# TABLE OF CONTENTS

**Preface** ................................................................. iii

**Author Bios** ............................................................ viii

## Part I  Introduction and Overview

Chapter 1  Executive Summary ............................................................. 1
Chapter 2  U.S. Supreme Court Criminal Law Decisions (2015-2016) ........ 21
Chapter 3  Federal Legislative Update .................................................... 61

## Part II  White Collar Crime

Chapter 4  White Collar Crime .............................................................. 79
Chapter 5  The State of Cybercrime ...................................................... 85
Chapter 6  Truth and Consequences: Helping Company Executives
Understand (and Ward Against) the Ever-Present Threat of
False Statements and False Certifications ........................................... 101

## Part III  Defense Issues

Chapter 7  The State of Pretrial Justice ................................................ 113
Chapter 8  Plea Bargaining ................................................................. 121
Chapter 9  National Association of Criminal Defense Lawyers ............. 127
Chapter 10  Public Defense ............................................................... 141

## Part IV  Professional Development, Equal Justice,
and Specialized Practice

Chapter 11  Ethics in Criminal Advocacy ........................................... 145
Chapter 12  Racial Justice Complements Criminal Justice
Policy Reform to Improve Efficiency and Fairness ................................ 185
Chapter 13  The Price for Justice: The Economic Barriers that
Contribute to an Unfair and Unjust Criminal Justice System ............... 199
Chapter 14  Juvenile Justice ............................................................... 209
Chapter 15  *Ohio v. Clark*: Protecting Children from
Child Sexual Abuse ........................................................................ 237
Chapter 16    Sexual Assault Proceedings on College Campuses:
              Current Issues ........................................ 245
Chapter 17    Military Criminal Justice: Further Expanded
              Victim Rights and Overarching Refinements .......... 255

PART V  CORRECTIONS AND SENTENCING

Chapter 18    The State of State Sentencing Guidelines .......... 265
Chapter 19    Sentencing Reform Legislation Hits a Wall .......... 271
Chapter 20    With No Signs of Federal Legislation to Expunge
              Federal Convictions, State Courts May Provide
              a Mechanism to Minimize Collateral Consequences .... 279
Chapter 21    Uncertainty Ahead: Pell Grant Funding for Prisoners .. 287
Chapter 22    Capital Punishment .................................... 291

APPENDIX

ABA Policies in 2016-2017 Related to Criminal Justice ................. 375
AUTHOR BIOS

Unless otherwise specifically noted, the authors of each chapter are writing only in their personal capacities. Statements in individual chapters are also not official policy of the American Bar Association unless the House of Delegates or the Board of Governors has formally adopted a specific policy.

Rachel Amster (co-author of Chapter 12, “Racial Justice Complements Criminal Justice Policy Reform to Improve Efficiency and Fairness”) is a law student at the George Washington University Law School and an intern with the ABA Criminal Justice Section.

Vanessa Antoun (co-author of Chapter 9, “National Association of Criminal Defense Lawyers”) is the Senior Resource Counsel at the National Association of Criminal Defense Lawyers.

Raymond Banoun (Chapter 4, “White Collar Crime”) is a former chair of the ABA Criminal Justice Section White Collar Crime Committee, a former chair of the International Bar Association Business Crime Committee, a Fellow of the American College of Trial Lawyers, and a former Assistant United States Attorney for the District of Columbia where he was Chief of the Fraud Division. Before establishing Banoun Law PLLC, he was a partner for 25 years, and the founder of the White Collar Group at Cadwalader, Wickersham & Taft, LLP, where he also served as the Managing Partner of the Washington, D.C. office for 10 years. He was also previously a partner at the Washington, D.C. firm of Arent, Fox, Kintner, Plotkin & Kahn, where he chaired the Business Fraud Group.

Lara Bazelon (Chapter 11, “Ethics in Criminal Advocacy”) is an associate professor at the University of San Francisco School of Law, where she is the director of the criminal and racial justice clinics. She is also the co-chair of the ABA Criminal Justice Section’s Ethics, Gideon & Professionalism Committee and will begin a three-year term on the CJS Council in October of 2017.

Justin Bingham (co-author of Chapter 7, “The State of Pretrial Justice”) is City Prosecutor, Spokane, Washington, and a co-chair of the Criminal Justice Section’s Pretrial Justice Committee.

Andrew S. Boutros (co-author of Chapter 6, “Truth and Consequences: Helping Company Executive Understand (and Ward Against) the Ever-Present Threat of False Statements and False Certifications”) is the National Co-Chair of Seyfarth Shaw LLP’s White Collar, Internal Investigations, and False Claims Team. He is also a Lecturer in Law at the University of Chicago Law School. For most of his nearly
eight-year prosecutorial career, he served in the Financial Crimes and Special Prosecutions Section of the Chicago U.S. Attorney’s Office.

**Cherise Fanno Burdeen** (co-author of Chapter 7, “The State of Pretrial Justice”) is a co-chair of the Criminal Justice Section’s Pretrial Justice Committee. She is the Chief Executive Officer of the Pretrial Justice Institute.

**Geoffrey T. Burkhart** (Chapter 10, “Public Defense”) was previously Attorney and Project Director with the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (“SCLAID”). He now serves as Deputy Director for the ABA Center for Innovation. Since 1921, SCLAID has worked to improve criminal and civil legal services for the poor.

**K. Jeannie Chung** (co-author of Chapter 12, “Racial Justice Complements Criminal Justice Policy Reform to Improve Efficiency and Fairness”) is a law student at the George Washington University Law School and an intern with the American Bar Association Criminal Justice Section.

**Ivan J. Dominguez** (co-author of Chapter 9, “National Association of Criminal Defense Lawyers”) is the Director of Public Affairs and Communications at the National Association of Criminal Defense Lawyers.

**Lauren Donaldson** (co-author of Chapter 16, “Sexual Assault Proceedings on College Campuses”) is an Associate Attorney at Prim & Mendheim, LLC in Dothan, Alabama and a member of the ABA Criminal Justice Section’s Women in Criminal Justice Committee.

**Thomas Eberth** (co-author of Chapter 3, “Federal Legislative Update”) is an intern at the American Bar Association Governmental Affairs Office.

**Danielle Fagan** (Co-author of Chapter 2, “Annual Review of the Supreme Court’s Criminal Justice Decisions”) is a 2017 graduate of the University of California, Hastings School of Law.

**Angelyn Frazer-Giles** (co-author of Chapter 9, “National Association of Criminal Defense Lawyers”) is the Director of State Legislative Affairs and Special Projects at the National Association of Criminal Defense Lawyers.

**T. Markus Funk** (co-author of Chapter 6, “Truth and Consequences: Helping Company Executive Understand (and Ward Against) the Ever-Present Threat of False Statements and False Certifications”) is the Firmwide Chair of Perkins Coie’s White Collar & Investigations Practice. He spent 10 years as a federal prosecutor in Chicago and two years working for the State Department in post-conflict Kosovo.

**Alexandra González-Waddington** (co-author of Chapter 17, “Military Criminal Justice: Further Expanded Victim Rights and Overarching Refinements”) is a partner
in the Evans, Georgia law firm of González and Waddington, LLC. The firm focuses exclusively on defending serious court martial cases. It has defended some of the most high-profile war crime cases of the Iraq and Afghanistan wars as well as military sexual assault cases worldwide.

**Sean Hecker** (co-author of Chapter 19, “Sentencing Reform Legislation Hits a Wall”) is a litigation partner at Debevoise & Plimpton LLP. His practice focuses on white collar criminal defense, internal investigations, and complex civil litigation. He regularly defends individuals and companies in grand jury and regulatory investigations and criminal proceedings involving allegations of securities and commodities fraud, money laundering, tax fraud, and criminal antitrust violations. He is a member of the Criminal Justice Act (“CJA”) Panel in the Southern District of New York, where he represents indigent federal criminal defendants.

**Michael C. Hennenberg** (co-author of Chapter 20, “With No Signs of Federal Legislation to Expunge Federal Convictions, State Courts May Provide a Mechanism to Minimize Collateral Consequences”) is a defense attorney in Ohio who for more than 35 years has defended people accused of serious crimes in federal, state, and municipal courts. He defends individuals accused of white collar crimes, health care fraud, drug crimes, and other felonies. He also conducts an active appellate representation practice. He is also of counsel with the firm of Dinn, Hochman & Potter, LLC.

**Navneet Jaswal** (co-author of Chapter 16, “Sexual Assault Proceedings on College Campuses”) is a law clerk to the Honorable Judge William M. Jackson at the District of Columbia Superior Court and a Member of the ABA Criminal Justice Section’s Women in Criminal Justice Committee.

**Alexandra Kandalaft** (co-author of Chapter 3, “Federal Legislative Update”) is a Program Associate at the American Bar Association Governmental Affairs Office.

**Christine Kulumani** co-author of Chapter 13, “The Price for Justice: The Economic Barriers that Contribute to an Unfair and Unjust Criminal Justice System”) is a Project Assistant to the ABA Criminal Justice Section’s Racial Justice Improvement Project.

**Carla Laroche** (co-author of Chapter 16, “Sexual Assault Proceedings on College Campuses”) is a Law Fellow at the Southern Poverty Law Center in Tallahassee, Florida, focused on criminal justice reform, and a Co-chair of the ABA Criminal Justice Section’s Women in Criminal Justice Committee.

**Andrew Levchuk** (Chapter 5, “The State of Cybercrime”) is of counsel to Bulkley Richardson & Gelinas, LLP in Springfield, Massachusetts. Before joining Bulkley Richardson, he was a prosecutor with the U.S. Department of Justice Criminal Division and an Assistant United States Attorney for the District of Massachusetts.
Rory K. Little (Chapter 2, “Annual Review of the Supreme Court’s Criminal Justice Decisions”) is a Professor of Law at the University of California Hastings College of the Law in San Francisco and of counsel at McDermott, Will & Emery, San Francisco. He is Co-Chair of the ABA Criminal Justice Section’s Amicus Review Committee.

Ilana Meyer (co-author of Chapter 12, “Racial Justice Complements Criminal Justice Policy Reform to Improve Efficiency and Fairness” and also a co-author of Chapter 12, “The Price for Justice: The Economic Barriers that Contribute to an Unfair and Unjust Criminal Justice System”) is a graduate student from Sackler School of Medicine/Public Health at Tel Aviv University and is an intern with the ABA Criminal Justice Section.

Kelly Lyn Mitchell (Chapter 18, “The State of State Sentencing Guidelines”) is the Executive Director of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota Law School, and is currently the President of the National Association of Sentencing Commissions.

Jumana Musa (co-author of Chapter 9, “National Association of Criminal Defense Lawyers”) is the Senior Privacy and National Security Counsel at the National Association of Criminal Defense Lawyers.

Bruce Nicholson (co-author of Chapter 3, “Federal Legislative Update”) was previously legislative counsel for the American Bar Association Governmental Affairs Office.

Andrea Nieves (co-author of Chapter 8, “Plea Bargaining”) is an attorney on the Policy and Advocacy Team of Brooklyn Defender Services. Before joining BDS, she was a capital defense attorney in North Carolina. She represented indigent clients facing the death penalty at trial as a J. Kirk Osborn Fellow at the Fair Trial Initiative and defended death row inmates in their capital post-conviction appeals as a staff attorney at the Center for Death Penalty Litigation. She also spent a year doing human rights and anti-death penalty advocacy work with the Commission for the Disappeared and Victims of Violence in Jakarta, Indonesia as a Henry Luce Scholar.

Kyle O’Dowd (co-author of Chapter 9, “National Association of Criminal Defense Lawyers”) is the Associate Executive Director for Policy at the National Association of Criminal Defense Lawyers.

Shana-Tara O’Toole (co-author of Chapter 9, “National Association of Criminal Defense Lawyers”) is the Director of White Collar Crime Policy at the National Association of Criminal Defense Lawyers.

Alexander Perlin (co-author of Chapter 8, “Plea Bargaining”) has been a staff attorney with Brooklyn Defender Services since 2012. Since 2015, he has been the BDS representative in the Red Hook Community Justice Center. Before coming to BDS, he was a public defender in New Jersey for two years, until making the switch
to Kings County. He is also teaches classes on Criminal Justice at Borough of Manhattan Community College where he is an adjunct lecturer.


A. Ann Ratnayake (Chapter 15, “Ohio v. Clark: Protecting Children from Child Sexual Abuse,” and co-author of Chapter 16, “Sexual Assault Proceedings on College Campuses”) worked for seven years as a Senior Staff Attorney at the American Prosecutors’ Research Institute (APRI)’s National Center for Prosecution of Child Abuse. She is the Managing Director of the National Center for Child Abuse Statistics and Policy in Washington D.C. She is also a consultant for the National Association of Attorneys General and a Co-Chair of the ABA Criminal Justice Section’s Young Lawyers Committee.

Salma S. Safiedine (co-author of Chapter 12, “Racial Justice Complements Criminal Justice Policy Reform to Improve Efficiency and Fairness,” and co-author of Chapter 13, “The Price for Justice: The Economic Barriers that Contribute to an Unfair and Unjust Criminal Justice System”) is an attorney with the boutique law firm, Safiedine Partners Law LLC in Washington D.C. She serves as Project Director for the ABA Racial Justice Improvement Project and is Co-Chair of the ABA Criminal Justice Section Race and Diversity Committee. She is also an editor of the ABA White Collar Crime Committee Newsletter.

David Sandler (co-author of Chapter 19, “Sentencing Reform Legislation Hits a Wall”) is a litigation associate at Debevoise & Plimpton LLP. His practice focuses on white collar criminal defense, cybersecurity and data privacy, and complex commercial litigation. Before he joined Debevoise in 2014, he served as Special Assistant to the President and Associate Counsel in the White House Counsel’s Office, where he developed compliance programs and counseled White House officials on risk management, compliance issues, data privacy, whistleblowers, open government, and environmental law.

SpearIt (Chapter 21, “Uncertainty Ahead: Update on Pell Grant Funding for Prisoners”) is an Associate Professor of Law at the Thurgood Marshall School of Law at Texas Southern University in Houston.

William Summers (co-author of Chapter 20, “With No Signs of Federal Legislation to Expunge Federal Convictions, State Courts May Provide a Mechanism to Minimize Collateral Consequences”) is a member of the Criminal Justice Section’s Defense Service Subcommittee. Mr. Summers is an NACDL Robert C. Heeney Memorial Award winner and a Fellow of the American Board of Criminal Lawyers. He has practiced for more than 45 years in civilian courts but now exclusively defends military criminal cases worldwide.
Thomas M. Susman (co-author of Chapter 3, “Federal Legislative Update”) is the Director of the American Bar Association Governmental Affairs Office.

Ronald J. Tabak (Chapter 22, "Capital Punishment") is Special Counsel and firmwide pro bono coordinator at Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates in New York. He has been chair since the late 1980s of the Death Penalty Committee of the ABA Section of Criminal Rights and Social Justice. He is also the co-chair of the New York State Bar Association's Special Committee on Re-entry, a Special Advisor to the ABA Death Penalty Due Process Review Project, a Special Advisor to the ABA Death Penalty Representation Project, and a member of the Committee on Capital Punishment of the New York City Bar Association.

David S. Tanenhaus (Chapter 14, “Juvenile Justice”) is Professor of History and James E. Rogers Professor of History and Law at the William S. Boyd School of Law, University of Nevada, Las Vegas. He is the author of The Constitutional Rights of Children: In re Gault and American Juvenile Justice (University Press of Kansas 2011).

Major M. Arthur Vaughn II (co-author of Chapter 17, “Military Criminal Justice: Further Expanded Victim Rights and Overarching Refinements”) is an Active Duty Air Force Judge Advocate General. He currently serves as an instructor in the Military Justice Division at the Air Force Judge Advocate General's School at Maxwell Air Force Base, Alabama. He received his Masters of Military Law (LL.M.) with a Criminal Law Specialty in 2016 from the Army Judge Advocate General's School. He has previously served as both a prosecutor and defense counsel in the Air Force. Any views expressed by the author are his personal views and do not reflect the views of the Air Force nor the Department of Defense.

Michael S. Waddington (co-author of Chapter 17, “Military Criminal Justice: Further Expanded Victim Rights and Overarching Refinements”) is a partner in the Evans, Georgia law firm of González and Waddington, LLC. Michael served in the U.S. Army Judge Advocate General's Corps. His law practice focuses exclusively on defending serious court martial cases, and his firm has defended some of the most high-profile war crime cases of the Iraq and Afghanistan wars as well as military sexual assault cases worldwide.


Mark E. Wojcik (Editor of The State of Criminal Justice and author of Chapter 1, “Executive Summary”) is a professor at The John Marshall Law School in Chicago. He has served as editor of The State of Criminal Justice in since 2014. He has
previously worked at the Office of the Public Defender of Cook County and for many years was a member of a special advisory committee to the Cook County State's Attorney.