ibrinfo.org. Additional forms and information is available at the Department of Education, 800-USA-LEARN.

The following programs, enacted as part of P.L. 110-315, the Higher Education Opportunity Act, do not yet have implementing regulations explaining how to apply or how the money will be awarded. They have also not been funded for at least the remainder of FY2009.

The John R. Justice Prosecutors and Defenders Incentive Act (§951)

This program will provide student loan relief to prosecutors and public defenders (including for juvenile delinquency

proceedings) and those who provide education and training. The program will provide up to \$10,000 per year in exchange for a one-time renewable 3-year commitment, to a maximum \$60,000. Given the recruitment purpose of the legislation, priority will be given to those with fewer than 3 years or fewer of service; and those "least able to repay." Implementing regulations will be promulgated by the Department of Justice and will include rules ensuring parity between prosecutors and defenders and among the state and local jurisdictions. The program has been authorized for just six years at \$25 million, plus such sums as necessary to carry out the program. The Inspector General will conduct a study at year three to report on the efficacy of the program at which time it may be extended.

428K Loan Forgiveness for Service in Jobs of National Need (§430)

This program provides a lengthy list of jobs considered to ones of "national need." Among the list, it includes "Public Sector Employees," which in turn includes "public interest legal services (*including prosecution, public defense, or legal advocacy in low-income communities at a nonprofit*



organization)." This program would provide no more than \$2,000 per year, and for no more than 5 years and \$10,000. It will be administered by the Department of Education. This program includes a prohibition on persons benefiting from it and other Department programs.

Perkins Loan Cancellation for Public Service (§465)

This program cancels a percentage of a borrower's outstanding Perkins' loan debt for performing certain kinds of public service jobs. Specifically, this Section was added extending this program's reach to "a full-time attorney employed in a defender organization established with section 3006A(g)(2) of Title 18", i.e., (A) federal public defender, and (B) community defender. The program cancels 15% for the first or second year; 20% for the third or fourth year, and 30% for the fifth, or 100% forgiveness for 5 years service. In addition, Congress also increased the loan limits under the Perkins program for graduate and professional students to \$8,000 per year, to a maximum of \$60,000.

For questions about these programs or the status of legislation, contact Kenneth Goldsmith, Legislative Counsel, ABA Governmental Affairs Office, (202) 662-1789 or goldsmithk@staff.abanet.org

News from the Field

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.

New Executive Director at NDAA

The National District Attorneys Association has named Scott Burns as its new executive director effective March 27, 2009. Burns spent more than 15 years as the district attorney in Iron County, Utah, before being appointed deputy director of the Office of National Drug Control Policy in 2002, a position he held until recently. More information can be found at www.ndaa.org.

NAAG to Hold Summer Meeting in Colorado

The 2009 NAAG Summer Meeting will be held June 16-18 at the Cheyenne Mountain Resort, in Colorado Springs, Colorado. This year's meeting theme is "Public Protection in Challenging Economic Times." During the meeting, Nebraska Attorney General Jon Bruning will take the reins as NAAG President. For more details visit www.naag.org/naag-summer-meeting.php.

Constitution Project Releases Right to Counsel Report

The Constitution Project's National Right to Counsel Committee recently released *Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel*. The report details the endemic and systemic failures of the indigent defense system and recommends twenty-two specific and urgently needed reforms to fix them. The full report and other relevant materials are available at tcpjusticedenied.org.

NIJ to Hold National Conference in June

The National Institute of Justice will hold its 2009 Annual Conference from June 15-17 at the Marriott Crystal Gateway in Arlington, VA. For more than a decade, NIJ's annual conference has brought together criminal justice scholars, policymakers, and practitioners at the local, state and federal levels to share the most recent findings from research and technology. For more information go to www.ojp.usdoj.gov/nij/events/nij_conference/welcome.htm.

NYSBA Releases Report on Reentry

The New York State Bar Association's Task Force on Wrongful Convictions recently conducted and published an extensive review of wrongful convictions. The Task Force reviewed 53 cases of wrongful conviction and found that the overwhelming majority (68 percent) of them rested on erroneous identification procedures. Some of the proposed solutions for this problem include: changing the way in which identification procedures are conducted to enhance the reliability of eyewitness identifications; conducting specialized training of police, prosecutors, judges, and defense attorneys; and instituting sanctions for failure to comply with mandated procedures. Criminal Justice Section chair-elect Charles Hynes was a member of the Task Force. A copy of the report is available at www.nysba.org/Content/NavigationMenu42/January302009HouseofDelegatesMeetingAgendaItems/TFWrongfulConvictionsreport.pdf.

MEMBER NEWS

Neal Sonnett Appointed to ABA Board of Governors

Former Criminal Justice Section (CJS) chair and Miami defense attorney Neal Sonnett was nominated to represent the Section on the ABA Board of Governors as one of six Section Members-at-Large in February during the ABA Midyear Meeting in Boston. Sonnett will begin his term at the commencement of the ABA Annual Meeting in August.

Bob Litt Nominated for Key Post in Obama Administration

On April 17, President Obama nominated CJS Council member and Professional Development Division co-chair Robert S. Litt for General Counsel, Office of the Director of National Intelligence. Mr. Litt is a Partner at Arnold & Porter LLP, where he specializes in white collar criminal defense. Prior to joining the firm, Litt served for five years at the Department of Justice as Principal Associate Deputy Attorney General and as Deputy Assistant Attorney General in the Criminal Division.

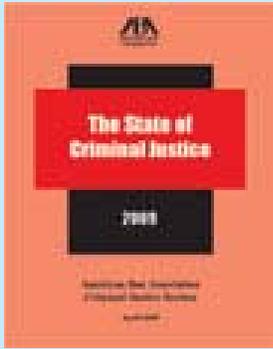
Susan Gaertner Gets the Call From the American College of Trial Lawyers

CJS Vice Chair At-Large and Ramsey County Attorney Susan Gaertner received the high honor of being inducted into the American College of Trial Lawyers on Feb. 28, 2009. A Fellowship in the College is extended only by invitation, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality.

Feedback Welcome

Send to
crimjustice@abanet.org

NEW BOOKS

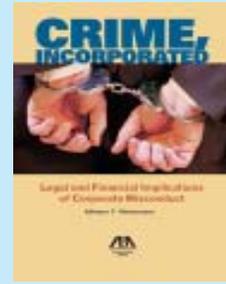


The State of Criminal Justice 2009

The Section prides itself on being the preeminent voice on national criminal justice issues. The Section continues to extend its influence on the field of criminal law with the release of a new edition of *The State of Criminal Justice*. The 2009 edition, edited by Prof. Myrna Raeder of Southwestern Law School, features authors from across the criminal justice spectrum providing

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 Section's work, the publication serves as an invaluable resource for policy-makers, academics, and students of the criminal justice system alike. The 2009 volume contains 21 chapters focusing on specific aspects of the criminal justice field, as well as an appendix of full text and reports of all of the adopted official ABA policies passed in 2008-2009 that address criminal justice issues. For more information and to order a copy, visit www.abanet.org/crimjust/pubs.

To order, call 800-285-2221 or see www.abanet.org/crimjust/pubs



Crime, Incorporated: Legal and Financial Implications of Corporate Misconduct

By Miriam Weismann

Today, whether prosecuting or defending, the approach to understanding organizational crime has become more difficult because of the increased multi-organizational character of corporate crime. This book provides a complete re-examination of how traditional legal rules and their application given how corporate crime has changed in the last decade.

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