



WHITE COLLAR CRIME COMMITTEE NEWSLETTER

WINTER/SPRING 2018

ABA CRIMINAL JUSTICE SECTION WCC Committee

MESSAGE FROM THE EDITOR

Welcome to the Winter/Spring 2018 Edition of the *White Collar Crime Committee Newsletter*.

The *White Collar Crime Committee Newsletter* showcases content and opinion of leading experts, scholars, and practitioners through articles written by our [Criminal Justice Section](#) members. The [White Collar Crime Committee](#) seeks your participation in its 20 regional committees and 20 substantive committees; and encourages your attendance at its national and international conferences, CLE, and workshops.

The White Collar Crime Committee encourages you to participate year round, and also looks forward to reading your submissions for our upcoming Summer/Fall 2018 issue. If you would like to submit an article for our next edition or have ideas on a subject for a topical Newsletter, please contact the WCCC Newsletter Subcommittee Chair, **Salma S. Safiedine** at S.Safiedine@SPartnersLaw.com.

Please note these upcoming CJS programs related to white collar crime:

[32nd National Institute on White Collar Crime](#): Feb. 28 - March 2, San Diego, CA

5th Southeastern White Collar Crime Institute: Sept. 6-7, Braselton, GA

[7th London White Collar Institute](#): Oct. 8-9, London, UK

[11th CJS Fall Institute and Meetings](#): Nov. 1-4, Washington, DC
With Academic Roundtable, White Collar Crime Town Hall, CJS Awards Luncheon

FEATURED ARTICLES

SESSIONS/TRUMP "TOUGH ON CRIME" APPROACH IS THE REAL JOKE

By Jeffrey Bornstein

After the New York City terrorist attack at the end of October, President Trump tweeted that America's justice system was "a laughing stock" and "a joke." Earlier this year Attorney General Jeff Sessions spoke forcefully about the need to increase the length of prison sentences to reduce crime and issued a "Memorandum on Department Charging and Sentencing Policy," reversing Obama administration efforts to reduce sentences for non-violent drug offenses. Whether and to what extent these sentiments carry over to white collar crime remains to be seen, but it is clear that prior bipartisan attempts to reform sentencing have been lost in the rhetoric. [READ MORE](#)

FACILITATION PAYMENTS NOW A CRIMINAL OFFENCE IN CANADA

By Sean K. Boyle and Alexandra Luchenko

Effective October 31, 2017, Canadian anti-corruption legislation has diverted significantly from US law by repealing a previous exemption that permitted facilitation payments. The elimination of the exception permitting facilitation payments was repealed via amendments made to Canada's *Corruption of Foreign Public Officials Act* (CFPOA) in 2013. However, those amendments were held in abeyance until this year. [READ MORE](#)

THE DOUBLE WHAMMY: PAYING A FORFEITURE JUDGEMENT AND A RESTITUTION JUDGEMENT IN A SINGLE CRIMINAL CASE

By Scott Gilbert

Over the last several years, Federal criminal practitioners have become increasingly familiar with the notion that a defendant in a fraud case will likely be ordered to forfeit the proceeds of her offense and to pay restitution to the victims. The vast majority of Circuit Courts of Appeal have held that forfeiture and restitution are separate and distinct parts of a defendant's sentence, that they are both mandatory, and that they each serve a different purpose. [READ MORE](#)

INSIGHT INTO THE DUTCH APPROACH TO LEGAL PROFESSIONAL PRIVILEGE

By Maarten 'T Sas

Quite a few people in Europe are running a temperature over the legal professional privilege and for good reason. In various European jurisdictions LPP is under threat. In this article I will focus on developments in the UK, Germany and The Netherlands. Furthermore, I will touch upon two recent rulings in the US. Although the debate rages across several jurisdictions - and therefore extends to a plurality of interpretations of LPP - the majority of those involved in it appears to share concern over the drastic restrictions of the privilege. This concern comes across from, for example, a recent statement by the Council of Bars and Law Societies of Europe (CCBE) subscribing in very explicit, unambiguous terms to the importance of LPP. [READ MORE](#)

INSIDER TRADING: THE EVOLVING DEFINITION OF FIDUCIARY DUTY

By Steve Jumes

Federal appellate courts, including the U.S. Supreme Court, are redefining key components of insider trading cases. Specifically, these courts are altering, and sometimes expanding, fiduciary duty as it pertains to corporate insiders. Consequently, they are broadening the group of people subject to civil and criminal prosecution because these changes widen both the personal benefit and relational proximity proof elements. These expansions are the result of significant appellate holdings, which resolve issues pertaining to those proof elements. An examination of the problems that have been recently addressed provides context and explanation for these changes.

[READ MORE](#)

THE MADOFF CASE, FROM MY PERSPECTIVE (PART 2 OF 4)

By Roland Riopelle

The proof at trial showed that Madoff had investors who were effectively partners in his scheme, and that these investors bailed him out when the market turned against him, customers sought withdrawals, and money got tight. Jeffrey Picower was the principal example of this sort of investor, as described in the testimony at trial. When money was short at the Madoff Ponzi scheme, Picower and/or other large investors would provide a significant influx of cash in exchange for a rate of return that was much higher than that of other Madoff investors. [READ MORE](#)

REDUCING CYBER RISK WHEN MOVING TO THE CLOUD

By Kristofer Swanson

What steps can you advise your clients to take now to preserve access to critical data in the event of a cyber attack? This first in a series of infographics, capturing Forensic Perspectives from CRA, will help you counsel your clients as they seek to further mitigate the risks of cyber-crime and data breaches. [READ MORE](#)

INCREASING DIVERSITY IN THE LEGAL RANKS

By Jennifer Beaudoin and Kate Frost

For at least the last decade, legal professionals have spoken of the need to bring more diversity into their ranks. And yet the legal profession — and law firms in particular — have struggled to significantly move the needle, especially at senior levels:

- From 2008 to 2017, the percentage of women lawyers increased only from 34.4% to 37.4%. Only one in 5 equity partners is female.
- While 24% of associates are racial minorities, only 8% are equity partners.
- Only 11% (57) of GCs at Fortune 500 companies are racial minorities.

[READ MORE](#)

[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.]

CJS UPCOMING EVENTS

[32nd National Institute on White Collar Crime](#): Feb. 28 - March 2, San Diego, CA

[21st National Institute on the Gaming Law Minefield](#): March 7-9, Las Vegas, NV

[CJS Spring Program and Meetings](#), April 5-8, Tampa, FL

[Digital Currency and Blockchain National Institute](#): April 27, New York, NY

[28th National Institute on Health Care Fraud](#): May 2-4, Hotel Nikko, San Francisco, CA

[9th Prescription for Criminal Justice Forensics](#): May 31 -June 1, Fordham University, NY

[CJS Annual Meeting & Programs During the 2018 ABA Annual Meeting](#): Aug. 2-5, Chicago, IL

[5th Southeastern White Collar Crime Institute](#): Sept. 6-7, Braselton, GA

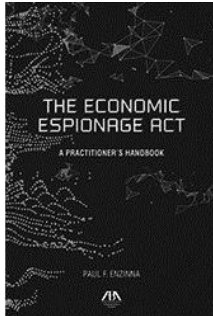
7th London White Collar Institute: Oct. 8-9, London, UK

11th CJS Fall Institute and Meetings: Nov. 1-4, Washington, DC

ABA/ABA Financial Crimes Enforcement Conference: Dec. 2-4, National Harbor, MD

See the complete calendar at www.ambar.org/cjsevents

NEW CJS PUBLICATIONS



The Economic Espionage Act: A Practitioner's Handbook

This is a practical guide for investigation and prosecution of economic espionage and trade secret theft.

See more CJS books at www.ambar.org/cjsbooks

VISIT THE [WHITE COLLAR CRIME COMMITTEE WEBSITE](http://www.ambar.org/white-collar-crime-committee) FOR COMMITTEE UPDATES AND RECENT NEWS

WCCC CHAIR: JOHN HUESTON

The White Collar Crime Committee Newsletter

Editor: Salma S. Safiedine
Deputy Editor: K. Jeannie Chung
Managing Editor: Kyo Suh

The **WCCC Newsletter** is published two times a year.
Articles reflect the views of the individuals that prepared them and do not necessarily represent the position of the American Bar Association, the Criminal Justice Section, any affiliated agencies, or the editors of the newsletter.
Copyright 2018, The American Bar Association.

The American Bar Association Criminal Justice Section

1050 Connecticut Avenue, NW, Suite 400, Washington, DC 20036

Phone: (202) 662-1500, Fax: (202) 662-1501

Email: crimjustice@americanbar.org Web: www.americanbar.org/crimjust
