100 Years of CJS

Hindsight 2020

BY LAURA CHIU

On August 24, 1920, the Criminal Justice Section of the American Bar Association was established in St. Louis, Missouri. A hundred years later, it has remained a dynamic and fundamental institution that still holds strong today.

Throughout the years, the Criminal Justice Section’s role has shifted dramatically, as it underwent fundamental challenges and grew alongside the American criminal justice system. Each decade has brought with it its various accomplishments and defeats. Remarkably, the Criminal Justice Section has remained an active part of those initiatives.

The roaring 1920s was a decade marked by prosperity. The end of World War I and the post-war economic boom had restored the confidence and patriotism of Americans in their country. However, it was also a sinful decade stained with crime. Prohibition on alcohol had led to the rise of mafia and other criminal activity. Homicide rates were climbing aggressively, reaching their peak during the decade. And as automobiles became a household mainstay, the rate of auto theft rose as well. This was only a trend that continued and worsened in the 1930s, a decade of hardship and stress from the impending World War II and the trauma of the Great Depression. The practice of kidnapping and holding children from rich families for ransom skyrocketed, as those deprived of work and income struggled to keep afloat during the Great Depression. The infamous kidnapping of the Lindbergh baby in 1932 was, by far, the most sensationalized child kidnapping of the decade. Armed robberies became much more frequent as America sunk deeper into the general hopelessness of the Great Depression.

During this era, the American Bar Association had not yet touched the field of criminal law. There was no existing standard, nor section, on the topic within the ABA itself. The events of the 1920s and the 1930s more than demonstrated to the ABA that they needed a unit that dealt specifically with the issue of criminal law. And, thus, the Section of Criminal Law and Criminology was born out of necessity.

The Section, from the beginning, was well attuned to the ailments in criminal law at the time. Its first concerns included topics such as crime resulting from prohibition, the rising drug crisis, and tax evasion—all matters of the utmost importance at the time. Despite enacting and suggesting reform on areas such as the parole system and capital punishment, the Section remained a small, yet mighty, effort during much of the 1920s.

In 1925, the Section took strides in the field of criminal justice to do what had never been done before. Noting that many states had neglected to keep an organized record of their crime and investigate these records, resulting in a lack of information, the Section was determined to metaphorically “remove the blindfold” on this urgent issue. Section members advocated for a resolution to push for more uniform crime statistics and information. Their protests did not fall on deaf ears, and a year later, the Director of the Census of the Census directed the Census Bureau to begin to gather uniform information in this field.

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As the 1920s began to wind down, the Section began to reach out to other fields in order to solve problems plaguing American society. Juvenile justice systems were beginning to be established, and the Section worked tirelessly with the American Medical Association, the American Psychiatric Association, the Social Science Research Council, and other organizations, in order to establish sound recommendations towards these efforts.

During the 1930s, the American public was complacent in criminal justice, a field they left to the legislators to deal with. The Section was not so complacent, continuing to investigate various theories behind criminal justice and scientifically study the problem at large. They attempted to spread the word that criminal justice was not solely a legal matter, but one that concerned all fields and professions. The Wickersham Commission, a commission appointed by President Herbert Hoover that observed the criminal justice system in order to make policy recommendations, took note, specifically highlighting the Section’s cooperation and work with outside groups. The Section, in turn, advocated the Wickersham Commission’s proposals for unified court systems and worked to implement these proposals in various states.

As crime of all sorts began to rise, the ABA asked the Section for advice on a solution to the crime problem. The Section then made five recommendations, all of which were approved by the Association. During their annual meeting, participants such as the Director of the FBI and the Director of the Federal Bureau of Prisons were in attendance, as they collaboratively worked on an effort to implement the National Bar Program.

During the highly publicized Lindbergh baby kidnapping, the Section immediately moved to create a committee to explore the trial. The debate around guns was heating up during this time as well, and the Section, including future chairman James V. Bennett, spearheaded the National Council for a Responsible Firearms Policy. Eventually, more stringent laws were passed regarding the matter. For the remainder of the late 1930s, the Section worked to pass the Criminal Rules Act, which eventually passed in the early 1940s.

The 1940s was a relatively tranquil period, reporting some of the lowest crime rates in the history of America. It was a welcome change of pace from the high crime spikes in the 1930s and 1920s. As America moved into World War II, the crime rates decreased. The prosperity due to the war resulted in a mass migration of African Americans from the South to northern cities, resulting in violent racial clashes. Detroit in the early 1940s experienced some of the worst racial-fueled riots in American history. Race riots, as they were known, spread across the United States. Anger, fear, and racism against Japanese Americans also reached peak levels after the bombing of Pearl Harbor in 1941, leading President Roosevelt to place Japanese Americans in internment camps.

Debates around religious rights, particularly the religious rights of public-school students, spread across the country and reached the Supreme Court. In the case of Minersville School District v. Gobitis, the Supreme Court ruled that public schools could compel students, regardless of religion, to salute the American flag and recite the Pledge of Allegiance. In another Supreme Court case that followed shortly that same year, West Virginia State Board of Education v. Barnette, the Supreme Court overruled its previous decision in the case of Minersville School District v. Gobitis and decided that students could not be forced to take actions that clashed with their religious beliefs. In both cases, the CJS submitted amicus curiae briefs to the Court.

During the 1950s, the crime rate began to rise again. The “baby boom,” a phenomenon stemming from the post-World War II period of America, resulted in a large spike of babies being born during the 1940s. These babies became young adults in the 1950s, and the rate of juvenile crime increased accordingly. Large-scale crimes, such as the 1950 Brink robbery in Boston, Massachusetts, shook the nation. Seven men had stolen nearly $3 billion, the largest sum of cash ever stolen at the time. It took six years for the FBI to track down and sentence each criminal involved. The Ed Gein serial murders and other eccentric cases took place as well. During the Cold War, McCarthyism and the fear of communists “living amongst us” had spread, launching an investigation that has been compared to the Salem witchcraft trials.

The media’s role in stoking the frenzy behind cases that became highly sensationalized led the Section to begin to study the effect of the media when it came to criminal justice in movies, radio, television, comics, and other multimedia. A commission was created to study it. Another major issue, organized crime, was addressed during a 1949 Annual Meeting, along with recommendations to study various areas of other criminal activity.
In addition to the findings from these commissions, they were able to draft four model acts, which were eventually adopted by the ABA. In July 1959, the Section published and distributed its first newsletter, which continues to be published to this day.

The 1960s continued to be a big year for the Section. The Standards were commissioned in 1964 and were a revolutionary concept to the field of criminal justice at the time. Today, the Standards continue to be used by members of the criminal justice system, from defense attorneys to prosecutors to judges to legal scholars. There are standards in mental health, monitors, appellate review of sentences, post-conviction remedies, collateral sanctions and discretionary disqualification of convicted persons, pretrial release, criminal appeals, prosecution function, discovery, and many other categories. The first Standards dealt with topics such as police function and post-conviction proceedings.

At a time when the American criminal justice system was beginning to develop, professional standards were desperately needed. This project was chaired by Chief Justice Warren Burger, who later reported that the Standards were consulted by the Supreme Court and many judges across the country. Today, hundreds of Supreme Court opinions quote or cite the Standards, showcasing its relevancy almost 60 years later. The CJS was tasked not only with creating the first standards, but also with implementing them nationwide. The program was highly successful, and the Standards were quickly adopted and favored by judges at both the state and federal levels. The CJS also dealt with the high number of youths due to the post-war baby boom, and the increase in juvenile crime, by planning pilot teacher training institutes and structuring a program for the American Personnel and Guidance Association, which was made up of counselors to offer guidance to students.

In 1963, the president of the ABA, Sylvester C. Smith Jr., remarked on the importance of the CJS, which played a role in fighting towards universal counsel to all indigents in criminal cases. That same year, the historic Supreme Court Case of Gideon v. Wainwright established just that. This holds true today, as the Section continues to fight for counsel at bail and counsel for child victims through its policy initiatives.

Crime was prevalent all throughout the 1960s. In 1968, America began to witness a high level of gun violence, marked with several high-profile assassinations and mass murders. Congress, in response, passed the first gun control act in several decades: The Gun Control Act of 1968. President Johnson and Congress also passed the Omnibus Crime Control and Safe Streets Act of 1968, which attempted to tackle several areas of crime that were on the rise during that period.

The relevancy of CJS continued into the 1970s, where it began with a name change from ABA Section of Criminal Law to the Criminal Justice Section, which it is still known as today. Unfortunately, crime rates during the 1970s continued to follow the precedent set by the 1960s, reaching its peak during the close of the decade. A combination of political and economic factors contributed to this rise, such as the rise of social movements, severe economic insecurity, and a renewed sense of distrust towards American politicians. In response to mafia activity, which was prominent during this era, Congress passed the Racketeer Influenced and Corrupt Organizations Act. It was during this era that the courts began to find their criminal dockets and the prison population began to rise. Policies towards gambling and lotteries loosened, and drug use became a common part of ordinary crime. The assassination of prominent leaders such as Martin Luther King Jr. and John F. Kennedy, along with the Watergate scandal, marked the 60s and 70s. Mass murderers and serial killers, such as Ted Bundy and John Wayne Gacy, terrorized Americans.

During the 1970s, the CJS’s efforts in educating and assisting the youth of America paid off in the form of the direct creation of the ABA Special Committee on Youth Education for Citizenship, which would continue the work of the CJS in this area. The high crime in this decade was largely and partially due to the public’s distrust in the government and justice. Events such as Watergate made the public wary about government institutions, including the court system. In order to directly combat this, the CJS was given a $75,000 grant in 1970 from the Ford Foundation, which funded several important studies on justice and how to strengthen the public’s confidence. The Section was able to make recommendations from these studies to the American Bar Association.

Throughout the 1980s, and into the 2000s, the level of crime declined significantly from the 1970s and 1960s. The CJS continued to be active in its efforts of advocacy and investigation and worked tirelessly to improve the criminal justice system. It continued to work on projects such as...
the Standards and the *Criminal Justice Magazine*, which was developed in 1986. The CJS was active in social movements, especially the movement towards gender equality and women’s rights. They pushed the ABA to support and advocate for the Convention of the Elimination of Discrimination Against Women in 1996 and urged Congress to pass the Violence Against Women Act. The CJS spoke out against domestic violence, sexual harassment, and gender inequality in the legal profession as well. The CJS also studied bias towards gays and lesbians in the legal community, an important first step towards decreasing the stigma against members of the LGBTQ+ community at the time.

Entering the new century, the CJS continued to grow. However, the tragic events of September 11, 2001, powerfully shaped the focus of the American criminal justice system and, indeed, the CJS. The domestic threat that global crime and terrorism posed on America forced the country to fight back. The events of 9/11 and a new focus on homeland security were the basis of a total restructure of the criminal justice system and the federal government. The PATRIOT Act and the National Intelligence Reform and Terrorism Prevention Act were passed to allow the government to have greater access to surveillance and intelligence gathering. The CJS worked on convincing Congress to enact legislation that would strengthen the US’s actions and prosecution in International Criminal Court, a great deviation from the Section’s normal focus on domestic criminal justice affairs.

The recent years of 2018 and 2019 have brought to light a series of different issues in the criminal justice system. Gun control has remained a hot topic, with the recent string of tragic and deadly school shootings across the US. Many parents, students, and teachers have expressed concerns about gun safety following the shootings, and this conversation has sparked a fierce debate on gun reform. The issue of immigration, which was a largely debated topic during the 2016 elections, remains controversial as well, with much of the nation split on how to deal with immigrants, particularly undocumented ones.

The CJS has remained active throughout, reaching out to and forming liaisons with the Standing Committee on Gun Violence, and enacting several policies regarding gun control. In 2017, the CJS advocated for the government to issue gun violence restraining orders. On the issue of immigration, the CJS and the ABA urged legal practices and law schools to provide immigration detainees and other such individuals with legal assistance, and worked with the CJS’s Immigration Committee, as well as other related committees, on immigration issues. In collaboration with other relevant organizations related to the criminal justice system, the CJS has produced reports each year that suggest reform, arguments, and opinions regarding various issues and current events. For example, in the past, the CJS has worked with the Commissions on Domestic Violence and Immigration on Report 104A to establish new procedures in criminal trial court.

Since the 1940s, the CJS has filed amicus curiae briefs on influential Supreme Court cases. Recent amicus briefs filed by the CJS include *Ramos v. Louisiana*, where the CJS points at Standard 15:11 (1993, 1978), which requires unanimous criminal juries in their brief to present their argument to the Supreme Court. Topics of other amicus briefs filed include juvenile death penalty, life without parole, and preventive detention cases.

Not only has the CJS impacted current criminal justice issues of the time, but the Section continues to build on its continuing legal education (CLE) programs. Important CLE efforts include the international White Collar Crime conferences, which feature panelists who provide updates on new developments and strategies in white collar law, and the Forensic Science conference, which brings experts from the field to discuss the current state of forensic science, new developments, and its impact on criminal justice.

The CJS has also embarked on several policy projects, which it continues today. These include the Racial Justice Improvement Project, which, with the support of the Bureau of Justice Assistance, works with state and local criminal justice systems and communities to identify racially discriminatory policies and practices and implement reform. The International Criminal Court Project, a joint initiative of the CJS and the Center for Human Rights, works to implement ABA policies on international criminal justice, all while pursuing goals of advocacy, education, and practical legal assistance. Another project, the Collateral Consequences of Conviction Project, works in collaboration with the National Inventory of the Collateral Consequences of Conviction in order to create an online database that identifies and categorizes collateral consequences in response to the lack of coordination and hidden nature of collateral consequences. Finally, the “Achieving an Impartial Jury: Removing Bias in Voir
Dire and Deliberations” Project conducts research to pursue the ideal of an impartial jury, increase impartiality in other key members of the criminal justice system, and educate others on and provide debiasing techniques.

Today, the Criminal Justice Section continues to strive for advancement and excellence in order to create a continuously improving criminal justice system for all citizens of the United States. With each passing year, the Section expands and grows as new members, committees, projects, and legislation are added on each year. As the criminal justice system grows and changes, the Section has worked tirelessly to improve the criminal justice system. Almost a hundred years after it was founded, the Criminal Justice Section and the people behind it still uphold the rich history and moral values behind this organization in their fight for progress in the criminal justice system.

From the Chair

I am honored to have served as chair of this amazing section of the American Bar Association. It has been and extremely rewarding experience. We will continue together in this centennial year, to find new ways to conduct the business of the Criminal Justice Section. The circumstances of these uncertain days require us to live into our anniversary motto “Perfecting our Vision 2020.” Together we will persevere 100 more.