In early April, the Section hosted its Spring CLE, Committee and Council Meeting in Tampa, Florida. The programming began with a White Collar Crime Townhall, “Lessons Learned from Handling High Profile White Collar Cases”.

P. David Lopez, Harvard Professor and Former EEOC General Counsel, gave the keynote address, “The 150th Anniversary of the 14th Amendment: Glass Half Empty or Half Full?” The first panel provided further discussion of this topic and examined current issues in civil rights, “Dark Hours, Difficult Days & Daunting Challenges - King’s Legacy Lives!”

The remaining panels took on a range of local and national topics. One panel discussed the current state of prosecutorial discretion in relation to the executive branch and another panel spoke to direct filing in Florida. The final two talks addressed migration, globalization, criminal law and the issues related to border searches of electronic devices for lawyers carrying confidential information, respectively.

After the CLE program concluded, the Council met to discuss the following proposed resolutions.

- Condemning the arbitrary arrest and disbarment, denial of due process, other ill-treatment, and death, that judges, lawyers, and other members of the legal profession face, worldwide, for serving in their designated capacities. Request for support by the Section of International Law and passed by CJS Council.
- Discussing 10 Principles on Fees and Fines. The principles reflect the application of due process and equal protection of the law to the imposition and collection of fines and fees. Request for co-sponsorship by SCLAID and passed by CJS Council.
- Requiring the closure of any existing private prisons, jails, and juvenile detention facilities. Proposed by the Criminal Justice Section and not passed by CJS Council.
- Expanding assistance to pre-trial detainees, immigration detainees, incarcerated individuals, and those reentering society. Proposed by the Criminal Justice Section and passed by CJS Council.
- Urging Louisiana and Oregon to join the other forty-eight states and the federal government in requiring unanimous juries in certain felony criminal cases and to reject the use of non-unanimous juries where currently allowed in felony cases. Proposed by the Criminal Justice Section and passed by CJS Council.

Requests for co-sponsorship or support come from other ABA entities. A request for co-sponsorship means that CJS has assisted the other ABA group in drafting the resolution and, if approved by the CJS Council, will be recognized as such. A request for support means that, if approved, CJS Council has decided to support the principles of the resolution but did not help in drafting.
Substance Abuse and the White-Collar Lawyer

By Nina Marino and Marlon Llanes

This year’s 36th Annual National Institute on White-Collar Crime, in San Diego, presented a flag ship panel on Substance Abuse and the White-Collar Lawyer. Never before had this timely and important subject been presented at a criminal justice section conference of this magnitude.

The speakers were some of the top educators in the space including David Jaffe, the Dean of Students at American University Washington College of Law. Other distinguished panelists included Patrick Krill, founder of Krill Strategies, Laura Lokker, a clinical psychologist, Gail Shifman, an attorney at the Shifman Law Group, and Lisa Smith, attorney and author of “Girl Walks Out of a Bar.”

The significance of the subject matter cannot be underestimated. Substance abuse is a serious and pervasive issue for lawyers, and it has become exacerbated by the current opioid crisis. However, substance abuse issues do not suddenly materialize after years of practicing as an attorney. These issues often begin manifesting much earlier – in law school.

In 2014, the ABA conducted a survey of law student well-being. The study was designed to examine alcohol, drug, and mental health issues among law students. It was administered with a grant from the ABA Enterprise Fund and was supported by the Dave Nee Foundation. 15 law school agreed to participate (about 11,300 law student total). The study had approximately 3,400 respondents – a response rate of just under 30%.

The comprehensive report of the findings of the study was published in the Autumn 2016 issue of the Journal of Legal Education. The report found that over half of the respondents reported drinking enough to get drunk at least once in the prior 30 days. 43% reported binge drinking at least once in the prior two weeks and 22% reported binge drinking two or more times in the prior two weeks. In terms of drugs, over 14% of respondents reported use of some prescription drug without a prescription in the prior 12 months. Use of marijuana and cocaine appeared to have increased since a 1991 survey. The study also examined anxiety and depression. 17% of respondents screened positive for depression. 23% of respondents screened positive for mild to moderate anxiety and 14% for severe anxiety. Of the 21% who had been diagnosed with anxiety, nearly one-third were diagnosed during law school.

Additionally, the survey gathered information regarding the respondents’ attitudes toward seeking help for alcohol, drug, or mental health issues. Respondents indicated that they were much more likely to seek help from a health professional than a dean of students or Lawyer Assistance Program, but only 4% indicated they have ever used a health professional. 42% of respondents indicated they had thought they needed help for emotional or mental health problems in the past year. However, only half had actually received counseling.

The study found that the 3 major discouraging factors for seeking help with alcohol and drug issues included potential threats to bar admission (63%), potential threats to job or academic status (62%), and social stigma (36%). For mental health, the 3 major discouraging factors included potential threats to job or academic status (48%), social stigma (47%), and financial reasons (47%).

The National Institute on White-Collar Crime provided a platform to discuss and share ideas on this important subject. Getting diverse voices is critical to spreading information and helping students engage in help-seeking behavior. Although changing the law school culture will be a difficult endeavor, this was a major step in the right direction.

Endnotes


Nina Marino is Partner at Kaplan Marino and Marlon Llanes is a law clerk at Kaplan Marino.
March was Women’s History Month and the Criminal Justice Section participated with a social media campaign. The campaign highlighted contributions of women to the field of criminal justice. We featured both women from our Section and historical figures. Here is a recap of spotlights featuring our Section members:

- Melba Pearson works toward criminal justice reform for women and minority communities, particularly in issues that involve criminal justice reform like mass incarceration.

- Tracey L. Meares, is a Walton Hale Hamilton Professor of Law and Founding Director of The Justice Collaboratory.

- The Honorable Bernice B. Donald is a United States Circuit Judge of the United States Court of Appeals for the Sixth Circuit. Judge Donald has been the recipient of over 100 awards for professional, civic, and community activities.

- Nina Marino has been a leader in organizing women in the field of white collar law. Marino has received a number of awards, including the Section’s 2017 Charles R. English Award.

- Tina Luongo recently assumed the role of president of the Chief Defenders Association of New York.

- Katherine Fernandez Rundle is Miami-Dade County’s & Florida’s first Cuban-American State Attorney. Rundle is a pioneer of numerous Miami programs: domestic violence, child support, human trafficking, and victim’s rights.

- Honorable Sylvia A. Bacon was a judge of the Superior Court of the District of Columbia and was the first woman to serve as chair of our Section.

We enjoyed reflecting on the contributions of women to the field of criminal justice throughout Women’s History Month. We are proud of the work of our Women in Criminal Justice Committee and encourage you to keep up with the work they do. The committee continues to engage in timely conversations and to strengthen the role of women in the field of criminal justice through webinars, taskforces and the development of Section resolutions. The committee also actively builds relationships through their meeting receptions.

The social media campaign used the hashtag #womenofjustice. You can follow the hashtag to view all the campaign’s posts and additional women in criminal justice content. We will continue to spotlight the women of criminal justice throughout the year. Please send submissions to Emily.johnson@americanbar.org.

**Women in Criminal Justice**

**Reforms in Brooklyn, Continued from page 9**

**Conclusion**

The input and participation of major stakeholders is critical for the success of innovative reforms in adolescent justice. In our experience, defenders play a particularly critical role in ensuring that new policies and programs limit harm to court-involved youth and do not result in net widening. Increased access to community-based services should never come at the cost of unnecessary court involvement. Defenders, with an eye to limiting the scope of the criminal legal system, will always play a key role in keeping net widening at bay.

**Endnotes**


10. To learn more about SOS projects, visit Crown Heights Mediation Center website at www.crownheights.org/sos/.

11. Learn more about the Invest in Youth initiative at www.brooklyncommunityfoundation.org/programs-impact/youth.

**Staff News**

Linda Britton is CJS’s new Standards and Policy Director. Linda has been working at the ABA as the Director of the Commission on Youth at Risk where she has often worked with CJS, including serving as a liaison on the Juvenile Justice Standards Task Force.
Corporal Bodies—Corporate Bodies

By Jonathan Shapiro

What all business leaders can learn from the Medical Profession

There is wide spread agreement within the medical community that a structured regime of preventive medical care or “prev. med,” not only saves lives, but also saves money. Indeed, this principal has led to the oft quoted maxim: “that an ounce of prevention is worth a pound of cure.” Even the medical insurance industry, certainly not known for freewheeling or profiteer spending, has realized that by covering its insured for regular preventative care, it is ultimately more profitable.

This same mindset ought to be present whenever the leaders of Corporate Bodies come together to decide how best to ensure the long-term health and viability of those living and breathing economic beings for which they are responsible. After over 15 years at the World Bank Group, ten leading and conducting investigations, and a half decade as an Integrity Compliance Officer where I analyzed and evaluated dozens of corporate compliance programs, I have spoken with, and assisted, numerous CEOs, CCOs, GCs, and other senior leaders from both publicly traded companies and smaller enterprises, as they began to guide their respective companies out of “corporate intensive care” following a sanction imposed on them by the World Bank or a national enforcement authority. I have learned some things from these discussions. Namely, companies, to remain healthy and more profitable, need to invest in what I have come to call “corporate prev. med.”

The Heart Attack

Many of you who will read this, like me, are of a certain age where eventually you get a call which goes something like this:

“Did you hear about __________?”

“No. What happened?”

“He had a massive heart attack.”

“No kidding.”

“Nope”

“Wow. Where is he now?”

And after we hang up the phone, we inevitably ponder, if for just a moment, our own mortality. We also may try to convince ourselves that since we walk by a gym on the way to work, unlike our friend, are leading a healthy lifestyle. About him we think: “Well he was a heart attack waiting to happen.” Why? Because we knew the lifestyle that our friend led. His was a diet loaded with the rich foods we all love, but as the norm not the exception; he never exercised, and he bragged about not seeing a doctor for years—a text book case of unhealthy and risky living. All behavioral signs pointed to the statistically probable. Any of our gentle cautionary prodding about his lifestyle were answered with devil-may-care responses like: “I have been eating like this since high school and nothing has happened yet.”

Well, then, of course, something happened.

The next time we see our nearly departed friend, shock describes the experience. Mr. Heavy Cream has gotten religion. Pulped kale and quinoa protein smoothie in hand, he, with the messianic zeal of someone who has seen death but narrowly avoided it, tells us about the dozens of pounds he has shed since “his incident,” how he now has completely re-configured his life-style away from his former ways, how exercise and conditioning are a part of his every day routine, and how he has traded truffled mashed potatoes with heavy cream for steamed baby carrots with curry.

He then tells you about the code blue triage team that almost lost him in the ER, and the dozen or so doctors who kept him alive and checked in on him during his one week in the hospital. You are then told in a slightly hushed tone: “Hey don’t get me wrong I am happy to be here” dramatic pause, “but you can’t even imagine the size of the phone numbers on the hospital bills for my one week vacation there. If I hadn’t had my two new stents in by the time I got them, I would have had another heart attack. I was billed by doctors that I don’t even remember seeing. They also billed me tens of thousands of dollars in lab tests, and had the chutzpah to charge me $8 for an aspirin. I even got a bill from an Oncologist.” He adds: “But, lying there, hooked up to a dozen beeping machines, I was in no position to negotiate fees. So, I just keep paying.”

And off you go, thinking that maybe the gym membership and running sneakers that you gripe about being too expensive really aren’t.

How Healthy is Your Company?

Which brings me to the matter of Corporate Bodies. High risk business behavior, not always and not immediately, but
often, leads to bad results. These bad results could include very invasive and costly investigations of corporate conduct, the scouring of the books and records by authorities such as the FBI, the SFO, or the investigative offices of the various International Financial Institutions. They can also include personal criminal liability for individuals. And when the corporate “heart attack” comes in the form of a founded or uncontested allegation of fraudulent or corrupt conduct- and it will come-the financial and other costs associated with keeping an entity alive will far outstrip any investment that would have been required for the always readily available, but heretofore ignored, corporate prev. med.

Corporate bodies, like our own corporeal ones, need to be regularly examined for possible signs of ill health. These examinations must include not only periodic corporate risk assessments, but also the adoption/improvement and effective implementation of corporate compliance programs which are designed to mitigate those identified risks. Bringing in specialists for this undertaking helps to not only ensure objectivity, but also to ensure that best practices are considered to mitigate identified vulnerabilities.

Possible Symptoms:

Often, identified vulnerabilities that are left unaddressed can bring on the heart attack. Ask yourself:

- Whether your company clearly and unambiguously prohibits fraud, bribery and corruption?
- What is the “compliance” tone at the top of your company?
  - Does it need to change?
  - Is the message reaching your employees?
- Who is responsible for creating and maintaining an organizational culture that encourages ethical conduct and a commitment to corporate compliance and following the law?
- Are you accurately recognizing the risk profile of your Company?
  - Have you done a comprehensive risk assessment?
- Do you know who you are hiring?
  - What due diligence are you doing on your employees?
  - What rules do you have for hiring former government officials, making political contributions or charitable donations?
- Do you have clear guidelines and approval protocols for Gifts, Hospitality, Travel, and Entertainment?
  - Are your employees adhering to them? How do you know?
- What, if anything, do you do to ensure that you have adequate relevant information about your business partners?
  - Do you have due diligence protocols in place?
  - Are you actually conducting that due diligence?
  - Do you require proper documentation for all business relationships?
  - Do you have proper monitoring and oversight over the execution of all contracts?
- Do you operate in a high-risk environment?
  - What are the additional risks that come from these operations?
  - Are you taking any special steps to mitigate these risks? Do you need to?
- Do you provide regular corporate compliance training that is effective and tailored to the appropriate roles and responsibilities of the employees being trained?
  - Is participation documented and mandatory?
  - How often are staff required to participate in training?
- Do staff have an obligation to report concerns about violations of the Company ethics guidelines or corporate compliance programs?
  - Can they report anonymously?
  - Do you have a non-retaliation policy
  - Are your staff actually reporting concerns and are you logging these concerns?
- If a possible violation of Company policies is identified, do you have procedures in place to investigate it?
  - Do you have a plan in place to respond with appropriate corrective action if the violation is founded?
  - Do you actually take corrective action when violations are found?

If you can't convincingly answer these questions or at least point to clear corporate policies which address them, your company could be at risk.

Corporate executives, while acknowledging the benefits of a robust corporate compliance program, will often relegate it to the “nice to have” rather than the “must have” bucket. Reasons for this include program costs, the concern that the corporate funds for the program will have to be reallocated from other important priorities, and that a corporate compliance program is not, in the literal sense of the term, a profit center. These reasons along with the “nothing has happened yet”
Third-Party Intermediary Risk in Latin America: How Well Do You Know Your Gestor or Despachante?

By Glenn Ware, Robert Chamberlain, Kenneth Ray

It's nearly impossible for companies conducting business in Latin America to avoid red tape. Virtually any startup activity — be it incorporating a subsidiary, securing a license or permit, establishing a joint venture, or competing in a public tender — involves coping with bureaucratic inertia. Starting a business in the region typically requires nine separate procedures, taking an average of 37 days — approximately double the number of procedures, and quadruple the turnaround time, typically required in developed countries.

This administrative rigidity can threaten seamless entry into a new market or the expansion of existing operations, producing potentially costly delays. Some therefore may opt to engage third-party intermediaries that are familiar with local business norms and regulatory requirements, and accustomed to interacting with government agencies and officials. These decisions and relationships need to be approached with care and caution.

Regulatory realities

Latin America has been buffeted by scandal, public outrage and political ruin, and issues of corruption and enforcement are front and center. The entire region has seen a wave of new local anticorruption laws and enforcement, adding to already-robust US Foreign Corrupt Practices Act (FCPA) enforcement, which has been singling out third parties and intermediaries for special scrutiny.

Perhaps no country has taken a more aggressive stance than Brazil, which enacted the Clean Company Act in 2014, partially modeled on both FCPA and the UK Bribery Act. Under the Act, executives have been held personally and criminally responsible for actions taken by employees under their charge. And like the FCPA, the Act provides for extrajudicial enforcement in certain cases. Brazilian and foreign multinationals with Brazilian subsidiaries and their executives are regularly investigated for domestic and/or foreign bribery.

Economic crime in Latin America

In PwC’s 2018 Global Fraud and Economic Crime Survey, one quarter of respondents from Latin America said they had been asked to pay a bribe, either in country or globally, in the previous two years. Stretching out over a longer time span (four years), the patterns come into view: the percentage of economic crimes committed by external parties across the region jumped from 23% in 2014 to 34% in 2018 — with notably higher instances in certain areas: respondents from Argentina reported 44% economic crime committed by external parties, and Venezuela reported 39%.

Of those external fraud actors, 20% were agents or intermediaries of companies — with higher representation in Peru (30%), Brazil and Colombia (25% each). Region-wide, 32% of these external fraudsters were connected to organized crime, with sharply higher shares in Venezuela (50%), Peru (50%) and Brazil (38%).

Know your intermediary

Companies operating in Latin America may find themselves in situations where contracting with a third-party intermediary is either expected or required due to local norms. The key to doing business successfully in the region is to understand the nuances and risks of engaging each.

Certain intermediaries, known as gestores in Spanish or despachantes in Portuguese, are considered formal occupations in Mexico and Brazil. They also may have additional service-type designations — for example, intermediaries assisting with routine public registry (gestor de trámites administrativos or despachante documentario) or customs (gestor aduanal or despachante alfandegario) procedures. In Uruguay, procuradores en derecho act as credentialed attorneys’ assistants who may manage procedural matters on behalf of clients before local courts.

Cambistas — unaffiliated individuals who facilitate the purchase and sale of currency — are required to register with financial regulators in Peru. But in Argentina (where they are known as cueveros or arbolitos) and Brazil (doleiros), they tend to operate under the radar.

Glenn Ware is a Principal/Practice Group Leader for the Global Anti-Corruption, Intelligence and Threat Practice for Pricewaterhouse-Coopers LLP. Robert Chamberlain and Kenneth Ray are Directors, PwC US. Thanks to Nicole Arellano, James Gargas, Lauren Mostakas and Esteban Xifre-Villar for their contributions to this piece.

This article appears in conjunction with PwC’s sponsorship of the CJS and neither the CJS nor the ABA recommends or endorses the product or services of PwC.
Criminal Justice Section Newsletter

Suspicious explanations or vague descriptions.

Links to organized crime.

Politically exposed persons or acting/former government officials.

Protecting your company

Companies that conduct business in Latin America, or that are planning to do so, should closely examine and understand the reputation of third-party intermediaries acting on their behalf. It’s also critical to examine the reputation of “fourth parties” — third-party intermediaries acting on behalf of their business partners.

Central to the due diligence process is looking for red flags. Many of these red flags may not be obvious to organizations unaccustomed to doing business in the region. Here are some warning signs to look out for when considering higher-risk intermediaries:

• **Suspicious explanations or vague descriptions.** Intermediaries may claim “this is the way things are done here” or provide unspecified descriptions — such as “consulting,” “facilitating,” “handling,” or “processing” — when asked to describe the methods employed to deliver proposed services.

• **Politically exposed persons or acting/former government officials.** Intermediaries with key professional or personal ties to the public sector may leverage inside knowledge and contacts to circumvent standard protocols or regulations via improper payments or “quid pro quo” arrangements.

• **Links to organized crime.** Intermediaries may moonlight, providing services — for instance, as bookkeepers, attorneys, consultants, financial advisors or security personnel — to parties seeking to conceal illicit operations or launder proceeds.

Conclusion

These facts, while daunting, are not meant to paint all intermediaries across all countries with a broad brush. Third-party intermediaries can play an essential role in day-to-day business operations and transactions in Latin America, providing a bridge between a company’s business needs and the conditions on the ground. They can help organizations unlock opportunities, grow market share and build profitable operations.

The key is to adopt a proactive, risk-based strategy that can protect your organization’s brand, and the brand of your business partners, when doing business in this dynamic and fast-changing region.

Endnotes


Corporate Bodies, Continued from page 5

mindset, often carry the day.

The Costs

However, in my numerous discussions with senior executives whose companies have had their own corporate heart attacks, one thing becomes abundantly clear. They are really expensive! It is not uncommon for companies to spend hundreds of thousands if not millions of dollars for internal investigations, counsel, remediation, and monitors. Millions more are spent on fines, and during periods of ineligibility many profitable opportunities are lost. In addition, and certainly worth noting is the fact that while companies can’t go to prison, people can, and judges are, with increasing frequency, locking people up. I repeat: People are going to prison.

Overall, to triage, treat, and overcome the damage resulting from their corporate event, companies are forced to spend many times the amount that it would have taken to proactively put in place and effectively implement a program which would have detected, deterred, and remediated the underlying unhealthy corporate conduct. Many business leaders have also remarked that for an extended period of time, because of the reactive and possible existentialist nature of the corporate threat, they don’t have any time for running their companies since every waking hour is spent with lawyers, auditors, monitors, their Board, and regulators.

Which brings us full circle to the original premise of this article. Namely, prev. med. in this setting— periodic risk assessments and the adequate resourcing of robust corporate compliance programs that effectively mitigate identified corporate risks—is as necessary for companies as it is for people. Failing to proactively confront and mitigate the risks which are present can put an otherwise healthy company in very costly and disruptive corporate intensive care.
Reforms in Adolescent Justice in Brooklyn

By Lisa Schreibersdorf and Andrea Nieves

Brooklyn Criminal Court is on the forefront of incubating reforms for adolescents charged with misdemeanors in adult courts. Unlike most of the rest of the country, New York only recently raised the age of delinquency court jurisdiction to 18 from the current 16. In 2018, New York’s raise the age reform will go into effect, diverting 16- and 17-year-old youth charged with low-level crimes to Family Court. Yet inaction at the state level spurred innovation at the local level, bringing stakeholders including public defenders, prosecutors, judges and community organizations together, with the support of the American Bar Association, to reform local practice to meet the unique needs of adolescents up to age 24.

Over the past decade, courts, researchers and the general public have begun to question the utility and efficacy of tough on crime policies, particularly as they apply to young people. The U.S. Supreme Court, in eliminating the death penalty for juveniles, relied on research proving what parents and teachers everywhere already knew anecdotally: that a person’s brain continues to develop into their mid-twenties, making adolescents especially vulnerable to impulsive behaviors and strongly receptive to rehabilitation efforts. Many of the behaviors that bring youth into the jurisdiction of juvenile and adult courts are characteristic of adolescence, including shoplifting, smoking marijuana or drinking alcohol, fighting with other teens, bullying or jumping a subway turnstile. Youth who commit these same acts in white suburban neighborhoods often do not face arrest, detention, court-involvement and potentially permanent collateral consequences associated with a criminal record. Yet black and brown youth in Brooklyn face exactly that. Increasing recognition of this racial injustice, in conjunction with new information about adolescent brain development, led to the creation of several innovations in Brooklyn that have dramatically transformed the way that the county deals with court-involved youth.

Of particular concern with any criminal justice reform is the threat of net widening.1 “Net widening” is the name given to the process of administrative or practical changes that result in a greater number of individuals being controlled by the criminal justice system.2 While it may seem counterintuitive, the research is clear: when it comes to youth, it is best to steer non-violent youthful offenders out of the justice system. Studies show that first-time offenders will never be arrested again, regardless of any intervention they receive. Almost 70 percent of youth who are arrested once are never arrested again. 20 percent of young offenders are re-arrested two or three times, with only six to eight percent falling into the category of three arrests or more.3 Re-arrest rates appear to mirror the reality in the streets. A recent study found that 91.5 percent of justice-involved youth reported decreased or limited illegal activity during the first three years following their court involvement.4 Re-offense statistics hold true whether or not first-time offenders are provided diversion interventions.5 Stakeholders in Brooklyn were keenly aware of the research on net widening and kept those lessons in mind when they began to develop new approaches to adolescent justice in our criminal courts.

Brooklyn Racial Justice Task Force Pilot Program

In early 2013, the American Bar Association Brooklyn Racial Justice Task Force designed a pilot program for 16- and 17-year-olds with Desk Appearance Tickets (DATs) for entering the subway without paying the fare and marijuana possession. Young people eligible for the program were given the chance to attend a one-day class or other appropriate short-term intervention prior to arraignment in exchange for having their cases dismissed and sealed. Upon compliance with program requirements including successful completion of the seminar, and no further involvement in the criminal justice system, the juveniles’ cases were dismissed on the next adjourn date.

The project was specifically designed in response to studies that indicate that short and targeted interventions are more effective than intrusive and long-lasting obligations when it comes to modifying the behavior of teenagers. Critically, the project also allowed youth to resolve the case in one day—creating an impression while the matter is fresh in the young person’s mind, rather than weeks or months later in a typical court case.

The initial 2013 Desk Appearance Ticket-Youth (DAT-Y) pilot was a resounding success. The project resulted in a 50 percent reduction in re-arrest for youth who participated in the program in Brooklyn criminal court, as compared to youth who did not participate.6 In summer 2014, the ABA Brooklyn Racial Justice Task Force expanded the pilot and created a new Youth DAT courtroom for all 16- and 17-year-olds appearing in court for the first time with a Desk Appearance Ticket.

Project Reset

Project Reset is a collaborative effort by the New York Police Department, the non-profit Center for Court Innovation, city prosecutors and defense attorneys in 2015 to provide youth an off-ramp from the criminal justice system. The program began as a pilot in Brooklyn and Manhattan and has since been extended to seven police precincts citywide.

Lisa Schreibersdorf is the founder and Executive Director of Brooklyn Defender Services, a public defender office that represents nearly 35,000 people in Brooklyn, New York every year. Andrea Nieves is a Senior Policy Attorney at Brooklyn Defender Services.
16- and 17-year-olds who are charged with minor offenses such as drug possession or shoplifting are issued a DAT at the point of arrest and notified about the Project Reset alternative. Prosecutors review each case and a public defender discusses the pros and cons of the program with the client. If the youth chooses, he or she will take part in a two-session restorative intervention administered by the Center for Court Innovation. The restorative intervention depends on the needs of the participant, and may involve individual counseling, a facilitated group discussion, or community service that is focused on young people. Once completed, the prosecutor declines to prosecute, no record of the case is retained and the youth never needs to appear in criminal court.

Like the DAT-Y pilot, Project Reset has been widely successful in reducing recidivism. Recidivism rates for youth involved in the program were 8 percent, as opposed to 25 percent for youth who did not participate. In the first six months of the pilot, the program had a 98 percent compliance rate. Project Reset is a true diversion program, meaning that youth never have to enter a courtroom if they successfully complete the program. Yet Brooklyn continues to provide alternatives to incarceration opportunities for youth whose cases are not diverted at the outset.

**Dedicated Adolescent Diversion Courtroom**

In early 2012, New York State’s Chief Judge Jonathan Lippman established a pilot Adolescent Diversion Program (ADP) in nine counties, including Brooklyn, to handle cases involving 16- and 17-year-olds defendants. Recently, in response to the success of the DAT-Y program and Project Reset, the program has been expanded to serve all of Brooklyn’s youth charged with misdemeanors up to age 24, including felonies that have been reduced down to misdemeanors.

After arraignment, criminal court cases that are not resolved involving adolescents are transferred to a special courtroom. The presiding judge receives specialized training in adolescent brain development and trauma. Brooklyn Justice Initiatives, a non-profit organization, provides youth with cases in the courtroom alternative to incarceration services including, but not limited to, mental health, drug treatment, education, employment and job training. The young people in the courtroom received a clinical assessment, age-appropriate services and non-criminal case outcomes. An early assessment of the 16/17-year-old pilot program by the Center for Court Innovation found that the program did not jeopardize public safety and, in fact, produced a slightly lower re-arrest rate for new felonies.

**Brooklyn Adolescent Representation Team**

At the same time as all of these reforms in criminal court, Brooklyn Defender Services (BDS), a public defender office that represents more than 30,000 clients in criminal, family and immigration cases every year in Brooklyn, created the Brooklyn Adolescent Representation Team, or BART. BDS’s youngest clients, ages 14-21 are represented by BART attorneys specially trained to work with young people. This includes understanding brain development and developing expertise in the institutions that our clients interact with as young people, including educational, medical, mental health, the Administration of Children’s Services and Family Court. Wraparound services for adolescents include Youth Social Workers and Education Attorneys, all situated together to work in tandem with our young clients.

Attorneys in BART assure that their young clients understand what is going on in their case, using adolescent-specific language and work directly with parents and guardians to help get the young person and the family on track if assistance is needed. BDS has specialized social workers who work exclusively with the youngest clients and directly with these specialized attorneys. BART social workers remind adolescents of appointments, escort clients to service providers and school, link clients with community-based services, provide counselling for incarcerated and young people and write reports for the court.

Our office is part of a network of Brooklyn-based organizations designed to reduce the impact of the criminal justice system and develop leadership among young people in Brooklyn’s poor communities of color. Also within BART are full-time education attorneys who support the clients in pursuing their educational needs and goal and specialized immigration attorneys to apply for Special Immigrant Juvenile Status, Deferred Action for Childhood Arrivals (DACA) and other youth-specific remedies. BART social work staff conducts group sessions for youth and have referred many to the formidable Save Our Streets (SOS) programs that are getting kids safely out of gangs and interrupting violence in our communities.

The team is also focused on strategic advocacy in the courtrooms and with stakeholders to think critically about how court actors can minimize harm to court-involved youth, leading to many of the collaborative reforms that Brooklyn has implemented over the past four years.

**Funding for Adolescent Justice Reforms**

Philanthropy has also played a critical role in supporting local reform. The Brooklyn Community Foundation’s Invest in Youth initiative deployed over $2.3 million to Brooklyn’s youth-serving nonprofits in 2016. Their investment in the community supports alternative-to-incarceration programs, adolescent social workers and case workers, and workforce development programs across the borough. The foundation also brings together grantees to ensure collaboration and better communication between the many community organizations serving Brooklyn’s youth.

*Continued on page 3*
Attention to Mental Health in the Criminal Justice System

INTERN'S CORNER  By Paola Bayron

The criminal justice system in the United States often fails to account for a very vital aspect of rehabilitation—mental health. An article recently published in the New York Times details the weaknesses of the system regarding mental health by using the privately-owned East Mississippi Correctional Facility as an example. The facility is designated by the state to hold mentally ill inmates, but has shown to be far from the beneficial location it should be. One of the instances the author shows to make his point is the mentally ill patient on suicide watch who proceeded to take his own life after not receiving the care necessary to treat his mental issues. The events occurring in this facility are unfortunately not singular; there is a long history of the criminal justice system turning a blind eye to mental illness. This article will continue to explore the role mental health plays in the lives of prisoners and how change can be initiated to improve wellbeing of inmates.

The Bureau of Justice Statistics reports that more than 64% of inmates in the United States have a mental health concern. However, studies have shown that most individuals that come into the hands of the criminal justice system do not receive the treatment they require. Additionally, only a small percentage of those who enter prison with a previously diagnosed mental illness continue to receive the medication necessary while imprisoned. This lack of attention to mental health not only affects the prisoner’s wellbeing while incarcerated, but also affects their likelihood of reoffending and recidivism rates.

The issue of mental health and criminal justice often go hand in hand, yet public concern often fails to account for it. Too often are stories brought up of individuals who are sent to jail—or worse—simply because the officers on the scene are not trained in understanding psychiatric episodes. If this problem is so salient around us, why are there no efforts to improve the system? Why are people who could benefit more from psychiatric help than jail still getting sent to prison? More importantly, what can be done to intervene?

The incarceration of people who need mental help instead can be stopped in its tracks during various steps of the criminal justice procedure. In its most basic level, it is crucial to train officers in recognizing the happenings of a mental health crisis to know how correctly respond. If the individual requires mental health treatment, it would be ideal to carry this out off—assuming deliberate deviant behavior and placing them in handcuffs. Not only would this action prevent the worsening of the individual’s mental health condition, it would also prevent overcrowding in jails, reduce stigmatization of the individual, and reduce the officer’s duties to the individual so they can divert their efforts to more crucial offenses.

An additional way of aiding the emphasis on mental health by the criminal justice system is through pretrial diversion (e.g. drug courts, mental health courts). Increasingly more and more states are engaging in this approach as a means of diverting individuals from incarceration and instead addressing the matter at hand regarding mental issues.

The corrections aspect of the criminal justice system is regarding by many as the area that needs the most attention. It has been shown that individuals who have either physical or mental health issues that went untreated during their time in prison have a more difficult time reintegrating back into society. Facilities like the East Mississippi Correctional Facility are a plague on the criminal justice system and negatively affect the proper rehabilitation of inmates. Incarceration can be a very traumatic experience in itself and when coupled with exacerbating factors (such as solitary confinement or lack of available personnel and resources), it can be a recipe for collective and individual disaster.

Movements to improve attention to mental health within the criminal justice system are on the rise. Efforts like The Stepping Up Initiative, crisis intervention team programs, and Medicaid expansion programs to extend healthcare to those recently released from jail have started to gain traction over the recent years. States, such as New York, Pennsylvania, and Texas, have taken matters into their own hands and implemented behavioral health assistance programs to help inmates receive healthcare upon release from prison. The road towards a better approach to mental health within the criminal justice system is slow but steady, and bringing awareness to the issues surrounding this concept is the perfect start.

Endnotes

5. U.S. Department of Justice, National Institute of Corrections, Mentally Ill Persons in Corrections, Washington, DC.
An Argument for Pretrial Detention Reform

INTERN’S CORNER  By Sara Gershman

Many people know of the haunting story of Kalief Browder; how he was held in pretrial detention at Riker’s Island for three years awaiting a trial that never came, for a crime he died swearing he did not commit. Kept in solitary confinement for the majority of his jail time, he endured ample abuses and attempted suicide numerous times, both while in jail and after he was released when his charges were dropped. Browder was sixteen years old when he was charged with stealing a backpack. He was 22 when he took his own life.1

Common critiques of what Browder endured are that he never should have been kept in solitary confinement, or have suffered such abuses during his time in jail. Advocates argue that better mental health services need to be available to detainees, and that he should have been treated better as a juvenile awaiting trial for a non-violent crime. These critiques are legitimate and deserving of both thought and action. Yet a more pressing criticism, in my opinion, is that he should not have been placed in pretrial detention, at all.

Pretrial detention is intended to secure arrestees who pose a danger to society or are a flight risk. Historically, bail has been collected as a form of assurance that an individual will not flee to avoid trial and will not commit additional crimes. However, today the system is used to disproportionately jail members of lower socioeconomic statuses by placing arrestees unable to post bail in pretrial detention. Aside from more serious charges for which bail is not given as an option, those who can afford bail are free to go until their trial begins, while their less-wealthy counterparts languish behind bars. This system of bail does nothing to ensure public safety, as “nearly half of the highest-risk individuals are able to pay the money bail amount and go home before trial.”2 Kalief Browder was not high-risk; charged with theft of a backpack, he was neither a danger to society nor a flight risk. He should have been released on personal recognizance but was incarcerated because he, like many of the 536,000 individuals in the United States who are currently awaiting trial in jail,3 was unable to post bail.

Although pretrial detention has been determined to be constitutional through a litany of cases, the real-life practice of pretrial detention, as evidenced by egregious cases such as that of Browder, challenges many constitutional statutes. Amendment five of the Constitution stipulates that “[n]o person shall...be deprived of life, liberty, or property, without due process of law;”4 amendment six designates that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and pub-

Sara Gershman is an undergraduate student at the George Washington University and an intern for the ABA Criminal Justice Section.
Reforming the bail system is one of many ways that pretrial detention can be avoided and made more just. Given our current bail system, the American Bar Association has published dozens of standards for sensible and just pretrial release that complement the aforementioned bail reform. Standards instruct law enforcement to “release [arrestees] under least restrictive conditions” and to set bail “at the lowest level necessary to ensure the defendant’s appearance and with regard to a defendant’s financial ability to post bond.” Rather than be detained or released on personal recognizance, an arrestee can be placed under supervision with limited access to specific activities, similar to parole. It is specified that the trials of detained arrestees should be scheduled more promptly than those of non-detained arrestees, and the use of pretrial services agencies is recommended. Issuing citations or summons over making arrests is highly encouraged, as is bringing a defendant before a judicial officer within, at most, 24 hours of arrest. Unless there is “a substantial risk of nonappearance or need for additional conditions” as delineated in standard 10-5.1, arrestees should be released on personal recognizance. Further, “[t]he judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay.” Though imperfect, these standards serve as excellent guidelines for establishing more equitable pretrial justice. Adherence to these standards by law enforcement agencies throughout the nation would be a formative step towards pretrial justice, and ensuring that no one else suffers the same gross injustices and tragic fate as Kalief Browder.

Endnotes
5. Ibid.
11. Ibid.