

The American Bar Association  
Criminal Justice Section

# Annual Report

## 2008-2009



Chair: Anthony Joseph

[www.abanet.org/crimjust](http://www.abanet.org/crimjust)

## *Table of Contents*

I.	Chair’s Introduction .....	3
II.	Policy Overview .....	5
III.	Publishing and Technology .....	8
IV.	Continuing Legal Education .....	12
V.	Outreach .....	16
VI.	Membership and Awards .....	19
VII.	Budget Report.....	25
VIII.	Division/Committee Reports/Charts .....	26
IX.	Section Leadership Roster .....	75

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## I. CHAIR'S INTRODUCTION



As chair of the ABA Criminal Justice Section, I take tremendous pride in the achievement and efforts by our Section during this past year. Some of those efforts have included the following:

During the fall, the Section sponsored a conference at George Washington University entitled, "Sentencing Advocacy and Reform Institute." The conference addressed a multitude of sentencing issues, including current reforms and future trends. The conference was well attended and a tremendous success.

In May the Section assembled, for the first time, the *Criminal Justice Congress*, which brought together key criminal law organizations such as the Department of Justice, Federal Public Defenders, International Association of Chiefs of Police, National Association of Attorneys General, National Association of Criminal Defense Lawyers, National Black Police Association, National District Attorneys Association, The National Judicial Conference, and the National Legal Aid & Defender Association to address issues critical to the proper and just operation of the criminal justice system.

In the spring, we teamed up with the Alabama State Bar, the Mississippi Bar, the Birmingham Bar Association, and the National District Attorneys Association to kick-off our Spring Meeting with a program entitled "Ethics, Politics and Public Corruption," which examined the boundaries between legitimate political activity and corruption, and the impact of aggressive prosecutions on that political conduct.

This past year our committees were extremely active. Some of the achievements include: The White Collar Crime committee sponsored more than 20 CLE programs this year, and partnered with the National Institute on White Collar Crime and the Anti-Money Laundering Conference (done in conjunction with the American Bankers Association) drawing a combined attendance of more than 2,500; The Juvenile Justice committee also worked with a number of key juvenile law-focused entities to present a Juvenile Justice Town Hall Meeting which centered on identifying new priorities and making recommendations to the Obama Administration, as well as to other interested lawmakers; and the Immigration committee worked with the ABA Commission on Immigration to develop a timely policy, which called for legislation to ensure due process and access to appropriate legal assistance for persons arrested or detained in connection with immigration enforcement actions. The ABA House of Delegates adopted this policy recommendation during the ABA Midyear meeting in February.

The Section's Magazine and Book Boards continue to do an outstanding job of monitoring emerging trends in criminal justice to ensure that our members remain informed.

The Section's quarterly publication *Criminal Justice*, once again, did an outstanding job of addressing a broad range of criminal justice issues including: the current state of victims' rights,

the evolution of the enforcement mechanisms, and the emerging role of the criminal practitioner in connection with these rights; how plea bargaining has transformed our criminal justice system from a “due process state” to a “guilty plea state”; the criminalization of negligence under the Clean Water Act; and whether combat trauma in veterans – particularly post-traumatic stress disorder – should be raised as a defense and mitigating factor at sentencing.

In addition to the *Criminal Justice Section Newsletter*, the Section office again published *The State of Criminal Justice 2009*, an annual publication from authors from across the criminal justice field who provided essays on topics ranging from cybercrime to juvenile justice to DNA. We also published the second edition of *Trial Tactics*, authored by former CJS chair Stephen Saltzburg, and *Crime, Incorporated: Legal and Financial Implications of Corporate Misconduct*, which provided a complete re-examination of traditional legal rules and their application given how corporate crime has changed in the last decade.

The online publications – such as the monthly *Section E-News* and various committee newsletters – continue to serve as great resources to members and the general public.

As is evidenced above, our criminal justice system has benefited as a whole by the outstanding efforts and achievements by the members of our Section, and the support and hard work of the staff. I am blessed and will be eternally grateful to the Section for giving me this opportunity to serve.

*Anthony Joseph*

A handwritten signature in cursive script that reads "Anthony Joseph". The signature is written in a dark ink and is positioned below the printed name.

## II. POLICY OVERVIEW

### POLICY GOING BEFORE THE ABA HOUSE OF DELEGATES IN AUGUST 2009

#### *Legislative Committee*

##### **National Study on the State of Criminal Justice**

The Legislative Committee will be submitting a recommendation which supports the enactment of legislation such as S. 714 (111<sup>th</sup> Congress) which would provide for a national study of the state of criminal justice in the United States to consider ways to reduce crime, lower incarceration rates, save taxpayer money, enhance the fairness and accuracy of criminal justice outcomes, and increase public confidence in the administration of the criminal justice system; and urges, as part of such a national study, that consideration be given to all the serious criminal justice issues facing federal, state, local and territorial jurisdictions. The entire recommendation and report is available at [www.abanet.org/crimjust/policy/am09111b.pdf](http://www.abanet.org/crimjust/policy/am09111b.pdf).

##### **Promoting the Prevention of Genocide**

The Section will cosponsor a resolution brought by the ABA Center for Human Rights which endorses paragraphs 138 and 139 of the World Summit Outcome Document of the 60th session of the UN General Assembly (September 2005) concerning the Responsibility to Protect doctrine; and calls for the American Bar Association to endorse the recommendations set forth in the report, *Preventing Genocide: A Blueprint for U.S. Policymakers* (December 2008), by the joint Genocide Prevention Task Force of the United States Holocaust Memorial Museum, the American Academy of Diplomacy, and the United States Institute of Peace.

##### **Eight Guidelines of Public Defense Related to Excessive Workloads**

The Section will cosponsor a resolution brought by the ABA Standing Committee on Legal Aid and Indigent Defense which calls for the American Bar Association to adopt the Eight Guidelines of Public Defense Related to Excessive Workloads, dated August 2009, which contain essential steps to be taken by those organizations and lawyers who provide criminal and juvenile defense services for persons in the United States who cannot afford to hire a lawyer.

##### **Categorical Approach to Immigration & Convictions**

The Section will cosponsor a resolution brought by the ABA Commission on Immigration which calls upon the ABA to support legislation, policies, and practices that preserve the categorical approach that has long been used to determine the immigration consequences of past criminal convictions, under which the adjudicator relies on the criminal statute and the record of conviction rather than conducting a new factual inquiry into the basis for the conviction; and urges U.S. immigration authorities to avoid interpretations of the immigration laws that erode the role of the categorical approach.

##### **Model Rule on Conditional Admission to Practice Law**

The Section will co-sponsor a resolution brought by the ABA Commission on Lawyer Assistance Programs which calls upon the ABA to amend the Model Rule on Conditional Admission to

Practice Law to include an applicant who currently satisfies eligibility requirements for admission to practice law, including fitness requirements, and who possesses the requisite good moral character required for admission, may be conditionally admitted to the practice of law if the applicant demonstrates recent successful rehabilitation from chemical dependency or successful treatment for mental or other illness.

**POLICY APPROVED BY THE ABA HOUSE OF DELEGATES IN FEBRUARY 2009**

The ABA Criminal Justice Section sponsored, or cosponsored with various other entities, the following recommendations submitted to the House of Delegates for consideration at the 2009 Midyear Meeting in Boston. All recommendations were approved as official ABA policy.

*Criminal Justice Section Sponsored*

**101 A (Adams Walsh Act Reforms)** – Urges Congress and state legislatures to re-examine and revise laws, policies and practices that require youth to register as sex offenders or be subject to community notification provisions otherwise imposed upon adult sex offenders, based upon a juvenile court adjudication. The entire recommendation is available at [http://www.abanet.org/leadership/2009/midyear/daily\\_journal/Adopted101A.doc](http://www.abanet.org/leadership/2009/midyear/daily_journal/Adopted101A.doc).

**101 B (Mediation in Criminal Matters)** – Urges federal, state, territorial and local governments to initiate, continue and expand the use of mediation as a means to resolve criminal matters, specifically at a time prior to actual case filing. To view the complete recommendation visit [http://www.abanet.org/leadership/2009/midyear/daily\\_journal/Adopted101B.doc](http://www.abanet.org/leadership/2009/midyear/daily_journal/Adopted101B.doc)

**101 C (Immigration Raids in Criminal Justice)** – Supports legislation and/or administrative standards to ensure due process and access to appropriate legal assistance for persons arrested or detained in connection with immigration enforcement actions and encourages bar associations to raise awareness of the rights available to individuals taken into custody during workplace immigration enforcement actions. The full recommendation can found at [http://www.abanet.org/leadership/2009/midyear/daily\\_journal/Adopted101C.doc](http://www.abanet.org/leadership/2009/midyear/daily_journal/Adopted101C.doc)

**101 D (Child Victims in the Criminal Justice System)** – Urges federal, state, tribal, local and territorial governments to ensure that child victims of criminal conduct have prompt access to legal advice and counsel and to specialized services and protections such as those provided by child advocacy centers approved and accredited by the National Children’s Alliance. A complete and final version of the recommendation is available at [http://www.abanet.org/leadership/2009/midyear/daily\\_journal/Adopted101D.doc](http://www.abanet.org/leadership/2009/midyear/daily_journal/Adopted101D.doc)

*Cosponsored by the Criminal Justice Section*

**109 (Standing Committee on Ethics and Professional Responsibility)** – Amends Model Rule of Professional Conduct 1.10 (“Imputation of Conflicts of Interest: General Rule”) to permit the screening of a lawyer who moves laterally from one private law firm to another, so that conflicts of interest that apply to the moving lawyer under Model Rule 1.9 (“Duties to Former Clients”) are not imputed to all the other lawyers in the new law firm.

## **POLICY IN DEVELOPMENT**

### **Mothers in Prison**

The Section Council will consider a recommendation brought by the Women in Criminal Justice Committee which urges states, territories, and the federal government to ensure that judicial, administrative, legislative, and executive authorities consider and expand, as appropriate, initiatives that facilitate contact and communication between parents in correctional custody and their children in the free community. It will be presented to the Section Council for discussion and comment at the meeting in August.

### **Juvenile Collateral Consequences**

The Section Council will address a recommendation brought by the Juvenile Justice Committee which amongst other things, urges federal, state, territorial and local governments to support the successful reentry and reintegration of youths detained within the criminal justice system into the community, by reducing the collateral disabilities and consequences of arrests that extend beyond the disposition imposed by the court or by operation of law. It will be presented to the Section Council for discussion and comment at the meeting in August.

### **Over-Reliance on Misdemeanors Policy**

The Section Council will discuss a draft recommendation brought by the Defense Function Committee which urges local, state, and federal governments to decriminalize misdemeanor offenses that pose no threat to public safety, and implement a system of civil fines and remedies as an alternative to the criminal sanctions previously in place. This draft recommendation will be discussed at the Council Meeting in August.

### **Transparency of the DOJ Office of Professional Responsibility**

The Section Council will debate a draft recommendation brought by the Ethics, Gideon and Professionalism Committee which calls upon the ABA to urge the U.S. Department of Justice to adopt and implement a policy similar to its previous policy of December 13, 1993, that promotes public accountability by requiring the Department to publicly disclose reports of its investigations and determinations regarding its attorneys' alleged professional misconduct subject to specified exceptions where confidentiality interests are plainly paramount.

*For a summary of additional policy issues the Section of Criminal Justice is developing, visit the Section's policy page at [www.abanet.org/crimjust/policy](http://www.abanet.org/crimjust/policy)*

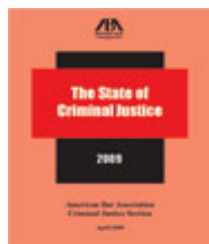
### III. PUBLISHING AND TECHNOLOGY

The Criminal Justice Section's publications continue to provide important resources for Section members and others interested in criminal justice. The book board has overseen the publication of four major titles in the 2008-2009 fiscal year: (1) *Another Bite at the Apple* (Janice L. Bergmann), an in-depth look at Section 2255 motions for federal prisoners; (2) *Do No Wrong* (Peter Joy and Kevin McMunigal), a collection of articles on ethics topics for prosecutors and defenders; (3) *Crime, Incorporated* (Miriam Weismann), assessing the legal and financial aspects of corporate entity crime; and (4) *The Privilege of Silence* (Steve Salky), a case analysis of the Fifth Amendment privilege against self-incrimination. In addition, the CJS staff has produced *The State of Criminal Justice 2009* (edited by Myrna Raeder) and *Trial Tactics Second Edition* (Stephen Saltzburg).

The Section periodicals, *Criminal Justice Magazine* and *Criminal Justice Section Newsletter*, continue to provide relevant information and practice tip-oriented articles.

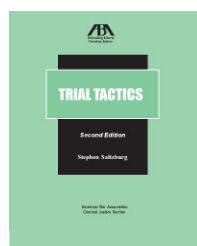
Online publications such as the monthly *Section E-News* and the quarterly *Committee Newsletters* provide additional information and resources to members and the general public.

#### BOOKS



#### [The State of Criminal Justice 2009](#)

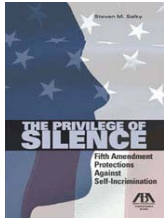
Authors from across the criminal justice field provide essays on topics ranging from white collar crime to international law to juvenile justice. This annual publication examines and reports on the major issues, trends and significant changes in the criminal justice system. As one of the cornerstones of the Section's work, the publication serves as an invaluable resource for policy-makers, academics, and students of the criminal justice system alike. The 2009 volume contains 21 chapters focusing on specific aspects of the criminal justice field, with new additions of full text and reports of all of the adopted official ABA policies passed in 2008-2009 that address criminal justice issues.



#### [Trial Tactics, Second Edition](#)

A compilation of high profile criminal cases, practice tips, legal analyses, and cautions that prepares defense counsel, prosecutors and judges to do outstanding work at trial and assists them in ensuring that justice is done each day in every court throughout the land. The text provides excellent statutory, case law and inside advice by George Washington University Wallace and Beverly Woodbury Professor of Law Stephen Saltzburg. The 54-chapter book is broken down in seven parts: Basic Principles; Examination of Witnesses; Lay and Expert Opinion; Hearsay, Confrontation and Compulsory Process; Character Evidence; Summaries and Exhibits; and Opening and Closing Arguments. The Second Edition includes additional chapters.

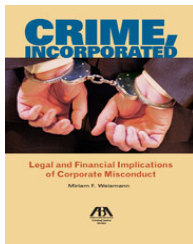




### [The Privilege of Silence: Fifth Amendment Protections Against Self-Incriminations](#)

By Stephen Salky

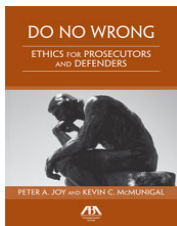
The United States Constitution provides that "no person shall be compelled in any criminal case to be a witness against himself." While this portion of the Fifth Amendment contains only fifteen words, its application can be deceptively complex. This book explains the contours of the Fifth Amendment privilege against self-incrimination in practice, providing a guide for both the civil litigator who may encounter it infrequently, as well as the criminal lawyer who seeks to advance his or her client's interests through the use of the Fifth Amendment.



### [Crime, Incorporated: Legal and Financial Implications of Corporate Misconduct](#)

By Miriam Weismann

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

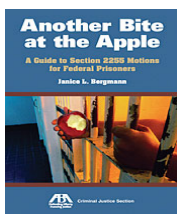


### [Do No Wrong: Ethics for Prosecutors and Defenders](#)

By Peter A. Joy and Kevin C. McMunigal

This book is designed to help provide guidance for resolving ethical issues such as:

- How far may the prosecution or defense go in using religion in a closing argument?
- Does the defense lawyer or the client decide whether to raise an insanity defense or to present mitigation evidence?
- Is the defendant entitled to Brady material prior to entering a plea bargain?
- When may the defense introduce evidence of an alternate perpetrator or SODDI (the "some other dude did it") defense?

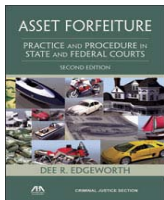


### [Another Bite at the Apple: A Guide to Section 2255 Motions for Federal Prisoners](#)

By Janice L. Bergmann

This is the first book of its kind to focus on the special procedures and concerns that arise when a prisoner moves to vacate, set aside, or correct a federal conviction or sentence under Section 2255. This book is especially important now as Section 2255 proceedings have become significantly more complex with the enactment of the Antiterrorism and Effective Death Penalty Act, and federal courts continue to struggle with the interpretation of the AEDPA's provisions. This book examines the various legal and practical questions that may be encountered in section 2255 proceedings, including those posed by the AEDPA. This book is

an essential resource for anyone wanting an introductory education about section 2255, or for experienced practitioners looking for an in-depth analysis. This important book is the perfect handbook for the litigation of non-capital section 2255 proceedings.



**[Asset Forfeiture: Practice and Procedure in State and Federal Courts , 2nd Edition](#)**

By Dee Edgeworth

This book is a "how to," practical guide to the common legal and practical issues faced by the asset forfeiture litigator. Written for both the criminal defense attorney and the criminal prosecutor, this book: is the only single-volume work summarizing state and federal asset forfeiture procedures; highlights key elements of all 50 states in easy-to-read summary charts; provides strategies for law and motion and civil discovery practice relating to state and federal forfeiture actions; contrasts state and federal forfeiture procedures, including a chart of the distribution formula for all 50 states; and is the only book that addresses ethical issues and discusses the state and federal ethical codes relating to asset forfeiture.

***Practice Under the Federal Sentencing Guidelines, Fourth Edition (2009 release)***

*Practice Under the Federal Sentencing Guidelines* provides extensive discussion and current citations of the hundreds of important cases interpreting the provisions. The volume is published through Aspen Publishers.

**PERIODICALS**

***Criminal Justice (Magazine)***



Feature articles for issues in the 2008-2009 year were: Plea Negotiations (Fall 2009), Criminalizing Negligence Under the Clean Water Act (Winter 2009), Victim's Rights (Spring 2009), Should Combat Trauma Be Part of the Criminal Justice Equation? (Summer 2009)

***Criminal Justice Section Newsletter***

The Section office continues to produce three newsletters per year (fall, winter, and spring), with production done in-house by the Section staff. The expanded newsletter features practice tips, ethics, legislative update, and committee reports, in addition to Section news and updates.

*For details and ordering information of CJS books and periodicals, see the Section's website at [www.abanet.org/crimjust/pubs](http://www.abanet.org/crimjust/pubs).*

## **TECHNOLOGY**

### ***Section E-News (Online)***

Criminal Justice Section E-News has been distributed monthly (since January 2006) to CJS members via email with highlights of CJS activities, chair's messages, event notices, case updates and new resources. E-newsletters are produced in-house by the Section office's technology staff.

### ***Committee Newsletters (Online)***

The CJS committees that produce regular committee newsletters are the White Collar Crime, Juvenile Justice, and the Reentry and Collateral Consequences Committees. Produced in-house by the CJS office.

### ***The Section Web Site***

The Criminal Justice Section's web site ([www.abanet.org/crimjust](http://www.abanet.org/crimjust)) features major portals (membership, leadership, law students, calendar, policy, publications, resources, etc.) Committee pages have been expanded with more committee-specific news items and resources.

### ***E-mail List Services***

The Section office maintains several list services to serve CJS members, committees and the leadership. Also, the CJS office periodically distributes timely information on events and programs, Supreme Court case updates and new resources to all CJS members who have not opted out of the ABA's email distribution system. The Council and committee chairs also participate in respective list services for Section business. In addition, all CJS committees maintain specific list service for particular committee work and discussion.

## IV. CONTINUING LEGAL EDUCATION (CLE)

The Criminal Justice Section continues to produce CLE programs in high quality and quantity. Section CLE success owes much to the ABA CLE Division and its long-term liaison to the Criminal Justice Section Earnestine Murphy who oversees Section CLE Teleconferences and National Institutes. Much of the success can also be credited to the organizational efforts of the White Collar Crime Regional Committees. The Council-created CLE Board continued this year to oversee all aspects of the Section's CLE offerings under the leadership of Chair Catherine Beane. Board members Jack Boese, Washington, DC; Maureen Essex, Baltimore, MD; Mary Galvin, Columbia, SC; Bruce Green, New York, NY; Stacy Sundstrom, St. Paul, MN; and David Simon, Palm Springs, CA continued to serve with Ms. Beane. Section CLE programs posted impressive attendance throughout the year with the Fall Sentencing Institute garnering nearly 250 attendees while the White Collar Crime Institute held its own at 1,350 attendees. The Anti-Money Laundering Conference and the American Bankers Association were also both successful, drawing around 1,000 attendees each.

The CLE Board worked with committees and leadership to identify the topics for the fall CLE in Washington, D. C. and finally selected Sentencing Advocacy, Practice Reform and Reentry Institute from the many excellent suggestions. Sentencing Committee Chairs Barry Boss and James Felman and Reentry Committee Chair Lance Ogiste (with help from April Frazier and Corrections Chair Marty Horn) are hard at work perfecting the agenda for the meeting on November 6, 2009, at the Marvin Center on the George Washington University Campus.

This will continue the CJS tradition of selecting topics for its fall meeting that bring the criminal justice field together around issues critical to the practice area. Cosponsors already include the following: National Association of Attorneys General, National Legal Aid and Defender Association, National District Attorneys Association, National Association of Criminal Defense Lawyers, Federal Public Defenders Inc., The Sentencing Project, National Crime Victims Law Institute, National Center for Victims of Crime, Prisoner Reentry Institute, American Probation and Parole Association, Center for Court Innovation, and the American Correctional Association. This will be a major conference to address a broad array of sentencing and post-sentencing issues including reentry, with a particular emphasis on sentencing and reentry practice in white-collar cases. The conference will examine sentencing and reentry trends and opportunities for reform in both the federal and state courts.

### LIST OF CLE PROGRAMS IN 2008-09

#### **September**

- 11 Foreign Corrupt Practices Act: Current SEC & DOJ Enforcement Initiatives, Washington, DC (Teleconference)
- 26 Criminal Enforcement of Intellectual Property Rights, San Francisco, CA



**The 2008 Securities Fraud National Institute** (Oct. 2-3 in Arlington, Virginia) featured overflow crowds attending panels on the latest developments on issues such as the mortgage meltdown and the False Claims Protection Act.

**October**

- 2-3 National Institute on Securities Fraud, Arlington, VA
- 15 National Institute on Foreign Corrupt Practices Act, Houston, TX
- 19-21 ABA/ABA Money Laundering Enforcement Conference, Washington, DC
- 24 (CJS 2008 Fall Meeting) Sentencing Advocacy, Practice and Reform Institute, Washington, DC



Harvard Law Professor Charles Ogletree leads a discussion on the road ahead for juvenile justice under the new Obama Administration during the Nov. 6 **Town Hall Meeting on Juvenile Justice**.

**November**

- 6 A Call to Action for Juvenile Justice, Washington, DC
- 11 Beyond the Mortgage Meltdown: The Future of Financial Crime & Corporate Prosecutions, Kansas City, MO
- 13 Crash of the Titans: At the Intersection of Privilege, Defendants' Rights, and Corporate Cooperation Credit, Chicago, IL

**December**

- 4 Providing People with Disabilities and the Elderly Equal Access to Justice, Gulfport, FL

4-5 National Institute on Criminal Tax Fraud, San Francisco, CA

### January 2009

29 The Speech or Debate Clause and its Impact in Public Corruption Cases, Washington, DC

### February

5-6 Gaming Law Minefield, Las Vegas, NV

13 Handling Investigations by State Attorneys General, Boston, MA

The New Paradigm of Juvenile Justice, Boston, MA

Practical Skills for Judges, Prosecutors, Child Victim Advocates and Attorneys to Better Serve Children, Boston, MA

24 Texas Intellectual Property Rights Conference IP Crimes, Victims & Cases, Houston, TX

25 Agency Under Fire: The Challenges Facing the Securities & Exchange Commission and How Reform will Affect the White Collar Bar, Los Angeles, CA

25 Anti-Money Laundering Compliance in these Turbulent Times, New York, NY

### March

4-6 National Institute on White Collar Crime, San Francisco, CA



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

### April

3 (CJS 2009 Spring Meeting) Ethics, Politics & Public Corruption, Birmingham, AL

3-4 Forensic Science for the 21st Century, Tempe, AZ

### May

6-8 National Institute on Internal Corporate Investigations and In-House Counsel, Washington, DC

13-15 19<sup>th</sup> Annual National Institute on Health Care Fraud, Phoenix, AZ

21-22 National Federal Sentencing Guidelines Seminar, Clearwater Beach, FL



**U.S. Attorney General Eric Holder** keynote address at the "National Institute on Internal Corporate Investigations and In-House Counsel," May 7, Washington, DC.

## **June**

- 4 Darkness Revealed: Shining the Light on the Freedom of Information Act in Illinois, Chicago, IL
- 17 Is the Government Complying with Brady: The Future of Criminal Discovery after U.S. v. Stevens, Los Angeles, CA
- 18 TARP Compliance and Enforcement, Washington, DC

## **July**

- 30 Beyond Best Interest: Roles and Responsibilities of the Children's Attorney, Chicago, IL
- 31 Life Sentences: Inside and Outside the Justice System, Chicago, IL  
Annual Review of Supreme Court Decisions – Criminal Cases, Chicago, IL

## **August**

- 1 Government Litigators: How Far Must They Go to Seek Justice, Chicago, IL
- 2 Investigations in a Time of Financial Meltdown: What is the New Normal, Chicago, IL

## V. OUTREACH

### REPORT ON STRATEGIC COMMUNICATION

The scope of the Section's Outreach efforts falls into three distinct areas: keeping membership updated on all the latest Section-wide and criminal law developments; informing other ABA entities about CJS programs, policies and various endeavors for possible co-sponsorships; and ensuring that all outside criminal law-related organizations and the general public are aware of and have input in policies in development and projects the Section is undertaking so as to have a balanced voice and perspective.

#### ***Updating Membership on All Section Activities and Relevant Criminal Justice Information:***

- Expanded and improved the Section Newsletter.
- Sent out monthly E-News with chair's message, which features list of programs and activities for the month.
- Distributed news articles of interest to pertinent committees, as well as produced and posted the cumulative "News Round-up" on the Section website.
- Released Supreme Court case summaries to members as soon as they are issued by the court.
- Encouraged Section committees to get more active in policy development. Sponsored trainings for new committee chairs in policy development and aggressively encouraged policy development by committees. Several committees have been active in this regard including: Legislative; Immigration; Ethics, Professionalism and Gideon; Sentencing; Victims; Corrections; Juvenile Justice; Women in Criminal Justice; Defense Function; and the Standards Committee.
- Implemented a system for committee chairs to comment on criminal law policies to be presented at Section Council meetings, ensuring that all related entities have a voice in the early stages of policy development.
- Audio recorded keynote speeches, Fall and Midyear Meeting panels, and Section-sponsored CLE programs for distribution to pertinent committee list serves and posting on the Section website.

#### ***Working With Other ABA Entities:***

- Cosponsored with the Business Law Section and the Center for CLE on the *National Institute on Internal Corporate Investigations and In-House Counsel*, at which Attorney General Eric Holder gave a keynote address; collaborated with the Section of International Law for the *Foreign Corrupt Practices Act Conference*; and worked with the Section of Intellectual Property Law on the *Criminal Enforcement of Intellectual Property Rights Conference*, amongst numerous others. The 2008 Fall Conference was cosponsored by four ABA entities (Death Penalty Representation Project, Section of Individual Rights & Responsibilities, Standing



Committee on Legal Aid & Indigent Defendants, and the Government and Public Sector Lawyers Division).

- Implemented a system for ABA entity staff directors and their leadership to cosponsor criminal law policies going before the House of Delegates, ensuring that the Section achieves optimum sponsorship. The following ABA entities cosponsored CJS policies submitted to the House of Delegates: Section of Dispute Resolution; Section of Individual Rights and Responsibilities; Section of International Law; Section of Litigation; Section of State and Local Government Law; Section of Tort Trial and Insurance Practice; Commission on Domestic Violence; Commission on Immigration; Commission on Youth at Risk; Government and Public Sector Lawyers Division; Young Lawyers Division; Standing Committee on Legal Aid and Indigent Defendants; and the Center for Ethnic and Racial Diversity.
- Participated in three ABA Enterprise Fund grant projects with other ABA entities that will play a major role in advancing and expanding the field of criminal law: Mediation in Criminal Matters (Section of Dispute Resolution, Section of State and Local Government Law, Standing Committee on Legal Aid and Indigent Defense, Government and Public Sector Lawyers Division, Commission on Domestic Violence, Commission on Effective Criminal Sanctions, and the Judicial Division); Improving Cross-Cultural Communication in the Criminal Justice System (Section of Individual Rights and Responsibilities, and the Council on Racial and Ethnic Justice); and Juvenile Collateral Consequences (Section of Individual Rights and Responsibilities, Section of Legal Education Admissions to the Bar, Section of Labor and Employment Law, Standing Committee on Legal Aid and Indigent Defendants, Commission on Youth at Risk).

### Ensuring that Outside Organizations and the Public Are Included in the Discussion:



CJS Reentry and Collateral Consequences co-chair Lance Ogiste with NOBLE rep. David Owens and National Black Police Assoc. chair John Hayes continue a lively debate from a morning breakout session of the **Criminal Justice Congress**.



CJS Race and Racism co-chair Wayne McKenzie listens intently as Kin E. Ng of the Kings County (NY) D.A.'s Office makes his case.



Bobby Vassar, Majority Chief Counsel, House Crime, Terrorism and Homeland Security Committee; Douglas Burris, Chief U.S. Probatic Officer, Eastern Dist. of Missouri; April Frazier, DC Public Defender Office, Community Reentry Program; CJS Prosecution Function co-chair David Barber; and CJS CL Board chair Catherine Beane participated in a panel discussion on employment-related reentry issues.

- The Section convened the first annual *Criminal Justice Congress*, a new endeavor through which several organizations joined with Section representatives and other criminal justice partners to address complex issues concerning the proper and just operation of the criminal justice system. Representatives came from the Department of Justice, Federal Public

Defenders, International Association of Chiefs of Police, National Association of Attorneys General, National Association of Criminal Defense Lawyers, National Black Police Association, National District Attorneys Association, The National Judicial Conference, and the National Legal Aid and Defender Association.

- Established the Section Fall and Spring Meetings as a gathering place for the criminal justice field to focus on issues of high importance to the field and obtained cosponsors from outside the ABA. The 2009 Spring Conference was cosponsored by the Alabama State Bar, The Mississippi Bar, the Birmingham Bar Association, and the National District Attorneys Association. The Fall Conference on *Sentencing Advocacy, Practice, and Reform Institute* in Washington, DC, had 10 outside-the-ABA cosponsors (NACDL, NAAG, NDAA, the National Legal Aid and Defender Association, Families Against Mandatory Minimums, The United States Sentencing Commission, The Sentencing Project, National Center for Victims of Crime, National Crime Victim Law Institute, and the Vera Institute of Justice). We already have the National Association of Attorneys General, National Legal Aid and Defender Association, National District Attorneys Association, National Association of Criminal Defense Lawyers, Federal Public Defenders Inc., The Sentencing Project, National Crime Victims Law Institute, National Center for Victims of Crime, Prisoner Reentry Institute, American Probation and Parole Association, Center for Court Innovation, and the American Correctional Association as cosponsors for the Fall 2009 Conference that will focus on Sentencing and will examine sentencing and reentry trends and opportunities for reform in both the federal and state courts.
- Worked with The United States Department of Justice; The United States Chamber of Commerce; The Federal Bar Association; and The Pharmaceutical Security Institute on *Texas Intellectual Property Rights Conference: IP Crimes, Victims & Cases*. The program featured a dialogue and discussion with top federal judges, prosecutors, law enforcement agents, and victims regarding intellectual property crimes and enforcement actions.
- Worked with a number of key juvenile law-focused entities to present a Juvenile Justice Town Hall Meeting which centered on identifying new priorities and submitting recommendations from leading national juvenile organizations to representatives from the Obama Administration, along with other interested lawmakers.
- Completed and implemented new outreach implementation plan that calls for Section liaisons to State and local Bars. This plan will also keep the Bars and United States Attorneys, Public Defenders, Prosecutors, Criminal Justice schools, and other criminal law-related entities alerted to the policy work of the section via Policy Bulletins -- which are sent quarterly and reach over 550 key individuals involved in criminal justice.
- Mailed *The State of Criminal Justice 2009* to all State and local Bar criminal justice committee chairs, to national criminal justice groups, as well as Section members and individuals outside the Section such as professors at colleges of criminal justice.
- Posted the Fall issue of the Section magazine on the Section web site for the general public to view free of charge and sent announcements to major segments of the criminal law field.

## VII. MEMBERSHIP AND AWARDS

### SECTION MEMBERSHIP UPDATE

*Year-End Member Count (1998 – 2008)*

<b>Year</b>	<b>Membership</b>
1998-99	7,016
1999-00	7,159
2000-01	7,115
2001-02	6,997
2002-03	6,692
2003-04	6,674
2004-05	6,777
2005-06	7,420
2006-07	8,076
2007-08	10,448

### *Dues*

#### **ABA Affordable Dues Program**

- This program offers a dramatically reduced ABA dues rate to members who are experiencing financial hardship, and shows our members in need that the entire Association supports them. Those members may opt to join one participating Section for \$5, and any additional Sections at the regular price.

#### **Student Associate Dues Rate**

- During the 2008 ABA Annual Meeting, the House of Delegates approved a proposal to immediately change the ABA bylaws to create a new dues category: Student Associates. This new grouping will allow students who were previously only eligible to join the ABA under the Associate category for \$175, the opportunity to join at a discounted student rate. The category only applies to those enrolled in post-secondary education studies who are not eligible for Lawyer or Law Student membership. The Section student associate dues rate is \$5.



## *Recruitment*

### **Race to 11K**

- Email to ABA members not in CJS in the following areas of concentration (AOC): white collar crime, criminal justice public & private defense, criminal justice prosecution, military, Constitution law, judicial administration, children's law, human rights. The email contained a membership blurb and links to relevant Section committees and policies sponsored or cosponsored by CJS, CLE programs, Section projects and criminal justice Standards.
  - Letter to 9,300 ABA members not in CJS in the following AOCs: criminal justice, white collar crime, public & private defense.
- 
- Collaborated with the ABA Membership & Marketing Division to increase group recruitment. An invitation from Attorney General Thurbert Baker, NAAG Representative to the ABA House of Delegates, was mailed to all Attorneys General, Chief Deputies and Executive Assistants inviting them to participate in the joint ABA/Criminal Justice membership program, which allows multiple attorneys in each office to join the ABA for one reduced flat membership dues rate ranging from \$100 to \$140 per member. The cost to belong to this program is based on the size of the office, increasing only as the size of the office grows. To date, the Oregon office and DC staff office have enrolled in the program, and the New Jersey office has expressed interest in participating as well.
  - Exhibited Section membership materials at the following conferences:
    - ABA-ABA Money Laundering Conference (October 2008)
    - CJS Fall CLE – Sentencing Advocacy, Practice and Reform Institute (October 2008)
    - A Call to Action for Juvenile Justice Town Hall Meeting, (November 2008)
    - ABA Midyear Meeting (February 2009)
    - White Collar Crime National Institute (March 2009)
    - 36<sup>th</sup> National Conference on Juvenile Justice (March 2009)
    - Forensic Science for the 21st Century: The National Academy of Sciences Report and Beyond (April 2009)
    - North Carolina Central University School of Law Roadshow (April 2009)
    - Samford University Cumberland School of Law – Careers in Criminal Justice program (April 2009)
    - CJS Spring CLE – Ethics, Politics and Public Corruption (April 2009)
    - University of Alabama School of Law – Careers in Criminal Justice program (April 2009)
    - National Institute on Corporate In-House Counsel (May 2009)
    - Criminal Justice Congress (May 2009)

## *Retention*

- “Thanks for joining” letter sent to all members that joined the Section since June 2008.
- Monthly personalized welcome letter sent to new members.
- Email sent to law student members informing them that current issues of Section periodicals are available online.

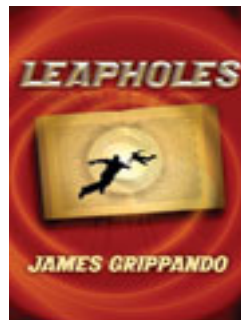
### *Law Students*

#### **Leapholes Lesson Plan**

The Section teamed with the ABA Public Education Division to develop a lesson plan to get law students involved in enhancing civic education in local middle schools. The lesson is built around issues raised by the Section publication, *Leapholes* by James Grippando, a book of fiction for middle school students. *Leapholes* is time travel with a legal twist, where law books and important legal precedents come to life. All of the cases woven into the *Leapholes* storyline are actual and important cases from American legal history.

The Section had a limited number of copies of the book available to distribute, on a first-come first-served basis, to law schools that obtained a letter of commitment from a middle school agreeing to: (1) assign the book to a class and (2) allow law students to teach the lesson in that class. Five schools/programs have agreed to use the books with students and evaluate the lesson plan and book afterwards:

- Miami-Dade Family Learning Partnership
- Street Law Clinic & Community Outreach, Southwestern Law School
- Thomas M. Cooley Law School
- Center for Legal and Court Technology, William & Mary School of Law
- South Texas College of Law



## AWARDS

### *Frank Carrington Crime Victim Attorney Award*

Richard D. Pompelio, Executive Director of the New Jersey Crime Victims' Law Center, received the award at the CJS Midyear Meeting in Boston on February 13, 2009. Richard began practicing law in New Jersey in 1972. For over half of his career, his work has been devoted to assisting crime victims in the criminal justice system. On February 12, 1989 Richard's 17-year-old son, Tony, was murdered. As he and his family suffered one indignity after another at the hands of the County Prosecutor's office, he was confronted with the reality that the criminal justice system did little more than re-victimize innocent crime victims.

In 1992, Richard established the New Jersey Crime Victims' Law Center, which is dedicated to the pro bono representation of crime victims in the criminal justice system. The Victims' Law Center is presently in its fifteenth year of serving crime victims throughout the State of New Jersey. The Victims' Law Center was the first of its kind in the United States, and there are now eight other pro bono law clinics throughout the nation that provide similar services.

Richard has also served as Chairman of the New Jersey Victims of Crime Compensation Board, and he has been involved in the drafting of numerous victims' rights legislation in New Jersey, including the Victim's Rights Constitutional Amendment in 1991. He has represented many crime victims before the courts throughout the State of New Jersey, and has served as special counsel to many organizations in the area of victims' rights including the Office of the Attorney General. The New Jersey Crime Victims' Law Center is dedicated to the life and memory of Tony Pompelio.



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

### *Charles R. English Award*

Janet Levine, a partner at Crowell & Moring, will receive the award at the Section's reception during the ABA Annual Meeting on July 31, 2009. She is an experienced trial and appellate attorney, with extensive experience in espionage, securities, health care, tax and public corruption matters. She has represented politicians, judges, and licensed professionals in a myriad of industries, providing defenses against governmental accusations of wrongdoing. Her clients are local, national, and international and include individuals, entities, and government organizations.

Ms. Levine has been the Co-chair of the Criminal Justice Section's White Collar Crime Committee, for the past two years, and has worked with and overseen the Committee's 32 regional and substantive subcommittees to develop and orchestrate more than 30 CLE programs for the Section. During this time, she has played an intricate role in the development of the National Institute on White Collar Crime. She also led the initial planning and creation of the National Institute on Internal Corporate Investigations and In-House Counsel – for which she was instrumental in securing U.S. Attorney General Eric Holder as the keynote luncheon speaker.

Among the many reasons the Award Committee selected Ms. Levine to receive the English Award are her contributions to the Section's Upjohn Task Force, her efforts to recruit young lawyers, minority lawyers, and female lawyers to become actively involved in both the White Collar Crime Committee and the Section, and her work to secure sponsorship dollars and donations for the Section's Spring and Fall conferences.

### *Livingston Hall Juvenile Justice Award*

This year's recipient is Winston Peters, Assistant Public Defender in Los Angeles County. Mr. Peters has been a member of the Los Angeles County Public Defender's Office for almost 24 years. In the area of juvenile justice advocacy, he has been responsible for implementing the vision and reforms of the Los Angeles County Public Defender in the representation of children in the delinquency system, and has become a national and statewide leader in his own right.

Mr. Peters serves as the Governor's appointee on the California State Advisory Committee on Juvenile Justice and Delinquency Prevention, which participates in the development and review of the state's three year juvenile justice plan, reviews state and local grant applications and provides recommendations regarding the state's compliance with core Federal juvenile justice requirements, including the Juvenile Justice Delinquency Prevention Act. He also serves on the seven-member California delegation to the John D. and Catherine T. MacArthur Foundation's Models for Change Juvenile Indigent Defense Action Network which focuses on establishing national and state standards for the legal representation of youth in the juvenile justice system.

Mr. Peters has played a pivotal role in conceiving, implementing and overseeing numerous noteworthy programs that benefit youth involved in the juvenile justice system. Among them

are: the CARE Project, the Juvenile Post-Disposition Program, the Juvenile Mental Health Court, and the Retail Skills Vocational Program (RSVP).

Mr. Peters has a clear and long-standing commitment to serving children and youth in Los Angeles in trouble with the law, as well as a record of leadership in improving the representation of young people in the juvenile and criminal courts there. Moreover, his dedication goes beyond the courtroom to enhancing the prospects for a productive life for these children through his initiatives in creating programs to assist them with education, job training and therapeutic intervention.

#### *Norm Maleng Minister of Justice Award*

The award will be presented to Susan Gaertner, Ramsey County (MN) Attorney, at the Section Reception during the ABA Annual Meeting on July 31, 2009. As a Ramsey County Attorney, she leads a public law office of 320 employees serving St. Paul, Minnesota, and surrounding communities. The office has responsibility for all felony-level adult prosecutions and all juvenile prosecutions in the county. The office also performs a wide range of civil law functions and has full responsibility for child support collection in the county.

Ms. Gaertner serves as a vice chair at large on the Governing Council of the Criminal Justice Section of the American Bar Association. She also serves as the section's representative to the ABA Death Penalty Representation Project. She served on the Board of Directors of the National District Attorneys Association for 14 years and has served twice as president of the Minnesota County Attorneys Association.

Throughout her career she has placed her pursuit of justice above all other individual goals. A few examples that particularly impressed the Award Committee include her efforts on the Ramsey County DNA Project and Uniform Evidence Retention Policy, as well as various community programs.

#### *William W. Greenhalgh Writing Competition*

Jason Miller, a law student at the University of Michigan Law School, will receive the award at the CJS Fall Council Meeting on November 7, 2009 in Washington, DC. His winning entry, *When Is a Parent's Authority Apparent? Reconsidering Third-Party Consent Searches of an Adult Child's Private Bedroom and Property*, has been recommended for publishing in *Criminal Justice Magazine*.



## VII. BUDGET REPORT

This year, the Section has increased its efforts to diversify the funding base with a greater focus on sponsorships and publications. This effort coupled with Non-dues income from CLE and National Institute programming helps us to continue to operate in the black. We have experienced budget cuts for two years in a row and the efforts mentioned above along with a strong frugal history have assisted the CJS to maintain a very solid financial framework. Dues income for lawyer and associate members has increased over levels at this time last year. Section reserves are strong, providing fiscal stability and ensuring continuity of Section activities in the face of economic downturns.

The most recent financial reports show that the bulk of total FY08-09 revenues have already been received, but our heaviest expenses will not be incurred until the last half of the year and probably not recorded until the final quarter.

**CLE and National Institute** programs account for the bulk of income to the Section. The White Collar Crime National Institute and the Money Laundering CLE program held jointly with the American Bankers Association continue to be extraordinarily successful.

**Dues Income:** Regular lawyer and associate member dues were budgeted at \$228,000 and to date we have received almost \$260,000 in actual collections for the current year. Efforts to increase existing membership numbers and to retain our regular lawyer base continue. We hope to see an increase in regular lawyer and associate members that will translate into increased income for the remainder of this year and in coming years.

**FY 2008-09 General Revenue Requests:** Section activities are supported by more than our Section resources. The Section receives substantial general revenue support from the ABA toward our basic operations.

It must be noted that the level of activity proposed by the Standards Committee far exceeds that which could be undertaken within the general revenue support. Accordingly, the proposed FY2010 Standards Committee budget assumes a commitment of additional financial support from the Criminal Justice Improvement Fund (CJIF) and/or Criminal Justice Section funds. The Council will be asked to approve this additional financial support for the Standards Committee as part of the FY2010 budget approval process at its meeting during the Annual Meeting.

## VIII. DIVISION/COMMITTEE REPORTS

### EQUAL JUSTICE DIVISION

Division Co-Directors: Lynn Branham and William Shepherd

#### Juvenile Justice Committee

Co-Chairs: Charles Olgetree and Kathryn Richtman

#### ***What Happens in Juvenile Court No Longer Stays in Juvenile Court: Collateral Consequences Project***

As a result of an increase in serious, violent juvenile offenses in the early 1990's, many states changed their approach to juvenile justice. Passing laws that open juvenile court proceedings to the public, making juvenile court records more accessible and imposing on adjudicated youth the same consequences that flow from an adult conviction are among those changes. The Juvenile Justice Committee has begun examining those collateral consequences in a project begun last year. Heading the project is Professor Ellen Marrus, George Butler Research Professor of Law and Co-Director of the Center for Children, Law & Policy, University of Houston Law Center. Many dedicated people are working on this important project including: Larry Wojcik, a partner at DLA Piper, Chicago; Chris Hecht, our new Law Student Division Liaison; and a number of student volunteers. The Committee has gathered preliminary research from regions around the county and is now seeking funding for a state-by-state summary of collateral consequences imposed on juvenile offenders. We hope that this project will be a comprehensive compilation of laws relating to collateral consequences for juvenile offenders and lead to the development of public policies that include consideration of the need for rehabilitation as well as the need to protect public safety.

The Juvenile Justice Committee's Collateral Consequences Project was awarded the ABA Enterprise Grant in order to fund the initiative. The project is one of only three that received the award out of a number of worthy applicants.

#### **Juvenile Justice Standards Project**

How should the juvenile justice system respond to referrals from schools and social services? The latest Juvenile Justice Standards Project, which began in 2008, will examine this question. The Standards Project is studying how referrals to the juvenile justice system are made from our education and child welfare systems. The Project will then establish standards that support diversion of youth from the juvenile justice system when appropriate, ensure needed services are provided to those youth within the juvenile justice system and promote critical re-entry services for youth as they leave the juvenile justice system.

#### ***Amicus Curiae Brief in JLWOP Cases***

The Juvenile Justice Committee, along with other ABA sections, is preparing an *Amicus* brief for the cases of *Graham v. Florida* and *Sullivan v. Florida* that will be heard before the Supreme Court in the next session. The brief focuses on how sentences of life without the possibility of parole ("LWOP") are against ABA policy. Issues such as child brain development, the inability of this sentence to act as an effective deterrent, etc., are addressed to persuade the Court that individuals

under the age of 18 who commit non-homicide crimes should not be sentenced to die in prison. To learn more about the issue and the two cases, read Larry Wojcik's article *Supreme Court Grants Certiorari In Juvenile Life Without Parole Cases*, in the upcoming edition of the Juvenile Justice Committee E-Newsletter.

### **Other Initiatives**

The third volume of the Juvenile Justice E-Newsletter has been produced. We have redesigned the newsletter to be more user-friendly and have a number of great articles on pressing issues in the Juvenile Justice field.

We have also begun work on an ABA publication that will be a reference guide and complete listing of all ABA policies on children. We hope to have the project completed by the end of 2009.

We are also currently working on developing a policy that would recommend to federal, state, and local governments and courts that certain low-level non-violent juvenile misdemeanors and ordinance violation offenses be decriminalized.

Additionally, the committee is developing a statement for Congress addressing the issues raised by LWOP sentences that will be presented to Congressman Scott (D-VA).

The committee has selected a recipient for the Livy Hall award. The award is given to an individual that has a proven dedication to serving the juvenile justice community and will be presented at this year's annual meeting in Chicago.

The Juvenile Justice Committee is hosting a number of important events at the 2009 Annual Meeting. Professor Charles Ogletree will be leading a discussion on life sentences and the effects they have inside and outside the justice system. The discussion will also include a number of panelists representing prosecutors, public defenders, and individuals who have been affected by the collateral consequences of a juvenile offense, as well as other panelists. The Child Victim's committee is presenting training on *How to Effectively Represent Child Victims in Criminal Cases*. This is a free CLE event that focuses on learning to become a child's victim advocate.

### **Military Justice Committee**

Co-Chairs: Eugene Fidell and Stephen Saltzburg

The Military Justice Committee cosponsored the formulation of the Cox Commission II, a blue ribbon Commission to examine major issues that have arisen in the military justice system. The purpose of the Commission will be to examine the current operation of the military justice system and consider whether the Uniform Code of Military Justice is meeting the needs of the military services to provide an efficient and fair way to ensure good order and discipline while also serving the criminal justice goals of a democratic society. The Commission will submit its report to the President, Congress, the Department of Defense, and its sponsoring organizations. The planned study is especially timely, as the new Commander-in-Chief and his advisors will be called upon to review the Manual for Courts-Martial and consider ideas that will enhance the goals of military justice.

Walter T. Cox III, former Chief Judge of the United States Court of Appeals for the Armed Forces, and currently Of Counsel to Nelson Mullins Riley & Scarborough LLP, will chair the Commission. It will continue the work undertaken in 2000-2001 by the Commission on the 50th Anniversary of the Uniform Code of Military Justice (“the Cox Commission”), which Judge Cox also chaired.

The Commission members are:

Hon. Mary M. Cheh, Councilmember, Council of the District of Columbia; Elyce Zenoff Research Professor of Law, The George Washington University Law School

Rear Admiral Donald J. Guter, former Dean and now Professor at Duquesne School of Law; U.S. Navy (Retired), former Judge Advocate General of the Navy

Major General William L. Nash, Adjunct Senior Fellow for Conflict Prevention and Director, Military Fellows Program, Council on Foreign Relations; U.S. Army (Retired)

Colonel Joyce E. Peters, Arquilla and Associates; U.S. Army (Retired), U.S. Army Judge Advocate General’s Corps

Professor Stephen A. Saltzburg, Wallace and Beverley Woodbury University Professor of Law, The George Washington University Law School

Professor Scott L. Silliman, Professor of the Practice of Law and Executive Director, Center on Law, Ethics and National Security, Duke University School of Law; Colonel (Retired), U.S. Air Force Judge Advocate General’s Corps

Hon. William W. Wilkins, Partner, Nexsen Pruet Law Firm; former Chief Judge of the United States Court of Appeals for the Fourth Circuit; Colonel (Retired), South Carolina National Guard State Judge Advocate

The Commission’s Reporters are:

Professor Elizabeth L. Hillman, University of California, Hastings School of Law; former Captain, U.S. Air Force

Associate Professor Victor M. Hansen, New England School of Law; Lieutenant Colonel (Retired), U.S. Army Judge Advocate General’s Corps

The Commission will hold a public hearing on a number of issues at the George Washington University Law School on June 16, 2009. It hopes to have a final report published by the end of 2009.

On May 20, 2008, Representative Maurice D. Hinchey (D-NY) introduced H.R. 6093, the “Carmelo Rodriguez Military Medical Accountability Act of 2008.” This bill would have amended the FTCA to allow claims for damages to be brought against the United States for personal injury or death of a member of the Armed Forces arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions that: (1) takes place other than in the context of combat; and (2) is provided by

persons acting within the scope of their office or employment by or at the direction of the Armed Forces, whether inside or outside the United States. Co-Chair of the Military Justice Committee, Stephen Saltzburg, testified on behalf of the American Bar Association in support of the legislation which is intended to modify the judge-made doctrine originated in *Feres v. United States*, 340 U.S. 135 (1950). The testimony was staunchly in support of ABA policy.

At its August 1987 annual meeting, the ABA adopted a resolution supporting a modest amendment to the doctrine. That resolution read as follows:

RESOLVED, That the American Bar Association supports H.R. 1054 (99th Congress) or similar legislation which would partially overturn the doctrine enunciated in *Feres v. United States* and allow members of the armed services to sue the United States for damages under the Tort Claims Act for non-combat related injuries caused by negligent medical or dental treatment.

At its August 2008 annual meeting the House of Delegates approved a resolution that attacked the *Feres* doctrine more broadly than the 1987 resolution. The 2008 resolution reads as follows:

RESOLVED, That the American Bar Association urges Congress to examine the "incident to service" exception to the Federal Tort Claims Act (FTCA) created by the Supreme Court in *Feres v. United States*, 340 U.S. 135 (1950), provide that only the exceptions specifically provided in the Act limit active duty military members' access to the courts when they are victims of tortious government conduct, and amend the Act to provide that the exception limiting access for conduct that occurs in combatant activities applies "during time of armed conflict" rather than "during time of war."

The 2008 report relied upon the work done in 2001 by the Commission on the Fiftieth Anniversary of the Uniform Code of Military Justice (UCMJ), commonly known as the "Cox Commission." The Commission was established by the National Institute of Military Justice. The Co-Chairs of the Military Justice Committee, Eugene Fidell and Stephen Saltzburg, are President and General Counsel of the National Institute of Military Justice.

### *Problems of the Elderly Committee*

Co-Chairs: Lori Levin and Benjamin Overton

The committee has been attempting to monitor abuse of elders either physically or by committing fraud in their health care contracts. Looking toward the future and the multiple changes that will be occurring in the health care of elders, it will be important to be vigilant and not allow elders to be taken advantage of in the inevitable changes in their care. To make sure that this committee and the Criminal Justice Section are well informed, we believe it is important to have an ongoing coordinating effort with the ABA Commission on Law and Aging.

## *Racial & Ethnic Justice & Diversity*

Co-Chairs: Eric Barron and Wayne McKenzie

At the beginning of the year, the committee established the following goals:

(1) Creation of a diversity policy for the section

The ABA Commission on Racial and Ethnic Justice's Goal IX Reports recognizes the section's continued positive performance in the area of diversity in leadership roles within the section. *"For the fourth consecutive year, minority leadership participation is at its highest level since reporting began."*

We will create a diversity subcommittee whose immediate charge is to create an official diversity policy for the section.

(2) Development of the Cultural Competency Curriculum

The proposal to develop a cultural competency curriculum for the primary actors (including prosecutors, defenders and judges) in the criminal justice system aims to build community trust through improving cross cultural communication – both internal and external. The goals of the curriculum are to: (a) increase the effectiveness of cross-cultural communication between primary actors in the criminal justice system and the members of the communities they represent; (b) improve the effectiveness of managers within prosecution, defender, and court agencies in identifying and addressing cross-cultural personnel, communication and management issues; (c) improve community perceptions of and confidence in the criminal justice system; and (d) provide tools for local criminal justice entities to reduce disparate racial impact in the criminal justice system.

The Section of Individual Rights and Responsibilities, the ABA Council on Racial and Ethnic Justice, and the Criminal Justice Section will set up an advisory committee composed of members and staff from each group to provide legal expertise, project development, administration, and oversight of the initiative. Each of these entities represents a similar but different constituency within the Association, and each will bring a particular expertise to this Project that will help to ensure its success.

(3) Support for ongoing initiatives and pending legislation aimed at assisting prosecutors in the regulation of the transparency and accountability of their offices.

a. The Prosecution and Racial Justice Program (Vera Institute)

The committee will discuss presenting to the Section on the findings and status of the Prosecution & Racial Justice Program and how best to share the lessons learned and encourage other prosecutors to undertake similar initiatives.

b. The Justice Integrity Act

The committee will be involved in organizing a briefing or hearing on the legislation, which is designed to address prosecutorial discretion and racial justice. The committee will also work to gather support for the bill and promote awareness of the issues it attempts to address.

With the assistance of a few stalwarts, the committee worked diligently towards achieving the above articulated goals. Special acknowledgements go out to Regina Ashmon and Pamela Meredith for their support work; to committee members Catherine Beane and Judge Arthur Burnett, who, along with vice-chair Jolanta Juszkiewicz, have been dedicated to the work of the committee; and Chair Anthony Joseph and Executive Director Jack Hanna for their leadership.

Regarding the first goal, under the guidance of co-chair Erek Barron, we have developed a diversity statement and an action plan for the Section. The Council submitted comments this past March and a final version will be submitted to the Chair and Council for approval during the annual meeting in Chicago.

As for the second goal, under the guidance of Catherine Beane, we are making progress with this project. A project advisory group, which includes representation from this Committee and the CLE Committee, as well as trainers from the prosecution, court and defense communities, has met several times to provide guidance on curriculum development. Catherine anticipates having a draft curriculum prepared, training sites secured, and "TOT" trainers identified by the time this committee meets. The project is on-track to have all project deliverables completed by the end of the year. Additionally, while not an original goal this year, we have linked this project to the broader Criminal Justice Solutions project, which will be discussed briefly later in this report. The Congress provided an opportunity to receive "focus group" feedback from key stakeholders in the criminal justice system regarding the issues which should be addressed in the curriculum. This feedback is being incorporated into the curriculum.

As for the third goal, we are pleased to report that the Justice Integrity Act, originally introduced in the Senate in July 2008, by then Senator Joseph Biden and Senator Arlen Specter, was recently re-introduced by Senators Cardin and Specter. More recently, a House version of the bill was introduced by Rep. Steve Cohen (TN-09) and Rep. John Conyers, Chair of the Committee on the Judiciary. Co-chairs Erek Barron and Wayne McKenzie continue to monitor the progress of this legislation. There are several other section members, including immediate past chair Stephen Saltzburg, who assisted Mr. Barron with the initial language of the Act. Thomas Sussman, ABA Director of Governmental Affairs, has written a letter expressing the ABA's support of this legislation. The ABA Council on Racial & Ethnic Justice will also declare its support in the immediate future.

Finally, representatives of this Committee participated in the Criminal Justice Congress convened by the Section on May 28-29, 2009. Drawing on the diverse perspectives of prosecutors, defense lawyers, judges, law enforcement organizations, academic institutions, advocacy organization, foundations, faith-based communities, and state and federal agencies, the 48 participants in the inaugural 2009 Congress utilized a cross-system, problem-solving approach, to identify needs and gaps in the justice system and potential responses to fill them. The Congress focused on two primary issues: (1) re-entry, particularly as it relates to employment; and (2) race, culture, and fairness/integrity in the criminal justice system, with a specific focus on (a) the distrust of the

criminal justice system in communities of color that is closely linked with systemic racial disparities, and (b) diversity-related management challenges in criminal justice system agencies. The Congress was co-facilitated by Catherine Beane and David Barber. While a full report on the Congress will be submitted separately, one specific “solution” embraced by the Congress involves developing a “Racial Justice Task Force” in jurisdictions that seek to address racial disparities and community perceptions of racial disparity. Ms. Beane worked with Section staff to develop a grant proposal through the BJA-sponsored “Encouraging Innovation: Field Initiated Programs” solicitation to support a “Racial Justice Task Force Pilot Project.” The proposal was submitted on June 24<sup>th</sup>.

### ***Victims Committee***

Co-Chairs: Russell Butler and Margaret Garvin

### **Child Victims**

#### Grant related activities

The committee, with a grant funded by U.S. Department of Justice’s Office for Victims of Crime award to the Criminal Justice Section, worked in concert with the ABA Center for Children and the Law to improve legal protections for child victims of crime. The ABA’s Child Victims’ Rights Project developed expertise to assist with the enforcement of child victims’ rights, with a special focus on child victims of abuse, and will disseminate knowledge through training, policy development, and technical assistance to attorneys and guardians *ad litem* nationwide. The committee had a leadership role in ensuring the success of the grant.

Major activities included:

- Developing Practice Tips in Criminal Justice Newsletter, “Practice Tips for the Child’s Attorney”, Winter 2009
- Phone training through the National Crime Victim Law Institute’s National Alliance of Victims’ Rights Attorneys, Winter 2009
- CLE regarding child victims at Mid Year meeting in Boston, Spring 2009
- ABA Annual Meeting Training and CLE in Chicago, Summer 2009
- Workshop at National Center for Victims of Crime in Washington, DC, Summer 2009
- Workshop at the Center on the Children and the Law Conference on Children in Washington, DC, May 2009
- Criminal Justice article on “Enhancing the Legal Profession’s Response to Victims of Child Abuse”, Spring 2009
- Article for the Center for Children and the Law providing practical tips to practitioners, Spring 2009

#### Enhancing Legal Professionals’ Response to Victims of Child Abuse

Working in partnership with the ABA Center on Children and the Law, the Criminal Justice Section developed policy calling for enhanced legal representation of child victims of crime through increased knowledge of victims’ rights, enhanced legal skills, and a deeper understanding of issues faced by child victims; development of leadership, infrastructure and capacity in child victims’ rights within the American Bar Association and across the legal



professions, including lawyers, judges, legislatures, and policy makers; and to support better treatment of child victims in the criminal and juvenile justice system.

### **Frank Carrington Crime Victim Attorney**

The award is named for late attorney Frank Carrington, who had a tremendous impact on the crime victims' rights and services movement in this country. Mr. Carrington founded and served as Executive Director of the Victims Assistance Legal Organization (VALOR) in Virginia, was a Director of the National Organization for Victims Assistance, and was a member of the California Attorney General's Commission on Victims. Following his service on the Attorney General's Task Force on Violent Crime (1981), he was appointed to the President's Task Force on Victims of Crime (1982). From 1980-82, he was Vice-Chair of the ABA Criminal Justice Section's Victims Committee and was its Chairman in 1982-83 when the ABA approved a comprehensive set of Guidelines for Fair Treatment of Crime Victims and Witnesses that subsequently served as a significant basis for the reconsideration of the interests of victims by both state and federal governments.

The 2008-2009 award was presented to Richard D. Pompelio, the Executive Director of the "New Jersey Crime Victim's Bar Association." He is a pioneer attorney in representing the rights of crime victims and served on the New Jersey criminal injuries compensation board. He also serves as the Editor In Chief of the "Victim Voice" Publication for said Victim's Law Center. Moreover, Richard was selected by the Program Manager for the Nation of China at the American Bar Association Rule of Law Initiative in Washington, DC, to meet with the Justices of China's Supreme People's Court in New York City on December 5, 2008, to provide to them a study of victims rights in the United States, with a focus on victim compensation and restitution.

### **Other activities**

Major miscellaneous activities included:

- Members of the Committee served as Liaisons to State Bars of Oregon and Texas
- Spring 2009 Criminal Justice article regarding "Crime Victims' Rights: From Illusion to Reality"
- Updating the Committee's website

### **Women in Criminal Justice Committee**

Co-Chairs: Jane Aiken and Sarah Buel

The Women and Criminal Justice Committee is drafting recommendations to the Council for resolutions dealing with special issues posed for mothers in prison. These proposed resolutions and a committee report should be available soon. In addition, the committee has begun exploring the difficult gender-related issues in prosecutions for failure to protect.

## **CORRECTIONS AND SENTENCING DIVISION**

Division Co-Directors: Dino Amoroso and Ernestine Gray

### **Alternative Dispute Resolution and Restorative Justice Committee**

Co-Chairs: Karen Gopee, Kimberlee Kovach, and Marvin Johnson

The *Mediation in Criminal Matters* project has accomplished several major endeavors on behalf of the participating ABA Sections including:

1. Documenting over 130 Current Model Programs Utilizing Pre-Trial Mediation, Restorative Justice, Victim Offender Mediation, and Other Methods of Creative Problem Solving in Criminal Law Settings. The survey of the field is available on the Criminal Justice Section Web site at: <http://meetings.abanet.org/webupload/commupload/CR100000/relatedresources/mediationsurvey.doc>.
- 2) Piloting a special project on mediation between prosecutor and public defenders to more quickly process incarcerated individuals unable to make bail in Anoka County, Minnesota. This project model demonstrates that county jails can save hundreds of thousands of dollars and those accused of a crime and unable to make bail can be processed within days rather than months to avoid the loss of jobs, housing and other collateral consequences of a conviction if the prosecutor and defense attorney come to a plea negotiation early in the process rather than after the defendant has been in jail for months.
- 3) Sponsoring a "Train the Trainers" conference for over thirty professionals from ten different communities that agreed in advance to implement criminal justice mediation programs when they return to their local communities and to conduct at least one training for other judges, defense lawyers, corrections officials, law school clinical academics and others from their locale in *Mediation In Criminal Matters*.
- 4) Awarding mini-grants to state and local bars, prosecutor's offices, courts and community mediation programs to establish pilot programs in mediation in criminal justice. Helping with the Enterprise Grant.
- 5) Drafting ABA Policy encouraging the use of *Mediation In Criminal Matters* and presenting that policy to the ABA House Of Delegates where it was adopted as ABA Policy at the February ABA House of Delegates meeting. See enclosed policy passed by the ABA HOD.
- 6) Creating a training DVD in how to set up a mediation in criminal matters program and posting that and related materials on the Criminal Justice Section web site for anyone interested in the project to download.
- 7) Recruiting new members of the Criminal Justice Section.

### *Alternatives to Incarceration and Diversion Committee*

Co-Chairs: John Creuzot, Mathew D'Emic and Anne Swern

This year the committee has been very involved in educating the legal and provider community about current issues involving therapeutic courts, problem-solving approaches to criminal justice and multi-disciplinary collaboration. Co-chairs D'Emic and Swern hosted a contingent of federal judges, magistrates, probation officers, marshals and United States attorneys in a discussion of diversion courts and their potential in the federal system. Additionally, co-chairs Swern and D'Emic met with the Standards Committee developing policy for treatment diversion.

In addition, co-chair D'Emic, presiding judge of the Brooklyn Mental Health Court, hosted Justice Department representatives and judges from Russia, Australia and Canada, as well as judges, prosecutors, public defenders, and mental health officials from Illinois, Minnesota, New Jersey and the District of Columbia, all interested in establishing diversion courts in their jurisdiction. The mental health court was also the subject of a local news broadcast by New York City's ABC affiliate. The Brooklyn court has also been selected as the site for studies of mental health courts being conducted by the Urban Institute and Rutgers University. In addition to published articles on diversion programs, co-chair D'Emic moderated a panel for the New York State courts on communicating with people with mental illness and participated in an international judges' panel on mental health courts for the International Institute on Special Needs Offenders in Niagara Falls, Canada.

Co-chair Anne Swern also trained various groups on the principles and practices of diversion. She taught New York City Police Department recruits about the role of alternatives to incarceration in the criminal justice system and their role in the process. This semester she taught Problem Solving Justice at Brooklyn Law School, based, in part, on a curriculum developed by the Center for Court Innovation and the Department of Justice. She also taught individual classes on alternative sentencing at the University of Pennsylvania and at the City College of New York. Co-Chair Anne Swern spoke on a panel at the New York Academy of Science about drug treatment and diversion. She also worked extensively on the New York State Bar Association's Wrongful Conviction Task Force Report. Anne Swern also assisted in the education of policy makers and elected officials in the revamping of New York State drug laws, enacted in April, that now provide greater opportunities for treatment diversion throughout the state. Ms. Swern met with victim advocates to explain the role of alternative sentencing in the criminal justice system as it relates to their particular interests. Finally, Ms. Swern is working with the Vera Institute to institute an alternative to incarceration program based upon a unique model that combines diversion with aspects of mediation and restorative justice.

Co-chair John Creuzot was a panelist at the U.S. Sentencing Commission's Symposium on Alternative Sentencing last summer. His panel discussed treatment options in drug courts. In addition co-chair Creuzot was part of a faculty development workshop for judges entitled "Evidence Based Sentencing Practices to Reduce Recidivism" at the National Judicial College in Reno, Nevada.

### Corrections Committee

Co-Chairs: Brett Dignam, Marc Elias, and Martin Horn

The Corrections Committee finished last year with a successful vote by the House of Delegates in August on the comprehensive resolution governing prison oversight, and began this year by conducting an interdisciplinary research project to investigate the challenges posed by the expanding population of female inmates and pretrial detainees who suffer from mental illness. That project continues. The Committee has joined the Section staff and Reentry Committee in planning a fall continuing legal education event and symposium to consider The National Criminal Justice Commission Act of 2009 introduced by Senator Webb. Members of the Committee have worked closely with Section staff and members of the Reentry Committee to prepare an ABA Enterprise Project Proposal that seeks to effectuate policy changes that reduce counterproductive barriers to reentry for formerly incarcerated people. Co-chairs have also contributed comments to the ongoing effort by the Standards Committee to revise standards governing the Legal Treatment of Prisoners.

In the summer of 2008, the Committee initiated a project on Mental Health and Women in the Criminal Justice System. The purpose of the project is to study women's unique mental health needs and experiences during incarceration, in order to understand gender-specific challenges (in patterns and prevalence of illness, as well as treatment). Leading up to the October 2008 Criminal Justice Section meeting in Washington, DC, students at Yale Law School prepared a literature review of the available studies on mental illness among women and its impact on their interaction with the criminal justice system. In October 2008, the Corrections Committee met and discussed areas of potential research and policy guidance. During the meeting in Washington, DC, prison health providers from Oklahoma and Connecticut presented their experience in designing and providing mental health care for women during their incarceration, and discussed the profile of incarcerated women who experience mental illness. The Committee identified interdisciplinary working groups that included correctional and mental health professionals, academics, prisoner and human rights advocates. These groups participated in conference calls during the winter and suggested areas of research, prison and community models addressing women's mental health, and possible areas of ABA expertise and intervention. At the April ABA meeting in Birmingham, AL, the Committee considered a report based on the findings and research collected by the working groups and reviewed draft proposals in three different areas: staff training, protocols for pregnancy and postpartum inmates, and segregation policies.

### Re-Entry and Collateral Consequences Committee

Co-Chairs: Michael Costello, Lisa Smith, and Lance Ogiste

This year, the Committee expanded its membership, and reached out to the profession through the Committee newsletter and list serve.

In April 2009, at the ABA's Spring Conference in Birmingham, Alabama, the Committee discussed several advancements in the field of prisoner re-entry programs and the allocation of grant money during 2009-2010. In May 2008, President Bush signed into law the Second Chance Act, providing, among other things, millions in grant money for the study of re-entry initiatives. The SCA authorizes millions of dollar in general grants for state and non-profit programs. In order to qualify for these grants, applicants must provide a plan outlining the method by which

they intend to reduce the recidivism rate among their participants by 10% in two years and by 50% in five years. Demonstration grants are available to states and local governments to facilitate safe and successful re-entry into the community from which the ex-offender came. States may use the grant for employment services, substance abuse treatment, family programming, mentoring, and housing, among other things. Grants are also available to states and local governments to create and maintain re-entry programs and courts. Re-entry courts are designed to specially monitor offenders and to provide them with an encouraging and supportive environment in which to complete comprehensive re-entry programs and services. Judges also oversee the process to impose tough sanctions on ex-offenders who don't follow through with their post-release plans.

The grant funding is slowly being released. Requests for proposals have been authorized for:

- SCA Demonstration Grants
- SCA Mentoring Grants
- SCA National Adult and Juvenile Offender Reentry Resource Center
- National Study of Collateral Consequences for Criminal Convictions

Several states made advancements in the area of prisoner re-entry in the past year. Alabama received multiple grants, including over \$300,000 from the U.S. Department of Labor and \$540,000 from the Department of Justice for job training and other skill training for reentering ex-offenders. In Massachusetts, re-entry advocates expect to see new bills introduced in the new legislative session to reform the state's Criminal Offender Record Information system, as well as post-supervision release. In Missouri, the St. Louis-based Eastern District of Missouri has implemented a "reentry court," which helps keep former drug addicts free of drugs through positive reinforcement. Failure to keep clean in the E.D.M.O.'s re-entry court can result in fines, inpatient treatment, community service, and being incarcerated in the U.S. Marshal's office.

Unfortunately this year, many initiatives lost funding because of the recent Bernie Madoff scandal. The Justice, Equality, Human Dignity and Tolerance (JHET) Foundation, a New York charity, reportedly lost millions of dollars in the scandal and was forced to close its doors in January 2009. JHET had funded several re-entry and risk reduction programs in Kansas and Michigan, as well as nationwide programs such as the Vera Institute of Justice and the Corporation of Supportive Housing, among others.

The Committee also authored a section in the ABA's publication, *The State of Criminal Justice 2009*, entitled "Corrections and Sentencing: Reentry and Collateral Consequences."

Members of the Committee and others involved in this area have presented in panels across the country. In January 2009, Professor Michael Pinard of the University of Maryland presented "The Civil Rights Dimensions of Prisoner Reentry: the Impact on Individuals, Families, and Communities." Professor Pinard is the director of the school's Re-entry of Ex-Offenders Clinic, a former staff attorney for the Neighborhood Defender Service of Harlem, and former attorney for the Office of the Appellate Defender of New York City. In April 2009, Professor Scott Decker of Arizona State University presented at a conference entitled "Prisoner Reentry: A Twenty-First

Century Imperative," in Phoenix, Arizona, hosted at DePauw University. Professor Decker is the director of ASU's School of Criminology and Criminal Justice.

The Committee has participated in several education initiatives within the legal community on re-entry issues and programs. The Committee is cosponsoring a CLE conference on re-entry and sentencing issues in November in Washington, DC. Panels at this conference will include research on re-entry effectiveness, housing, sobriety and jobs, and breaking down barriers to employment. This CLE is highly anticipated with many experts in the field of re-entry expected.

### Sentencing Committee

Co-Chairs: Barry Boss and James Felman

In 2008-09, the Sentencing Committee was active in addressing the myriad sentencing issues that have come to the forefront for several reasons: the Supreme Court's decisions in *Gall* and *Kimbrough*, the renewed legislative focus on sentencing issues, the new administration's review of existing charging and sentencing practices, and the Sentencing Commission's focus on alternatives to incarceration. In addition, we have continued our efforts to improve procedural fairness in the sentencing process and helped organize the Sentencing Advocacy, Practice and Reform Institute in Washington, DC.

After the Sentencing Commission instituted ameliorative guidelines (retroactively) to address the cocaine/crack sentencing disparity (lessening but not eliminating the disparity), we submitted materials to various Congressional committees urging legislative reform in this area not only to eliminate the disparity completely but also to address the overarching problems caused by statutory mandatory minimum sentences. Co-Chair Jim Felman testified before the Senate Judiciary Committee, Subcommittee on Crime and Drugs. Our Committee remains committed to continuing its efforts to support passage of such legislation in the coming year.

An additional priority of the committee has been to urge the Sentencing Commission to make greater use of alternatives to imprisonment. The committee submitted commentary to the Sentencing Commission and participated in the Commission's symposium on alternatives to imprisonment.

In addition, the committee organized the Sentencing Advocacy, Practice and Reform Institute which was held on October 24, 2008 in Washington, DC. The seminar featured some of the most well-known sentencing experts in the country, such as Professor Doug Berman and Deputy Solicitor General Michael Dreeben. The program was a success with over two hundred attendees, and the Committee will assist with the Second Annual program which will be held in conjunction with the Fall Council meeting in Washington, DC. This year's program will include a focus on reentry issues.

The committee has sought volunteers to assist in developing policy regarding the DOJ charging practices. We hope to begin work on this project shortly.

Finally, the committee continues its efforts to achieve procedural reform in the federal sentencing process. During the past year, the committee developed policy which was approved by the House of Delegates at the last annual meeting to amend Federal Rule of Criminal Procedure 32 to ensure that both the government and the defense have an opportunity to review the information

to be considered by the sentencing court in determining the appropriate punishment. During the upcoming year, we plan to continue our efforts to encourage the Rules Committee to adopt this amendment.

### **SPECIALIZED PRACTICE DIVISION**

Division Co-Directors: James Cole and Bruce Zagaris

#### **Amicus Practice Committee**

Co-Chairs: Terence Anderson and Rory Little

During Association Year 2008-09, the Section's Amicus Committee vetted a number of requests for ABA amicus briefs. By press-time for the Annual Report, two ABA amicus briefs initiated by the Section had been filed in the U.S. Supreme Court, and another was under consideration. In addition, the Criminal Justice Section cosponsored an ABA brief initiated by another Section, decided against applying for an ABA brief in another case, and considered but took no action on several requests.

#### **Bowen v. Oregon** (U.S. Supreme Court No. 08-1117)

On May 28, the ABA filed a brief asking the Supreme Court to grant certiorari to consider whether the Sixth Amendment as applied to the states through the Fourteenth Amendment permits a criminal conviction based on a non-unanimous jury verdict. Drafted by Tom Goldstein of Akin, Gump, Strauss, Hauer & Field, the brief informed the Court that the ABA Standards and Jury Principles support unanimous juries in criminal trials, and argued that non-unanimous verdicts reduce the reliability of jury determinations, allow juries to reach a quorum without seriously considering dissenting viewpoints, and undermine the community's confidence in the justice system.

#### **Padilla v. Kentucky** (U. S. Supreme Court No. 08-651)

An ABA amicus brief was filed in the Supreme Court on June 2. Supporting the Petitioner, the brief argued that a lawyer's duty of competence includes a duty to be informed about the consequences of a client's guilty plea and to advise the client accordingly; that a lawyer should advise a non-citizen client about the immigration consequences of a guilty plea since they will frequently be of considerable importance to the client; and that a lawyer should be informed about the immigration consequences of a conviction because these can shape and determine the outcome of a criminal proceeding. Authorities cited included three sets of Criminal Justice Standards: *Defense Function*, *Guilty Pleas*, and *Collateral Sanctions and Discretionary Disqualification of Convicted Persons*. The brief was drafted by Gabriel Chin of the University of Arizona; Daniel Leffell of Paul, Weiss, Rifkin; Margaret Colgate Love of the Law Office of Margaret Love; and Peter S. Margulies of Roger Williams University.

#### **Graham v. Florida** (U.S. Supreme Court No. 08-7621) and **Sullivan v. Florida** (U.S. Supreme Court No. 08-7621)

On May 4, 2009, the Supreme Court granted certiorari to consider the constitutionality of life without parole for juveniles who commit crimes other than murder in their teen years. The issue arises in two cases from Florida — one involving a 13-year-old, the other a 17-year-old. On May 12, the Section decided to file an application for a brief consistent with ABA policy adopted in

2008 that urged recognition of youth as a mitigating circumstance that warrants less punitive sentences for youth than for people over the age of eighteen. The proposed brief is being drafted by Lawrence A. Wojcik and associates at DLA Piper.

**Mohawk Industries, Inc. v. Carpenter** (U.S. Supreme Court No. 08-678)

This ABA brief in this case was initiated by the Litigation Section and cosponsored by the Criminal Justice Section, and filed on May 4. The issue is whether a party has an immediate appeal, under the collateral order doctrine set forth in *Cohen v. Beneficial Industrial Loan Corporation*, of a district court's order finding waiver of the attorney-client privilege and compelling production of privileged materials. The brief argued that there should be an immediate appeal under *Cohen* when the court rules that the attorney-client privilege has been waived and compels production of attorney-client communications because of the importance of the attorney-client privilege and the importance of maintaining the appropriate balance between the public interests embodied in the privilege and in the principle that the public has a right to "every man's evidence." Paul Mogin of Williams & Connolly was the principal brief writer.

**U.S. v. Kuehne, Saldarriaga and Velez** (11<sup>th</sup> Circuit No. 0-20770)

After consideration, the Section decided not to request an ABA brief in this case concerning a lawyer charged with money laundering for vetting a fee paid another lawyer.

Other cases considered by the Amicus Committee and/or the Section included:

- **Selby v. Missouri** - Cert. petition asking U.S. Supreme Court to consider whether the trial court can prohibit a licensed attorney in good standing from acting as his own retained co-counsel to conduct cross-examination of a police witness in his prosecution.
- **Nijhawan v. Holder** - U.S. Supreme Court No. 08-495 – Regarding whether an immigration court can look beyond the statutory definition of an offense to determine whether a conviction of the offense constitutes an "aggravated felony."
- **Vermont v. Brillon** - U.S. Supreme Court No. 08-88 – Regarding whether continuances and delays caused solely by an indigent defendant's public defender can arise to a speedy trial right violation.
- **Wilson v. Hogsten** – Cert. petition asking U.S. Supreme Court to consider due process protections for inmates in administrative segregation.
- **Yaeger v. U.S** - Cert. petition asking U.S. Supreme Court to consider whether a Fifth Amendment collateral estoppel analysis should consider the jury's failure to reach a verdict on some counts.

**Appellate and Habeas Committee**

Chair: Jeffrey Green

No report submitted.

**Cyber Crime Committee**

Co-Chairs: David Goldstone and Christopher Painter

No report submitted.



### Homeland Security Committee

Co-Chairs: Barbara Berman and Steven Solow

This year the Homeland Security Committee continues to formulate a contact list of NGO and governmental liaisons, ABA sections and other committees addressing homeland security issues.

The committee has identified a program project for Fall 2009 to address the questions raised recently by the release of government attorney memos and related correspondence in connection with interrogation methods. Specifically, the program will be a web-based discussion by national experts and ABA participants on the responsibility and actions that should be taken by government attorneys when asked to take certain positions in their legal work by their supervisors or others.

In addition, the Homeland Security Committee had a committee meeting entitled "Conversation with Stephen R. Heifetz," Deputy Assistant Secretary for Policy Development and Counselor to the Assistant Secretary for Policy, U.S. Department of Homeland Security, for the Fall 2008 Meeting followed by a reception co-hosted with the White Collar Crime Committee.

### Immigration Committee

Co-Chairs: Sara Dill and Robert McWhirter

The Immigration Committee continued its dedication to developments in the immigration and criminal justice fields, while also increasing its membership.

Most notably, in response to the increased number of immigration raids and subsequent federal criminal cases, the committee, in conjunction with the Commission on Immigration, drafted a report and recommendation which was passed by the ABA House of Delegates at the annual meeting in February. This recommendation spoke to the importance of maintaining basic principles of due process in proceedings involving non-citizens.

The committee continued publication of two of its most notable books: *The Criminal Lawyer's Guide to Immigration Law* and *The Citizenship Flowchart*, both written by Co-Chair Robert McWhirter.

Most notably, the committee commenced work with the Standards Committee in an effort to draft additional language for standards for prosecutors and defense counsel in criminal cases involving non-citizens. The committee hopes to improve representation of non-citizens and ensure that all rights and collateral consequences are considered during any criminal proceeding.

Currently, the committee is planning CLEs for the upcoming year to address recent U.S. Supreme Court decisions that affect immigration and criminal practitioners alike.

Finally, the committee was actively involved with the Commission on Immigration in developing policy proposals, studies, and reports for the new administration in the ongoing push for immigration reform, especially as it applies to non-citizens who have been convicted of a crime and the harsh penalties that result. This work will continue through the next year, and a study is expected to be released sometime this fall.

### International Committee

Co-Chairs: Luz Nagle and Buddy Parker

The committee again undertook efforts to coordinate and liaise with the Criminal Law Committee of the International Bar Association (this includes Business Crime and Criminal Law Committees) on different events sponsored by the ABA and IBA. The committee was successful in obtaining ABA cosponsorship for the IBA's 12<sup>th</sup> Transnational Crime Conference – Multi-jurisdictional conflict in the global economy: cross-border legal wars, conducted 11-13 June 2009 in New York. Many members of the committee participated in both the organization and planning of the conference. As a direct result of prior efforts to jointly sponsor projects with IBA's Criminal Law Committee, the Criminal Justice Section's support in cosponsoring this conference was obtained with less burdensome bureaucratic stops. The committee will in 2009-10 continue this coordination and liaising function.

The committee undertook efforts to develop interest within its membership of writing papers for committees on various topics, such as extradition, extraordinary rendition, military subcontractors, etc. In talking with various committee members we learned that many, if not all, such topics had been previously addressed by other ABA Sections (International Law and National Security). Indeed the International Criminal Law Committee of the International Law Section appears to be duplicative of the interest and jurisdiction of this committee. It is the chairs' opinion that efforts need to be undertaken to liaise and coordinate with the committee.

Additional activities of the committee involved committee members participating in the Criminal Justice Section's publication on the State of Criminal Justice 2009. Specifically, Part III: Specialized Practice and Development, Chapter 7: U.S. International Criminal Law was co-authored by Luz Nagle and Bruce Zagaris. The committee will also participate in the proposed creation of CJS' new book "Careers in Criminal Justice." Committee members will address such topics as international white collar crime, practice before international criminal courts, international criminal tax controversions, etc.

### **PROFESSIONAL DEVELOPMENT DIVISION**

Division Director: Barbara Berman

### CLE Board

Chair: Catherine Beane

See *Continuing Legal Education* chapter.

### Criminal Procedure, Evidence and Police Practices Committee

Chair: David Aaronson

This past year, 2008-2009, was an eventful year for the Committee on Rules of Criminal Procedure, Evidence & Police Practices. The Rules Committee recommended two resolutions to the ABA Criminal Justice Section Council which, after some modification, were forwarded to the

ABA's House of Delegates. Both resolutions were unanimously adopted at its August 2008 summer meeting in New York City and are now official ABA policy.

The first resolution addressed the need to update and strengthen the ABA's official policy on police racial profiling (more information, including the complete text of the resolution, can be found at <http://www.abanet.org/crimjust/policy/am08104c.pdf>). The second resolution attempts to respond to the heightened risk of mistaken eyewitness misidentification and conviction of innocent persons in criminal cases involving a cross-racial identification when little corroborating evidence is presented (more information, including the complete text of the resolution, can be found at <http://www.abanet.org/crimjust/policy/am08104d.pdf>).

On January 9, 2009, the Rules Committee held its annual meeting in San Diego to coincide with the American Association of Law Schools' annual meeting. A main focus of the Committee meeting was to consider proposed amendments to the Federal Rules of Evidence and Criminal Procedure and to discuss the implications of recent U.S. Supreme Court cases involving the Sixth Amendment's Confrontation Clause.

The Committee discussed a proposed amendment to FRE 804(b)(3), the hearsay exception for statements against interest, providing that statements that tend to "expose the declarant to criminal liability and offered to exculpate the excused" are not admissible without corroborating evidence. The amendment under consideration by the Federal Judicial Center Advisory Committee on the Rules of Evidence would extend the corroboration requirement to so-called inculpatory statements, usually offered by the prosecution. The Committee compared its own proposal to that currently under review by the Federal Judicial Center Advisory Committee and voted to support the Federal Advisory Committee's proposal.

The Committee discussed a report by Professor Daniel Capra, Reporter to the Federal Judicial Center Advisory Committee, on the on-going project to restyle the Federal Rules of Evidence.

Professor David Leonard submitted a proposal to amend FRE 410, in light of *United States v. Mezzanatto*, 513 U.S. 196 (1995), and subsequent lower court decisions. In *Mezzanatto*, Justice Thomas, writing for the Supreme Court, held that a criminal defendant may waive the protection of FRE 410(4), barring admission into evidence of "any statement[s] made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn," provided that the waiver was voluntary and knowing. Professor Leonard's proposed amendment would forbid the government from conditioning its entry into plea discussions on the defendant's agreement to waive protections under Rule 410(1), a plea of guilty which was later withdrawn, and Rule 410(2), a plea of *nolo contendere*. Professor David Aaronson suggested a narrower amendment to FRE 410(4) to limit the admissibility of statements made after a valid waiver agreement, and in the course of an unsuccessful plea bargaining discussion to impeach by contradiction any testimony the defendant gave at trial. These proposals were tabled until the next meeting.

### Innocence Subcommittee

Co-Chairs: Paul Giannelli and Myrna Raeder

The report from the Wrongful Convictions Symposium held at Southwestern Law School and cosponsored by the Criminal Justice Section has recently been published. The report will give additional publicity to the ABA policies. In addition, the Committee will post a PDF copy of the ABA report to ensure the widest distribution. Several schools are currently using the report in seminars addressing wrongful convictions. This year the Committee is expected to determine what if any additional project or CLE might be appropriate as a result of the National Academy of Science Report on Strengthening Forensic Science in the United States. A number of Committee members regularly speak about these issues.

### Defense Function Committee

Co-Chairs: Jennifer Thompson and Pauline Weaver

We are continuing to try to increase the number of lawyers participating in the committee. We had had some success, but we have had little success in encouraging members to come to the meetings. They have been sparsely attended and it has made assigning tasks difficult.

It was suggested that we develop regional subcommittees to encourage involvement. We will start the planning and see if this works. Our work on habeas corpus was eclipsed by a separate group, but Karyl Krug has monitored the progress by serving as our representative to the group.

We met with people interested in public defense in Washington, DC, in conjunction with the NLADA meeting. The idea is to develop issues for public defender offices such as funding, case levels, resources, etc. Given the economic climate, these issues are becoming critical.

We submitted an article for the State of Criminal Justice. Many thanks to the authors, primarily Cynthia Orr, Scott Slonim, Roland Garcia and Bob Boruchowitz. The Defense Function list serve has been used to forward articles and other legal materials that may be of use to our members. We have presented resolutions to the Council. Scott Slonim and Bob Boruchowitz are working on a misdemeanor policy which will be presented to the Council at the Annual Meeting.

### Subcommittee on Habeas Reform

Chair: Karyl Krug

The Chair has attended all meetings of the Postconviction Task Force this past year. Recently, ABA Staff Attorney Christopher Gowen assigned us an intern, Ryan Peterson, to do necessary research to assist us with the task of Habeas Corpus Reform. Right now we are looking to see what proposals, scholarly articles, published opinions, and other materials are out there, to get a sense of whether there already exists any consensus as to how the procedural limitations enacted under the Anti-Terrorism and Effective Death Penalty Act of 1996 are or are not working. This past year the Supreme Court struck down the Military Commission Act of 2006 in *Boumediene v. Bush*, codified at 28 U.S.C. 2241, as a violation of the Suspension Clause. While the

AEDPA itself has withstood a Suspension Clause challenge, it is evident that there are problems that need to be addressed.

One issue where there seems to be agreement on is that the statute of limitations could reasonably be extended to as much as three years, since the resources to litigate these cases that were contemplated pre-AEDPA, when the one-year statute of limitations was agreed upon, never materialized. Litigating something as complicated as a post-conviction habeas case with little time and no resources is simply not realistic. In the current economic climate, funds are even more scarce. The other general area of agreement is that there should be an actual innocence exception to the statute of limitations -- preferably one contemplating not just known scientific breakthroughs, such as the refinement and improved accuracy of DNA testing since its inception, but also scientific breakthroughs not yet known. The need for reform in this area is even more urgent since the Supreme Court's very recent decision in *District Attorney's Office for the Third Judicial District v. Osborne*, which held that there is no constitutional right to post-conviction DNA testing, despite its "unparalleled ability both to exonerate the innocent and to identify the guilty." We are still working on crafting a proposal that balances governments' and crime victims' interests in finality with fairness to the litigants and their attorneys and, in particular, the innocent who have been wrongly convicted.

#### *Ethics, Gideon and Professionalism Committee*

Co-Chairs: Bruce Green and Ellen Yaroshefsky

The committee has developed proposed policy regarding the DOJ's disclosure of reports on investigations of prosecutorial misconduct conducted by the Office of Professional Responsibility. The committee presented the proposal to CJS Council in April 2009. The Council voted to table the proposal at the request of the DOJ's representative, who indicated that the issue was under review in the DOJ's new administration, which favored greater transparency.

The committee continues working to develop a proposed exception to the current confidentiality rule (ABA Model Rules of Professional Conduct, Rule 1.6) to address lawyers other than prosecutors who possess exculpatory evidence. The current version would provide: "A lawyer may reveal information relating to the representation of a deceased client to the extent the lawyer reasonably believes necessary to prevent or rectify the wrongful conviction of another." The proposal was presented to the National Association of Criminal Defense Lawyers, which expressed its opposition to any new confidentiality exception on this subject, and the proposal was then presented to, and discussed within, the CJS Council in April 2009.

The committee commented on the proposed change to the conflict of interest rules of the ABA Model Rules in order to permit screening of lateral lawyers. The proposal was developed by the ABA Standing Committee on Ethics and Professional Responsibility and CJS cosponsored it. The proposal was adopted by the ABA HoD at the midyear meeting in February 2009.

Professor Yaroshefsky co-chaired an ad hoc committee to develop proposed ABA policy on courts' appropriate use of the terms attorney "misconduct" and "prosecutorial misconduct." The proposal was approved by the CJS Council in April 2009. The draft report will be revised so that the proposed resolution and accompanying report can be circulated in time for consideration by the HoD at the annual meeting in August 2009.

Professor Green contributed to the organization of the Section's April 2009 annual conference, which was on "Ethics - Politics - and Public Corruption," and he participated on a panel on "The Media's Role in Public Corruption cases."

Professors Green and Yaroshefsky contributed a chapter to *The State of Criminal Justice 2009*.

At the October 27, 2008, Council meeting in Washington, DC, Professor Green organized and moderated a panel discussion on the topic, "Does Brady and its Progeny Actually Work?" The panelists were Neal Sonnett, Cheryl Jacobs, Vince Aprile, and Mat Heck. The panel discussed a case study raising questions about the prosecutors, defense lawyers and judges in discovery. The committee is now following up on the suggestion made at the program that the Section consider developing policy on Brady and on witness intimidation.

Professor Green is organizing a program for the upcoming ABA annual meeting in Chicago titled, "Government Litigators in the New Administration: How Far Must They Go to Seek Justice," to be held on August 1, 2009.

Professor Green has worked with Ron Goldstock, Anne Swern, Prof. Yaroshefsky and others to develop a proposal for an ongoing "Criminal Justice Ethics Conversation," in collaboration with NDAA, NACDL, and a consortium of academic institutions.

#### **Judicial Function Committee**

Chair: Sheila Murphy

This Committee has met infrequently, but since Sheila Murphy has been a member and Chair, we have dedicated ourselves to the principles of Restorative Justice in the criminal cases that come before judges.

In this endeavor we have circulated and studied the latest Pew Report and the Department of Justice's Bureau of Justice Statistics. Judges are systemically incarcerating individuals at an unprecedented rate: approximately 2.3 million people are incarcerated in our prisons. Of these numbers, African Americans make up 80 percent of mandatory life sentences.

It is the recommendation of the Chair that the Judicial Functioning Committee set forth goals and standards to stop judges from being used as "instruments of injustice" as appropriately stated by Associate Justice David Souter.

#### **Prosecution Function Committee**

Co-Chairs: David Barber, Mike McCann, and Michael Moore

The Prosecution Function Committee held three meetings this year. The meetings took place in New York City, Washington, DC, and Birmingham, Alabama. The following items were addressed by the committee: performed extensive work on the Resolution on Judicial Use of the Term "Misconduct"; opposed the proposal regarding "Miranda"; opposed the Draft ABA Policy on Collateral Consequences of Juvenile Arrest or Adjudications (although they like the concept); discussed at length the proposal urging DOJ to reestablish a policy on disciplinary actions;

reviewed the resolution on the amendment of model rule 1.6; discussed ethical concerns with prosecutors being involved with CIS.

The Committee also assigned members of committee to attend the Criminal Justice Congress. In the future the committee will be working on an ethics rule regarding the unknowing recording of a conversation with another attorney. The committee will also be reviewing a proposal on pattern instruction for capital cases and the NAS report. The Prosecution Function will work with the science and technology committee on the NAS report

### *Science Technology and Forensics Committee*

Co-Chairs: Todd Foster and Andrew Grosso

In April 2009, the committee cosponsored, on behalf of the ABA CJS, the first Conference on Forensics and the Law at the Sandra Day O'Connor School of Law at Arizona State University, in Tempe, Arizona. Over 250 persons attended plus the faculty.

In June 2008, the committee sponsored, on behalf of the ABA CJS, and along with other ABA Sections and the Association for Computing Machinery, the Second National Institute on CyberLaw, in Washington, DC. There were approximately fifty attendees plus faculty.

The committee is following and will produce a report on the ongoing prosecution of Professor Emeritus John Reese Roth, of the University of Tennessee. Dr. Roth was convicted after trial on various criminal charges regarding violations of the Arms Export Control Act. The gravamen of the charges included that he exported classified information to foreign countries (China and Iran) by using graduates students on research projects who were foreign nationals - these charges did not allege that he also intended for the graduate students to transfer the information to their countries. The case is also being followed by the American Physical Society. Dr. Roth is awaiting sentencing.

## **COMMUNICATION, MEMBERSHIP AND SERVICES DIVISION**

Division Co-Directors: Susan Gaertner and Nina Marino

### *Book Board*

Chair: Andrew Taslitz

### **Publications**

The book publishing board has overseen the publication of four major titles in the 2008-2009 fiscal year: (1) *Another Bite at the Apple* (Janice L. Bergmann), an in-depth look at Section 2255 motions for federal prisoners; (2) *Do No Wrong* (Peter Joy and Kevin McMunigal), collecting articles on ethics topics for prosecutors and defenders; (3) *Crime, Incorporated* (Miriam Weismann), assessing the legal and financial aspects of corporate entity crime; and (4) *The Privilege of Silence* (Steve Salky), a case analysis of the Fifth Amendment privilege against self-incrimination. The last two books on this list were published after this Committee's spring 2009 report to Council. In addition, we will publish a Spanish version of the *Citizenship Flow Chart Poster* (Bob McWhirter).

The topic areas (criminal law, ethics, white-collar crime, a Bill of Rights subject, and immigration law) represent the book board's goal to publish widely in criminal justice subjects. To meet this goal, the board had developed a strong pipeline of publications for the next two years. By the end of this year, we will establish a three-year development cycle for books that meet a practical need, provide timely, focused information to criminal justice practitioners, and serve the section's interests. Although we will continue our tradition of doing public service projects, we are trying to focus far more heavily on the profitability of projects, subjecting them to significant market analysis as to potential audience, price, and competitors.

We anticipate a strong beginning for fiscal year 2010 with the release of the section's next white-collar crime book, *Witness Warnings* (Gary Collins and David Seide, working title). Although the *Fourth Amendment Handbook, 3rd Edition* had been slated for FY09 publication, critical cases on the Supreme Court's 2009 docket caused the editors to hold for those decisions.

Many more books are in development. Working titles include *Contraband and Counterfeiting*, by Craig Stewart; *How to Try a Murder Case* (suggested by Bruce Green), lead author Michael Wims (several chapters already in draft); *How to Start, Build, and Manage a Criminal Law Practice*, by Eduardo Balarezo and co-authors; *Collateral Consequences*, by Bob McWhirter and co-authors; *Using the Media: What Prosecutors and Defenders Can, Cannot, and Should Say and How* (a multi-author work, with a different author for each chapter); *A Guide to the Sixth Amendment* (modeled after the recently-published *The Privilege of Silence*, but offering a concise overview and practical guide to the Confrontation, Compulsory Process, Speedy Trial Clauses, and possibly other clauses; the project is in the early stages of development, but the current debate is whether effectiveness of counsel should be a chapter in this book or is too large a topic); *The New Prosecutors* (a practical guide to new tools being used by prosecutors, including gang injunctions, community prosecution programs, etc.); *Parallel Proceedings*, by Miriam Weismann; and *How to Write a Bulletproof Search Warrant Affidavit* (a short, practical guide, including potential pitfalls and illustrative real-world documents; it differs dramatically from the *Fourth Amendment Handbook*, which collects case summaries on a wide range of Fourth Amendment issues). These projects are in various stages of development and, except for *How to Try a Murder Case*, are awaiting marketing department evaluations of profitability, proposal revisions, and other matters before proceeding further. But the Committee is hopeful that these background efforts will be successful and that all the projects will be in the writing phase by the end of this summer.

### **Marketing**

ABA Publishing continues to do a very good job marketing the Section's publications. In addition, members of the Book Board have made some helpful suggestions of audiences to target. A marketing flyer for works published through both ABA Publishing as well as the Section will likely be released in 2009, much like the flyer distributed in 2008. The Committee is also investigating the economics of electronic books, including a potential deal with amazon.com concerning its new Kindle 2 device.

### **General**

The Committee has increased the number of its conference calls (approximately bimonthly) between the board's regularly scheduled spring, summer, and fall meetings (though budgetary considerations might require reducing the number of meetings). As of April 2009, the books published under the Committee's auspices had brought in 75% of the Committee's profit



projected for this fiscal year, and the Committee is confident that it will meet the target fully by this fiscal year's end. One member of the Committee is appointed as a liaison to shepherd each project from Committee approval through completion. Sometimes, several Committee members work together as teams on projects. Committee members are also selected to review drafts and outside evaluators are also generally solicited to offer feedback on drafts.

The current board members are Gary H. Collins, George B. Donnini, Ellyn Garofalo, Carol Garfiel Freeman, Sharon Rubinstein, Jack Selden, Bob Del Tufo, Michael D. Wims, and chairman Andy Taslitz, with ABA staff participation by CJS publications manager Kyo Suh, ABA Publishing marketing director Kelly Keane and executive editor Sarah Orwig.

(See also *Publications and Technology* chapter.)

### **Criminal Justice Magazine Editorial Board**

Chair: J. Vincent Aprile II

The winner of this year's William W. Greenhalgh Student Writing Competition is Jason C. Miller of the University of Michigan Law School. Jason's expected graduation date is 2009. His entry is entitled "When is a Parent's Authority Apparent? Reconsidering Third Party Consent Searches of an Adult Child's Bedroom and Property." Jason will be awarded \$2,000 plus full Section membership for a year. Jason's law school will receive a commemorative plaque. Depending on space availability, Jason's article will also be considered for publication in a future issue of Criminal Justice magazine.

The summer 2009 issue of the magazine has been mailed to the membership and features articles on combat veterans' post-traumatic stress disorder in the criminal justice system, sentencing advocates, privacy and e-filings, and disability discrimination law in correctional facilities.

The symposium issue (Fall 2009) will focus on post-conviction as its theme. Andrew Taslitz will again be the issue editor. Authors were solicited and articles were due in June. Potential topics include gubernatorial pardons, ineffective assistance of counsel, alleviating collateral consequences post-conviction, and post-conviction options for the wrongly convicted.

The *Criminal Justice* magazine editorial board members next meet at the ABA's Annual Meeting in Chicago on August 1, 2009. In 2008-09, the board reduced its in-person meetings (usually held in the Washington, DC, offices) from three to two in response to the Section's loss of General Revenue funding. In light of the continuing economic situation and the ABA request that all entities reduce expenses, the board will continue this practice through 2009-10, conducting business via the board's e-mail list serve and conference calls.

Carol Freeman, a veteran of the editorial board, has tendered her resignation from the editorial board effective at the end of the 2008-2009 term in August, but has generously volunteered to continue to write the Cert Alert column, which in her hands has become an essential component of the magazine and one that so many of our readers rely upon and eagerly await.

The entire board thanks Carol for all of the years of devotion and contribution she has given to Criminal Justice magazine as an editorial board member and columnist, including her tenures as

chair and vice-chair. It would be impossible to list all of the various ways as a member of the editorial board that she has shaped and improved Criminal Justice magazine including, to name but a few examples, proposing article ideas, identifying potential authors, insightful critiquing of article ideas and manuscripts, developing and evaluating magazine policies and procedures, and cultivating the magazine's student writing competition. Carol's love of the magazine and its role in educating our readership on a variety of issues from various perspectives while promoting the value of membership in the Criminal Justice Section has always been apparent to those who have had the opportunity to work with her. Criminal Justice magazine will always bear indicia of her many excellent contributions.

New editorial board members for 2009-2010 are: Benjamin Gluck, Bird/Marella Law Firm, Los Angeles, a specialist in white collar criminal defense; Sherri L. Schornstein, Senior AUSA, U.S. Attorney's Office, District of Columbia, who has expertise in fraud and public corruption prosecutions; and Sheila Murphy, Rothschild Barry & Myers LLP, Chicago, a retired Cook County Circuit Court Judge, who now specializes in mediation and litigation.

This year the vice-chair of the editorial board has been David P. Leonard, Professor of Law and William M. Rains Fellow at Loyola Law School, Los Angeles, California. David will be the 2009-2010 chair of the editorial board. His vice-chair will be Dick Ginkowski, a career state prosecutor in Wisconsin, who has a long history of service on the editorial board in a variety of functions including as an article contributor. Vince Aprile will step down as editorial board chair after three years in that role.

Although advertising forecasts are bleak for 2009-10, the editorial board continues to discuss methods to increase Section revenue, mainly through promoting the sale of Section books, as well as looking for ways to cut expenses. Internal costs will be held at 2008-09 levels and the magazine's printer has suggested several ways to save on the outside expenses for print and mailing costs.

In addition to the ongoing pursuit of authors and articles, the board continues its work on a variety of magazine topics, such as: designing and implementing a new readership survey (probably electronically) and/or the incorporation of such a readership survey in an upcoming section general membership survey; continuing on the creation of a new readership subcommittee, primarily composed of section members not on the board, to provide additional perspectives and diversity on articles and authors; and devising a method of assessing the impact of the articles and columns published in the magazine by tracking where those works are cited, whether in other publications, cases, or on the internet.

#### **Criminal Practice Management/Solo & Small Firm Committee**

Chair: Anthony Colleluori

This was a year of change for the committee. Our two esteemed former co-chairs have moved on: Sol Weisenberg is now a lawyer in a "Big Law Firm" and Co-Chair William Nettles is set to begin serving our nation as US Attorney in his home district. We are both thankful and proud of both of these men for their service to our profession and our committee. The Committee has been entrusted to our new Co-chair Anthony J. Colleluori of Woodbury NY. Tony joined the ABA while still in law school and has been a Section member for as long. One of the inaugural

members of this committee, Tony is focusing on bringing a certain “joie de vive” to the committee. He has a firm belief that the practice of criminal law should be both fun and profitable. Our second Co-chair awaits designation.

A changing of the guard brings on changes in priorities and mission. To that end we have begun the work of putting out a committee Newsletter. The Newsletter will include articles from members of the committee as well as professionals outside of Section but who help Criminal legal practitioners and other members of the legal community to run a successful small law office.

In addition to the Newsletter which is set to have Jessica Foley of MA and Alena Shautsova of NY as co-editors, we have begun to plan a Webinar for the fall to cover topics such as how to expand your business, your case load and your income.

We are in the process of identifying potential speakers for next year’s annual meeting where we hope to participate in the CLE that is provided.

In addition to the above, we have actively been soliciting members to help the Section to raise our lawyer membership over 11,000 and we are participating in both the Red Flag Rule controversy and in the writing of a Criminal Justice Section book entitled *Careers in Criminal Law*.

#### **Communication, Awards and Memberships Committee**

Co-Chairs: J. Vincent Aprile II, Cheryl Jacobs

See *Membership and Awards* chapter.

#### **Law School and Academic Function Committee**

Co-Chairs: Brice Aikens and Cynthia Jones

The Law Student Committee has made solid contributions to the discussions and ongoing activities of the Section. Committee co-chair Cindy Jones has attended and actively participated in all Council meetings, bringing a strong perspective of what issues the Section – and the American Bar Association as a whole – should address and embark on that would be beneficial to the law student community.

The committee helped develop the strategic plan, and is currently working with the Section staff, in our efforts to boost law student involvement and retention once they embark on their legal careers. As part of the new initiative, Criminal Justice Section staff and leadership will be visiting and conducting presentations at law schools around the country about *Careers in Criminal Justice* and the important work of the American Bar Association.

Ms. Jones also took the time to organize a law student teaching visit to a Middle School in Houston, TX to implement the lesson plan for *Leapholes*, a book of fiction published by the Section for middle-schoolers.

We recently completed a re-design of the committee’s webpage, and continue to communicate with fellow law students about upcoming Criminal Justice Section programs taking place in their region.

### Legislative and Policy Committee

Co-Chairs: Lynn Branham and Hillel J Hoffman

The Legislative and Policy Committee has taken several steps to help facilitate the implementation of the ABA's criminal-justice-related policies. These steps are briefly described below.

#### **State Bar Liaison Program**

The goal of this program is to strengthen the ties between the Criminal Justice Section and the state (and eventually local) bar associations through liaisons appointed to the Section by each state bar association. This liaison will work with individuals and entities within the state bar association and throughout the state to effectuate changes in criminal-justice-related and juvenile-justice-related laws, policies, and procedures that reflect ABA policy recommendations. The liaison also will serve as a conduit to channel cutting-edge ideas and information about innovative criminal-justice programs in the liaison's state to the Section.

To realize the goals and objectives of the liaison program, the following steps, among others, have been taken:

- (a) A teleconference and meeting with leaders of the National Association of Bar Executives led to NABE's support for the liaison program.
- (b) The first ten states to participate in the program have been identified: Alabama, California, Illinois, Louisiana, Maryland, Massachusetts, New York, Oregon, Texas, and Wyoming.
- (c) Mentors from the Section have been identified for nine of these states. These mentors will serve, along with Section staff and staff from the Government Affairs Office, as resources to the state liaisons.
- (d) Section staff and staff from the Government Affairs Office continue to work with the bar associations in the ten states to secure the appointment of a liaison from each state.
- (e) Documents have been prepared for the liaisons explaining the purposes of the liaison program. CJS staff members have been asked to set up ten teleconferences in June and July. The following individuals will confer during each teleconference: the liaison from the state bar association, the mentor for that state, Robert Snoddy (the Section's Outreach Coordinator), Ken Goldsmith (Government Affairs Office), and one or both of the co-chairs of the Legislative and Policy Committee. The purpose of this teleconference will be to lay the foundation for the liaison program's success in that state by, for example, further explaining the program and answering questions about how it can be adapted to meet the needs of the liaison and the state bar association.

So that the liaison program can meet its purposes and flourish, it is recommended that the Section explore potential funding sources that would enable a current or newly hired member of the

Section staff to devote a minimum of twenty hours a week, and preferably forty, to this ambitious, but important, program.

### **Federal Subcommittee**

Hilly Hoffman, the chair of this subcommittee, has recruited the following individuals to serve on the subcommittee: Janet Fink (New York State Office of Court Administration), Wayne McKenzie (Vera Institute of Justice), and Andrew Taslitz (Howard Law School). The subcommittee has begun to monitor proposed federal, criminal-justice-related legislation and administrative policies for the purpose of informing the Legislative and Policy Committee and the Section of issues that merit their attention. The subcommittee plans to focus, in particular, on legislation and policies identified as priorities by the ABA's Board of Governors as well as "signature issues" that have been identified by incoming CJS chair, District Attorney Charles Hynes. These latter issues include domestic violence, diversion of drug offenders, treatment courts, re-entry of prisoners into the community, collateral consequences, wrongful convictions, and forensic evidence. The expectation is that this subcommittee will coordinate its efforts with the Government Affairs Office so as to complement, not duplicate, that Office's work.

### **Other Steps**

The committee drafted a memo last fall to be sent by the chair of the Council to the chairs of the Section's committees. That memo asked each committee to include in the committee's annual goals the development of an implementation plan for at least one policy previously developed by the committee. The committee recommends that the incoming Section chair send a similar memo to the individuals who will chair the Section's committees in 2009-10.

### **Long Range Planning Committee**

Chair: Robert A. Johnson

The Criminal Justice Section convened the first annual *Criminal Justice Congress*. This was a new endeavor through which several organizations joined with Section representatives and other criminal justice partners to address complex issues concerning the proper and just operation of the criminal justice system.

We had outstanding representation from key stakeholders in the criminal justice system. Representatives came from the Department of Justice, Federal Public Defenders, International Association of Chiefs of Police, National Association of Attorneys General, National Association of Criminal Defense Lawyers, National Black Police Association, National District Attorneys Association, The National Judicial Conference, National Legal Aid & Defender Association, and the ABA.

## WHITE COLLAR CRIME DIVISION

Division Co-Directors: Gary Collins and Bruce Green

### White Collar Crime Committee

Co-Chairs: Janet Levine and Morris "Sandy" Weinberg

The WCCC continued to take a leadership role in 2008-09 in advancing the Section's goals of education, promotion of policy initiatives, and providing a platform to help develop the next generation of criminal justice experts. We worked to foster a continuing dialogue between defense attorneys and the Department of Justice, particularly in areas of national policy. Our DOJ Liaison committee, under the leadership of Jack Selden, has already had contact with Attorney General Holder to that end.

The WCCC's Regional and Substantive subcommittees – working with the National leadership and the ABA Center for Continuing Education – put on National Institutes covering issues such as Securities Fraud, the Foreign Corrupt Practices Act, Criminal Tax Fraud, Gaming Law, Health Care Fraud, Computer Forensics, and the Civil False Claims Act. This year, together with the Business Law Section, we cosponsored the first National Institute on Internal Corporate Investigations and In-House Counsel.

This menu of national programming was punctuated by the *23rd Annual National Institute on White Collar Crime* in March. More than 1,200 practitioners gathered in San Francisco to benefit from the expertise and insights of a unique blend of judges, federal, state and local prosecutors, other law enforcement officials, defense attorneys, corporate in-house counsel, and members of the academic community. Our institute, founded by former committee co-chair and National Institute program chair, Ray Banoun, stands alone as the preeminent gathering of White Collar Crime practitioners in the country.

Local programming continued to highlight our committee's work. A few of the more than 25 programs are set forth below. The completion of the Upjohn Best Practices Report is one of our most significant accomplishments, and we continue to publish the *Committee Newsletter* on a quarterly basis.

Our thanks to our dedicated, substantive and required committee chairs for their hard work. It is their work, and that of staff liaison Robert Snoddy, that has made this all happen so successfully.

### White Collar Crime Committee Programs

#### SEPTEMBER

- 12     **"The Foreign Corrupt Practices Act: Current SEC and DOJ Enforcement Initiatives"** was presented by the Securities Fraud Subcommittee. The in-person/teleconference panel discussion drew more than 30 attendees and another 90+ participants via phone.

- 26 **“Second National Institute on Criminal Enforcement of Intellectual Property Rights,”** took place in San Francisco, CA, and was sponsored by the Computer Crime, Intellectual Property, and Trade Secrets Subcommittee. Joe Russoniello, U.S. Attorney for the Northern District of California, gave a keynote luncheon address.

## OCTOBER

- 2-3 **“National Institute on Securities Fraud”** took place at the Hyatt Regency-Crystal City Hotel in Arlington, VA. Deputy Attorney General Mark Filip was the keynote speaker. Mr. Filip chose to use our venue to disclose that he did not believe that federal legislation was needed to protect the attorney-client privilege and employee rights now that the Department has refined its policies. He also said that the Department continues to support separate legislation (introduced in previous Congresses but not currently pending) that would allow companies to voluntarily produce privileged materials to the government without waiving the privilege as to third parties (the so-called "selective" or "limited" waiver proposals). There were more than 15 members of the media present and his remarks were the basis for a [Washington Post article](#) which ran on the front page of the Business Section. This event garnered numerous other references in the media.
- 16-17 National Institute on Foreign Corrupt Practices Act, Houston, TX.
- 23 **“Town Hall Meeting on the State of White Collar Crime.”** Panelists included: Chris Conte, Associate Director of the Division of Enforcement for the SEC; Judge Ellen Huvelle of the United States District Court in Washington, DC; Ed McNally, Senior Counsel, Criminal Division, Department of Justice; and Lisa Monaco, Chief of Staff to the Director of the FBI.
- 23 Committee-wide meeting; more than 50 in attended in person, another 30-plus by phone.
- 30 The Mid-Atlantic Regional Subcommittee presented **“Recent Developments in Corporate Prosecutions: Views from the Prosecution and Defense in the Northeast”** which addressed the most recent developments in corporate prosecutions in New York, New Jersey, and Pennsylvania from the perspectives of both the prosecution and the defense. Particular emphasis was given to the recently revised Department of Justice guidelines on corporate prosecutions and the Second Circuit’s affirmance of the KPMG decision. Panelists included Michele A. Brown, Executive Assistant U.S. Attorney, District of New Jersey; Kelly Currie, Deputy Chief, Criminal Division, U.S. Attorney’s Office for the Eastern Division of New York; and Linda Dale Hoffa, Chief of the Criminal Division, U.S. Attorney’s Office for the Eastern District of Pennsylvania.

## NOVEMBER

- 12 The Midwest/Kansas City Region Subcommittee held a program titled **“Beyond the Mortgage Meltdown: The Future of Financial Crime & Corporate Prosecutions”** which featured comments from recently appointed U.S. District Court for the Western District of Kentucky Judge Greg Kays. U.S. Attorney John Wood gave a presentation on determinations regarding increased corporate fraud prosecutions and the factors for

charging business organizations, as well as the revised guidelines for the attorney-client privilege policy. Members of the United States Attorneys Office for the Western District and the District of Kansas and many of the Private Bar and Public Defenders were in attendance.

- 13 Midwest/Chicago Region Subcommittee presented two separate programs in Chicago: **“Crash of the Titans: At the Intersection of Privilege, Defendants’ Rights, and Corporate Cooperation Credit”** and **“Financial Institutions: Navigating Through the Landmines.”**

The **“Crash of The Titans”** program addressed the most recent decision in *U.S. v. Stein*, as well as the Filip Memorandum and the DOJ’s current policies and procedures relating to the waiver of the attorney client privilege by corporate defendants. Panelists included: David Glockner, Chief of the Criminal Division, U.S. Attorney’s Office for the Northern District of Illinois; and Jeffrey Johnson, Senior Corporate Counsel, Motorola, Inc.

**“Financial Institutions: Navigating Through the Landmines”** was cosponsored with the Illinois CPA Society and featured a former United States Attorney, the head of the Financial Crimes Unit for the Illinois Attorney General’s Office, an FBI mortgage fraud expert and the FDIC’s lead Fraud Examiner for a discussion of the primary areas of potential civil and criminal exposure for professionals who work with or for financial institutions.

## DECEMBER

- 4-5 National Institute on Criminal Tax Fraud, San Francisco, CA.

## JANUARY 2009

- 22 The Southwest/Arizona Region Subcommittee cosponsored with the State Bar of Arizona an in-person/Webcast CLE program titled **“White Collar Crime 2009 Annual Update and Trends – Directions for the Future”** This program featured experienced government, corporate and private practitioners providing valuable insights into such issues as the framework for internal investigations and compliance programs; the development of DOJ policies; state and federal forfeiture; and parallel proceedings and collateral consequences.
- 29 The Public Corruption and Extortion Subcommittee held a program titled **“Speech or Debate Clause and its Impact in Public Corruption Cases”** in Washington, DC. William Welch, Chief of the Public Integrity Section, U.S. Justice Department, served as a panelist.

## FEBRUARY

- 13 The New England/Boston Region Subcommittee presented **“The Handling Investigations by State Attorneys General”** at the Criminal Justice Section’s Midyear Meeting in Boston. The program – which will feature AG’s from Connecticut and Massachusetts – will examine how multi-state investigations develop, how these multi-state groups are organized and function in individual investigations, how the civil prosecutors in AG



offices work with federal and state criminal counterparts, the organizations among attorneys general and staff that support these activities, how these investigations can affect state and federal criminal matters, and how to assist clients in dealing with these inquiries simultaneously.

- 24 **“Texas Intellectual Property Rights Conference: IP Crimes, Victims & Cases”** was cosponsored with the U.S. Department of Justice, the U.S. Chamber of Commerce, the Federal Bar Association, and the Pharmaceutical Security Institute. The program featured a dialogue and discussion with top federal judges, prosecutors, law enforcement agents, and victims regarding intellectual property crimes and enforcement actions. The conference included tips on how to develop and refer cases to law enforcement, best practices, civil seizures, permissible assistance and will also provide attendees with case studies on recent IP criminal prosecutions involving trademark counterfeiting, criminal copyright infringement, and the theft of trade secrets. It took place in Houston, TX.
- 25 The committee cosponsored **“Anti-Money Laundering Compliance in These Turbulent Times”** with Huron Consulting Group in New York City. The panel explored the impact of this period of economic upheaval on AML examination activities and industry compliance efforts and offered inside perspectives into the major issues found during recent AML investigations and how organizations can manage systemic risk.
- 25 The committee sponsored **“Agency Under Fire: The Challenges Facing the Securities & Exchange Commission and How Reform will Affect the White Collar Bar”** The program – which was moderated by Michael Wilner, U.S. Attorney’s Office, Los Angeles, and featured Rosalind Tyson, Regional Director, SEC Los Angeles Regional Office as a panelist – discussed challenges and changes facing the Securities & Exchange Commission in light of recent scandals involving Madoff and other cases, and how the White Collar bar will respond to it. Los Angeles, CA.

## MARCH

- 4-6 **“2009 National Institute on White Collar Crime”**, San Francisco, CA. The Institute featured a faculty of the leading white collar crime experts and featured panels focusing on the hottest issues in white collar crime investigations and prosecutions. ABA Criminal Justice Section Chair Anthony Joseph welcomed attendees and gave opening remarks to kick off the conference.

The presentations included white collar staples such as money laundering, criminal tax enforcement, and health care fraud and hot issues such as the FCPA, corporate charging guidelines, and mortgage fraud.

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

More than 100 committee members attended the Committee meeting. It was kicked-off with remarks by Steve Tyrrell, chief of the Department of Justice Criminal Division's Fraud Section. Mr. Tyrrell's remarks focused on the expected fraud division priorities in the coming year. Other topics in the meeting included a report on the status of the Upjohn Best Practices initiative (David Seide addressed), the ABA Task Force on Attorney/Client Privilege (Neil Sonnett addressed and provided recent written updates), and the committee's DOJ Dialogue subcommittee (Jack Selden addressed priorities and introduced his distinguished committee members). Representatives from virtually all the committee's regional and substantive subcommittees attended and provided an overview and preview of past and upcoming programs. The upcoming In-House Counsel Institute (May 6-8, Washington, DC) was also discussed.

During the ABA White Collar Crime Conference, committee leadership met with representatives from The American Institute of Certified Public Accountants and Huron Consulting Group to discuss the possibility of representatives from both organizations becoming involved in ABA regional committees for the purposes of joining the committees and participating in regional programs.

## APRIL

- 2 **"Town Hall Meeting on Prosecutorial Perspectives of the Obama Justice Department"** took place in Birmingham, Alabama (during the CJS Spring Meeting). This program featured a panel of seasoned DOJ veterans – Vicki Davis, Michele Nicrosi, and Joyce Vance – who shared their personal perspectives on what they foresee as prosecutorial priorities and other related matters in the Northern, Middle, and Southern Districts of Alabama under the Obama Administration. The discussion was moderated by Jack Selden, who previously served both as the United States Attorney and as an Assistant U.S. Attorney for the Northern District of Alabama. More than 60 people attended the program and the reception that followed.
- 23 **"Health Care Fraud: Forecast for Enforcement 2009"** was held at the Union League Club in Philadelphia, and presented by the Mid-Atlantic Regional Subcommittee. It featured a dialogue and discussion on Health Care Fraud issues, what in-house counsel and the defense bar can expect from the federal and state authorities in 2009, and how to get prepared for what lies ahead.

## MAY

- 6-8 **"National Institute on Internal Corporate Investigations and In-House Counsel"** in Washington, DC. Attorney General Eric Holder gave a luncheon keynote address on, amongst other issues, what the Department of Justice can expect from corporations and what corporations can expect from the Department of Justice during his tenure. The audio recording of his remarks was distributed to the entire Section membership shortly after the conclusion of his speech. Cosponsored with the ABA Business Law Section, more than 150 people attended the three-day program, which was in its first year.
- 13-15 **"19<sup>th</sup> Annual National Institute on Health Care Fraud"** took place in Phoenix, AZ.

- 20 The New York Region Subcommittee hosted an informal reception and meeting to develop ideas for building membership in the Regional committee and to get an idea as to the types of programs and events lawyers in the NYC White Collar Crime community would find of interest. Approximately 45 people attended the gathering. The committee also created a special entity to focus on outreach to young lawyers at the large firms and law students at NYC-area law schools.
- 28 The Washington, DC, Region Subcommittee hosted a meeting for local Committee members (25-30 attended the function) to meet and share ideas for educational programs and dialogue sessions, to organize steering committees and a Young Lawyers Division, and to ascertain interest from those wanting to serve as program leaders.

## JUNE

- 17 **“Is the Government Complying with Brady: The Future of Criminal Discovery after U.S. v. Stevens”** was held in Los Angeles, CA.
- 18 **“TARP Compliance and Enforcement: What the Legal and Financial Sectors Can Expect”** was held in Washington, DC. This program, which was attended by more than 50 people, featured panelists from the TARP program and the American Bankers Association, and addressed how TARP funds are being monitored and how TARP fund recipients and their counsel can prepare for the enforcement actions that are likely to arise in the upcoming months and years. The program was cosponsored by the Washington, DC, and Mid-Atlantic Regional Subcommittees, along with the Washington, DC, and Philadelphia Young Lawyers Subcommittees of the ABA Criminal Justice Section’s White Collar Crime Committee.

## JULY

- 31 **CJS “Town Hall Meeting: One Look Forward, Two Looks Back”** coordinated by the Midwest/Chicago Subcommittee and taking place during the ABA Annual Meeting, this program will address many of the factors affecting financial institutions that handled mortgage-backed securities and how those factors contributed to the current financial crisis and the current focus of prosecutors and regulators with respect to financial crisis investigations. This program will be preceded by the Committee-wide meeting.

## AUGUST

- 2 **“Investigations in a Time of Financial Meltdown: What is the New Normal?”** (ABA Presidential CLE Showcase Program) This roundtable discussion – moderated by Gary Collins, the Committee’s Immediate National Past Chair – will assess the “new normal” in investigations conducted by the Justice Department, the SEC, the FBI, and foreign prosecutors in the wake of the international financial meltdown and credit crisis.

## CRIMINAL JUSTICE STANDARDS COMMITTEE

Chair: Martin Marcus

On the occasion of the fortieth anniversary of the Criminal Justice Standards, Standard Committee Chair Martin Marcus published an article in the Winter 2009 edition of *Criminal Justice* magazine, which describes the accomplishments of the Standards over the past four decades and describes the Standards process. The article reports that more than 120 Supreme Court opinions quote from or cite to the Standards and/or their accompanying commentary, that the federal circuit courts have cited to the Standards in more than 700 opinions, and that state supreme courts have cited to the Standards in more than 2,400 opinions. The article also reports that the Standards have been implemented by legislatures and in court rules, and in a variety of criminal justice projects and experiments, and have made their way into law school casebooks and other academic literature, including some 2,000 law journal and law review articles. Indeed, entire symposia have been devoted to the consideration of particular standards and the issues they raise, and to the development, implementation, and significance of the standards.

On June 2, 2009, the ABA submitted an amicus brief to the Supreme Court in *Padilla v. Kentucky*, a case in which the Kentucky Supreme Court had held that a hearing to consider the advice a defendant's attorney gave him about the immigration consequences of his guilty plea was not necessary in order to determine the validity of his plea, since counsel's failure to advise a defendant about the potential for deportation, or of advising the defendant incorrectly, would provide no basis for vacating the defendant's sentence. In supporting the defendant, the amicus brief cites (in addition to the above described article) the ABA Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons, on Pleas of Guilty, and on the Prosecution and Defense Function.

### Current Standards Activities

#### **Standards on the Prosecutor as Investigator**

*Prosecutorial Investigation Task Force [Ronald Goldstock, Chair; Stephen Solow, Reporter]*

At its meeting on May 30-31, 2009, the Standards Committee began reviewing the proposed commentary to the "black letter" Standards on Prosecutorial Investigations, which were approved by the House of Delegates in February 2008.

#### **Standards on the Treatment of Prisoners**

*Legal Status of Prisoners Task Force [Margaret Love, Chair; Alvin Bronstein, Co-Chair; Margo Schlanger, Reporter]*

The Standards Committee has completed its review of the proposed Treatment of Prisoner Standards and will be submitting them to the Council for a first reading at the August 1-2, 2009, Council meeting in Chicago. The draft Standards will be circulated to Council members and other interested parties well in advance of the Council meeting.

#### **Standards on the Prosecution and Defense Function**

*Prosecution/Defense Function Task Force [Judge John Tunheim, Chair; Prof. Rory Little, Reporter]*

The Prosecution/Defense Function Task Force has completed its draft of the Prosecution and Defense Function Standards. The Standards Committee began its consideration of that draft at its May 30-31, 2009, Committee meeting.

### **Standards on Diversion and Special Courts**

*Diversion and Special Courts Task Force [Judge Irma Raker, Chair; Prof. Walter Dickey, Reporter]*

The Diversion and Special Courts Task Force will hold its final meeting on July 26-27, 2009. Once finalized, its proposed standards will be submitted to the Standards Committee for consideration.

### **Standards on Transaction Surveillance**

*Transaction Surveillance Task Force [Judge Michael Bender, Chair; Prof. Stephen Henderson, Reporter]*

The Transaction Surveillance Task Force met for the sixth time on February 28, 2009, and plans to have its next (and last, or next to last) meeting on June 27-28. The Standards Committee expects to begin its review of the proposed standards late this year.

### **Standards on Post-Conviction Remedies**

*The Post-Conviction Remedies Task Force [Robert Johnson, Chair; Prof. Larry Yackle, Reporter]*

The Post-Conviction Remedies Task Force will hold its third meeting on September 18-19, 2009.

### **Standards on Juvenile Justice**

*The Juvenile Justice Task Force [Judge Ernestine Gray, Chair; Kristin Henning, Reporter]*

This task force has now held its fourth meeting. Prof. Henning, Georgetown University Law Center, has begun serving as Task Force Reporter for this group, following the death of Robert Shepherd in December. The standards will address the interaction between the juvenile justice system and other systems that provide youth services, such as education, welfare, foster care and health care. The Task Force will bring its proposed Standards to the Committee for review prior to submission to the Council and House of Delegates.

## DIVISION REPORTS (CHARTS)

### Equal Justice Division

Executive Directors: Lynn Branham & William Shepherd

#### *Number of Substantive Committee Related Emails*

<b>Equal Justice Division</b>	July 2008	Aug. 2008	Sept. 2008	Oct. 2008	Nov. 2008	Dec. 2008	Jan. 2009	Feb. 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
Juvenile Justice	9	8	13	6	11	18	13	10	23	5	9	9	134
Military Justice	0	0	0	1	1	1	0	0	0	0	0	0	3
Problems of the Elderly	2	0	0	1	0	0	2	1	0	0	0	0	6
Racial & Ethnic Justice & Diversity	3	2	2	5	2	2	3	2	5	4	2	1	33
Victims	0	1	3	3	2	0	5	1	0	1	0	4	20
Women in Criminal Justice	0	2	0	1	1	0	0	1	2	5	0	0	12

#### *CLE*

<b>Date</b>	<b>Committee Name/Co-Chairs</b>	<b>Program Title</b>
08/07/08	Women in Criminal Justice (Jane Aiken & Sara Buel)	Women in Criminal Law and the Criminal Justice Section
08/09/08	Juvenile Justice (Charles Ogletree & Kathryn Richtman)	The Rule of Law and Juvenile Justice
08/08/08	Problems of the Elderly (Ben Overton & Lori Levin)	It's Time for Justice: How to Handle Financial Exploitation of the Elderly
08/09/08	Military Justice (Eugene Fidell & Stephen Saltzburg)	Defining the Boundaries: The Use of Private Contractors in Contingency Operations
11/06/08	Juvenile Justice (Charles Ogletree & Kathryn Richtman)	A Call to Action for Juvenile Justice
02/13/09	Juvenile Justice (Charles Ogletree & Kathryn Richtman)	A New Paradigm for Juvenile Justice
12/04/08	Problems of the Elderly (Ben Overton & Lori Levin)	Providing People with Disabilities and the Elderly Equal Access to Justice
02/13/09	Victims (Russell Butler & Margaret Garvin)	Practical Skills for Attorneys, Judges, Prosecutors, Child Victim Advocates and Defense Attorneys to Better Serve Children
07/30/09	Victims (Russell Butler & Margaret Garvin)	Child Victim Attorney Training
07/30/09	Juvenile Justice (Charles Ogletree & Kathryn Richtman)	A Life Sentence for Juveniles? Challenging The Application of Collateral Consequences
	Racial & Ethnic Justice & Diversity (Wayne McKenzie & Erek Baron)	No program

*New Committee Members from July 2008 through June 2009*

	<b>Current Membership as of 07/1/08</b>	<b>Lawyer</b>	<b>Associate</b>	<b>Law Student</b>	<b>Total New Members</b>	<b>Total Current Membership as of 06/30/09</b>
Juvenile Justice	116	21	1	31	53	157
Military Justice	156	15	0	16	31	169
Problems of the Elderly	59	4	0	3	7	58
Racial & Ethnic Justice & Diversity	95	16	2	20	38	119
Victims	51	4	3	12	19	58
Women in Criminal Justice	155	11	2	29	42	185

\*\*\* This chart doesn't reflex ABA Members that were dropped for the year.

*POLICY (from July 2008 to March 2009)*

<b>Date</b>	<b>Committee</b>	<b>Program Title</b>
	Juvenile Justice	Adam Walsh Act
	Juvenile Justice	105 C (Sentence Mitigation for Youthful Offenders)
	Juvenile Justice	Special Presentation on Juvenile Collateral Consequences, Collateral Consequences for Juveniles
	Victims	Child Victims in the Criminal Justice System
	Racial & Ethnic Justice & Diversity	CJS Diversity Policy

*Newsletters*

<b>Date</b>	<b>Committee</b>	<b>Title</b>
March 2009	Juvenile Justice	Juvenile Justice E-Newsletter
June 2009		

*Number of Substantive Committee Page Hits*

<b>Equal Justice Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
Juvenile Justice	663	583	639	761	1274	472	584	645	738	1356	1203	1103	10021
Military Justice	22	38	54	19	25	21	18	15	28	15	18	11	284
Problems of the Elderly	14	24	17	0	14	10	12	13	11	5	7	12	139
Racial & Ethnic Justice & Diversity	51	67	162	155	161	160	114	136	202	221	157	97	1683
Victims	21	56	64	34	92	25	41	27	28	21	25	51	485
Women in Criminal Justice	59	70	63	68	75	48	40	40	48	65	91	42	709

**Corrections and Sentencing Division**

Executive Directors: Dino Amoroso and Ernestine Gray

*Number of Substantive Committee Related Emails*

<b>Corrections and Sentencing Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
Alternative Dispute Resolution & Restorative Justice	3	0	0	2	0	0	0	0	1	1	0	0	7
Corrections	3	3	2	5	3	0	4	3	9	2	2	2	38
Alternative to Incarceration & Diversion	0	0	3	3	0	0	0	0	0	2	1	0	9
Re-Entry & Collateral Consequences	1	0	3	3	0	1	0	2	6	1	5	0	22
Sentencing	4	0	5	6	1	1	2	15	5	8	6	0	53

*CLE*

<b>Date</b>	<b>Committee Name/Co-Chairs</b>	<b>Program Title</b>
08/08/08	Alternative Dispute Resolution and Restorative Justice (Karen Gopee, Marvin Johnson, Kim Kovach)	It takes a Community Court to Change a Neighborhood



09/12-14/08	Alternative Dispute Resolution and Restorative Justice (Karen Gopee, Marvin Johnson, Kim Kovach)	ABA Criminal Matters Mediation Training
10/24/08	Sentencing (Barry Boss, James Felman)	Sentencing Advocacy, Practice and Reform Institute
04-16-09	Alternative Dispute Resolution and Restorative Justice (Karen Gopee, Marvin Johnson, Kim Kovach)	Mediation in Criminal Matters at Dispute Resolution Spring Conference
05/21-22/09	Sentencing (Barry Boss, James Felman)	Federal Sentencing Guidelines (Co-Sponsored)
	Corrections (Brett Dignam, Marc Elias, Martin Horn)	No programs
	Diversion (John Creuzot, Matthew D'Emic, Anne Swern)	No programs
	Re-Entry & Collateral Consequences (Lance Ogiste, Lisa Smith, Michael Costello)	No Programs

*New Committee Members from July 2008 through June 2009*

	<b>Current Membership as of 07/1/08</b>	<b>Lawyer</b>	<b>Associate</b>	<b>Law Student</b>	<b>Total New Members</b>	<b>Total Current Membership as of 06/30/09</b>
Alternative Dispute Resolution and Restorative Justice	106	6	1	9	16	112
Alternative to Incarceration and Diversion	24	8	1	10	19	37
Corrections	130	4	0	13	17	137
Re-Entry & Collateral Consequences	125	8	2	9	19	134
Sentencing	163	22	2	14	38	182

\*\*\* This chart doesn't reflex ABA Members that were dropped for the year.

*POLICY(from July 2008 to March 2009)*

<b>Date</b>	<b>Committee</b>	<b>Program Title</b>
	ADR	Mediation in Criminal Matters
	Corrections	104 B (Guidelines for Effective Prison Oversight)
	Sentencing	104 A (Improving Procedural Fairness in the Federal Sentencing Process)

*Newsletters*

<b>Date</b>	<b>Committee</b>	<b>Title</b>
July 2008	Re-Entry & Collateral Consequences	Re-Entry & Collateral Consequences E-Newsletter

*Number of Substantive Committee Page Hits*

<b>Corrections &amp; Sentencing Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
Alternative Dispute Resolution & Restorative Justice	108	94	106	84	85	77	63	77	112	96	53	59	1014
Alternative to Incarceration & Diversion	0	17	13	13	10	10	4	10	11	12	39	15	154
Corrections	17	33	27	26	77	38	21	12	76	38	23	30	418
Re-Entry & Collateral Consequences	29	29	35	35	109	47	65	99	46	24	36	27	581
Sentencing	30	30	60	32	32	16	21	38	13	16	14	37	339

**Specialized Practice Division**

Executive Directors: James Cole and Bruce Zagaris

*Number of Substantive Committee Related Emails*

<b>Specialized Practice Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Toal</b>
Amicus Practice	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Appellate and Habeas	0	0	0	0	0	0	0	0	0	0	0	0	0
Cyber Crime	0	0	2	4	0	0	0	0	0	0	1	0	7
Homeland Security	0	0	4	3	0	0	0	1	1	0	1	1	11
Immigration	1	0	2	6	0	0	0	0	0	0	0	0	9
International	0	0	0	1	0	0	0	0	0	0	0	0	1

**CLE**

<b>Date</b>	<b>Committee Name/Co-Chairs</b>	<b>Program Title</b>
06/11-13/09	International Committee (Luz Nagle & Buddy Parker)	Transnational Crime Conference (Co-Sponsored)
	Immigration Committee (Sara Dill & Robert McWhirter)	No Program
	Appellate and Habeas Committee (Jeffrey Green)	No Program
	Amicus Practice Committee (Terence Anderson & Rory Little)	No Program
	Cyber Crime Committee (David Goldstone & Christopher Painter)	No Program

*New Committee Members from July 2008 through June 2009*

	<b>Current Membership as of 07/1/08</b>	<b>Lawyer</b>	<b>Associate</b>	<b>Law Student</b>	<b>Total New Members</b>	<b>Total Current Membership</b>
Amicus Practice	n/a	n/a	n/a	n/a	n/a	n/a
Appellate and Habeas	51	11	1	16	28	70
Cyber Crime	79	9	0	9	18	92
Homeland Security	55	8	2	13	23	71
Immigration	51	9	0	13	22	51
International	156	10	0	18	28	154

\*\*\* This chart doesn't reflex ABA Members that were dropped for the year.

*POLICY (from July 2008 to March 2009)*

<b>Date</b>	<b>Committee</b>	<b>Program Title</b>
	Immigration	Immigration Raids in Criminal Justice
	Amicus Practice	ABA amicus brief in <i>Padilla v. Kentucky</i>

*Number of Substantive Committee Page Hits*

<b>Specialized Practice Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
Amicus Practice	0	0	0	0	0	0	0	0	0	4	0	5	9
Appellate & Habeas	0	22	0	0	14	8	13	6	6	10	0	17	96
Cyber Crime	0	0	0	0	0	0	0	0	0	16	21	26	63
Homeland Security	17	13	17	0	0	0	5	11	9	9	7	13	101
Immigration	25	30	30	31	30	29	28	20	21	27	13	17	301
International	11	20	20	16	14	16	19	13	7	11	8	12	167

**Professional Development Division**

Executive Director: Barbara Berman

*Number of Substantive Committee Related Emails*

<b>Professional Development Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
CLE Board	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Criminal Procedure Evidence, and Police Practices	0	0	1	1	0	2	4	1	0	1	0	0	10
Innocence	0	1	0	1	0	0	1	1	0	0	0	0	4
Defense Function	16	6	12	9	12	6	6	8	10	6	5	5	101
Ethics, Gideon and Professionalism	2	2	2	3	0	0	47	3	3	35	10	3	110
Judicial Function	3	0	0	2	2	4	6	2	4	1	7	2	33
Past Chairs Function	0	0	0	0	0	0	0	0	0	0	0	0	0
Prosecution Function	7	2	0	4	2	0	2	3	4	1	10	11	46
Science & Technology	0	0	1	1	0	0	0	3	1	0	0	1	7

**CLE**

<b>Date</b>	<b>Committee Name/Co-Chairs</b>	<b>Program Title</b>
08/08/2008	Science Technology and Forensics (Andrew Grosso and Todd Foster)	The Legality and Practicality of Remote Witness Testimony
08/08/2008	Criminal Procedure, Evidence and Police Practices (David Aaronson)	Miranda Warning and Waivers: The Latest Research and its Practical Applications
04/03-04/09	Science Technology and Forensics (Andrew Grosso and Todd Foster)	Forensic Science for the 21 <sup>st</sup> Century (Co-Sponsored)
04/03/09	Ethics and Gideon and Professionalism (Bruce Green & Ellen Yaroshefsky)	Ethics Politics and Public Corruption
	CLE Board (Catherine Beane)	The CLE Board is responsible for all sections CLE During this period we did 20 programs. They are reported on other parts of the reports
	Past Chairs Function (Stephen Saltzburg)	N/a
	Prosecution Function (David Barber, Michael McCann, Michael Moore)	No Program
	Judicial Function(Sheila Murphy)	No Program
	Innocence (Paul Giannelli, Myrna Raeder)	No Program

*New Committee Members from July 2008 through June 2009*

<b>Professional Development Division</b>	<b>Current Membership as of 07/1/08</b>	<b>Lawyer</b>	<b>Associate</b>	<b>Law Student</b>	<b>Total New Members</b>	<b>Total Current Membership as of 06/30/09</b>
CLE Board	n/a	n/a	n/a	n/a	n/a	n/a
Criminal Procedure Evidence, and Police Practices	218	34	1	39	74	244
Innocence	48	13	2	14	29	75
Defense Function	148	14	2	19	35	181
Ethics, Gideon and Professionalism	88	6	0	8	14	99
Judicial Function	284	6	1	11	18	310
Past Chairs Function	n/a	n/a	n/a	n/a	n/a	n/a
Prosecution Function	130	20	1	33	54	178
Science Technology & Forensics	27	7	1	8	16	45

\*\*\* This chart doesn't reflex ABA Members that were dropped for the year.

*POLICY (from July 2008 to March 2009)*

<b>Date</b>	<b>Committee</b>	<b>Program Title</b>
	Criminal Procedure Evidence, and Police Practice	104 C (Updating Current ABA Policy on Racial Profiling)
	Criminal Procedure Evidence, and Police Practice	104 D (Witness Cross Racial Misidentification)
	Ethics, Gideon and Professionalism	105 B (Revised Model Rule 3.8 – Prosecutorial Disclosure of Evidence)
	Ethics, Gideon and Professionalism	Transparency of DOJ Office of Professional Responsibility
	Ethics, Gideon and Professionalism	Client Lawyer Relations MR1.6 and Confidentiality of Information concerning Ethics, Gideon and Professionalism Wrongful Incarceration
	Science Technology & Forensics	Culturally & Developmentally Accessible Standardized Miranda
	Prosecution Function	Lawyer Misconduct V. Lawyer Error

*Number of Substantive Committee Page Hits*

<b>Professional Development Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
CLE Board	11	20	16	16	19	10	7	5	9	7	9	11	140
Criminal Procedure Evidence & Police Practices	92	128	113	119	107	82	76	110	107	110	100	116	1260
Innocence	22	25	20	24	14	16	15	27	14	15	19	14	225
Defense Function	9	29	32	21	27	18	31	25	23	12	12	16	255
Ethics, Gideon & Professionalism	26	38	39	31	36	36	22	45	48	50	77	172	620
Judicial Function	0	26	20	12	13	11	10	9	9	12	10	14	146
Past Chairs Function	8	24	22	9	13	7	11	6	4	11	10	13	138
Prosecution Function	26	37	31	33	28	22	33	32	32	20	16	23	333
Science Technology & Forensics	0	18	19	17	26	7	15	10	18	12	11	17	170

**Communications, Membership and Services Division**  
Executive Directors: Susan Gaertner and Nina Marino

*Number of Substantive Committee Related Emails*

<b>Communi-cations, Membership &amp; Services Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
Book Board	22	10	18	14	6	26	50	28	32	15	21	4	246
Criminal Justice Magazine Editorial Board	130	46	21	23	60	50	35	60	62	30	61	25	603
Criminal Practice, Management /Solo & Small Firm	0	0	1	2	1	0	0	0	0	0	2	0	6
Communi-cations, Awards & Membership	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Law Student Activities	0	0	1	1	0	0	0	1	0	0	0	0	3
Legislative & Policy	0	0	0	0	0	0	0	0	0	0	1	1	2
Long Range Planning Committee	0	0	0	0	0	0	0	0	0	0	0	1	1

*CLE*

Date	Committee Name/Co-Chairs	Program Title
	Criminal Practice Management/Solo & Small Firm (William Nettles & Solomon Wisenberg)	No programs
	Book Board (Andrew Taslitz)	No programs
	Criminal Justice Magazine Editorial Board (Vincent Aprile II)	No programs
	Communications, Awards and Membership (Vincent Aprile and Cheryl Jacobs)	No programs
	Law Student Activities (Brice Aikens & Cynthia Jones)	No programs
	Legislative & Policy (Lynn Branham & Hillel J Hoffman)	No programs
	Long Range Planning (Robert Johnson)	N/A

*New Committee Members from July 2008 through June 2009*

Communications, Membership & Services Division	Current Membership as of 07/1/08	Lawyer	Associate	Law Student	Total New Members	Total Current Membership as of 06/30/09
Book Board	n/a	n/a	n/a	n/a	n/a	n/a
Criminal Justice Magazine Editorial Board	n/a	n/a	n/a	n/a	n/a	n/a
Criminal Practice Management/Solo & Small Firm	64	12	0	7	19	82
Communications, Awards & Membership	n/a	n/a	n/a	n/a	n/a	n/a
Law Student Activities	204	6	2	62	70	265
Legislative & Policy	12	12	2	12	26	26
Long Range Planning Committee	n/a	n/a	n/a	n/a	n/a	n/a

*Number of Substantive Committee Page Hits*

<b>Communications, Membership &amp; Services Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
Book Board	9	17	14	9	12	9	7	5	5	4	35	10	136
Criminal Justice Magazine Editorial Board	11	15	24	13	15	5	11	0	7	7	10	8	126
Criminal Practice, Management /Solo & Small Firm	6	19	19	11	14	14	12	5	20	13	58	24	215
Communications, Awards & Membership	0	13	6	7	7	8	6	1	1	3	7	4	63
Law Student Activities	9	17	20	38	20	15	18	14	19	15	13	11	209
Legislative and Policy	0	18	17	22	10	23	24	10	18	8	13	20	183
Long Range Planning	0	0	0	0	0	0	0	0	0	0	0	0	0

**White Collar Crime Division**

Executive Directors: Gary Collins and Bruce Green

*Number of Substantive Committee Related Emails*

<b>White Collar Crime Division</b>	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	<b>Total</b>
White Collar Crime	7	7	9	7	6	2	5	6	7	1	3	3	63

**CLE**

<b>Date</b>	<b>Committee</b>	<b>Program Title</b>
09/11/08	White Collar Crime	Foreign Corrupt Practices Act: Current SEC & DOJ Enforcement Initiatives, Washington, DC (Teleconference) (Co-Sponsored)
09/26/08	White Collar Crime	Criminal Enforcement of Intellectual Property Rights (Co-Sponsored)
10/2-3/08	White Collar Crime	National Institute on Securities Fraud (Co-Sponsored)
10/15/08	White Collar Crime	National Institute on Foreign Corrupt Practices Act (Co-Sponsored)
10/19-21/08	White Collar Crime	ABA Money Laundering Enforcement Conference (Co-Sponsored)
10/23/08	White Collar Crime	"Town Hall Meeting on the State of White Collar Crime"



10/30/08	White Collar Crime	Recent Developments in Corporate Prosecutions: Views from the Prosecution and Defense in the Northeast" (Co-Sponsored)
11/13/08	White Collar Crime	Beyond the Mortgage Meltdown: The Future of Financial Crime & Corporate Prosecutions (Co-Sponsored)
11/13/08	White Collar Crime	Crash of the Titans: At the Intersection of Privilege, Defendants' Rights, and Corporate Cooperation Credit (Co-Sponsored)
11/13/08	White Collar Crime	Financial Institutions: Navigating Through the Landmines" (Co-Sponsored)
12/4-5/08	White Collar Crime	National Institute on Criminal Tax Fraud (Co-Sponsored)
01/22/09	White Collar Crime	"White Collar Crime 2009 Annual Update and Trends – Directions for the Future" (Co-Sponsored)
01/29/09	White Collar Crime	Speech or Debate Clause and its Impact in Public Corruption Cases" (Co-Sponsored)
02/13/09	White Collar Crime	"The Handling Investigations by State Attorneys General" (Co-Sponsored)
02/24/09	White Collar Crime	Texas Intellectual Property Rights Conference: IP Crimes, Victims & Cases"(Co-Sponsored)
02/25/09	White Collar Crime	Anti-Money Laundering Compliance in These Turbulent Times (Co-Sponsored)
02/25/09	White Collar Crime	Agency Under Fire: The Challenges Facing the Securities & Exchange Commission and How Reform will Affect the White Collar Bar" (Co-Sponsored)
04/06-08/09	White Collar Crime	National Institute on Internal Corporate Investigations and In-House Counsel (Co-Sponsored)
04/29/09	White Collar Crime	Insights from the SROs, SEC and DOJ and Key Compliance Steps To Avoid Liability (teleconference) (Co-Sponsored)
05/13-15/09	White Collar Crime	National Institute of Health Care (Co-Sponsored)
07/30/09	White Collar Crime	It's Not the Crime, It's the Cover-Up: Current Issues in Public Corruption Investigation and Government Ethics (Co-Sponsored)
08/02/09	White Collar Crime	Preparing Your Criminal or Regulatory Practice to Survive the Meltdown (Co-Sponsored)

*New Committee Members from July 2008 through June 2009*

	<b>Current Membership as of 07/1/08</b>	<b>Lawyer</b>	<b>Associate</b>	<b>Law Student</b>	<b>Other</b>	<b>Total New Members</b>	<b>Total Current Membership as of 06/30/09</b>
White Collar Crime	1084	114	15	33	0	162	1227

\*\* This chart doesn't reflex ABA Members that were dropped for the year.

*Newsletters*

Date	Committee	Program Title
August 2008	White Collar Crime	White Collar Crime E-Newsletter
March 2009		

*Number of Substantive Committee Page Hits*

White Collar Crime Division	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	Total
White Collar Crime	207	397	313	255	217	205	468	567	545	198	91	95	3558

*Criminal Justice Standards*

*POLICY (from July 2008 to March 2009)*

Date	Committee	Program Title
	Criminal Justice Standards	105 D (Prosecutorial Investigation Standards)

*Number of Substantive Committee Page Hits*

Criminal Justice Standards	July 2008	Aug 2008	Sept 2008	Oct 2008	Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009	April 2009	May 2009	June 2009	Total
Criminal Justice Standards	73	72	103	93	61	48	93	48	61	48	43	42	785

## IX. SECTION LEADERSHIP ROSTER

### CRIMINAL JUSTICE SECTION LEADERSHIP, 2008-2009

#### *Section Officers and Council Members*

<b>OFFICERS:</b>	<b>(term expires)</b>
CHAIR	2009 Anthony Joseph, Birmingham, AL
CHAIR-ELECT	2009 Charles Joseph Hynes, Brooklyn, NY
FIRST VICE CHAIR	2009 Bruce Green, New York, NY
DELEGATES	2009 Stephen A. Saltzburg, Washington, DC
	2011 Neal R. Sonnett, Miami, FL
BUDGET OFFICER	2009 Ronald Goldstock, Larchmont, NY
FIVE VICE CHAIRS AT LARGE	2009 James Cole, Washington, DC
	2009 Susan Gaertner, Saint Paul, MN
	2009 Ernestine Gray, New Orleans, LA
	2009 Robert Litt, Washington, DC
	2009 William Shepherd, W. Palm Beach, FL
LAST RETIRING CHAIR:	2009 Stephen A. Saltzburg, Washington, DC
<b>BOARD OF GOVERNORS LIAISON:</b>	2009 Bettina B. Plevan, New York, NY
<b>COUNCIL MEMBERS:</b>	
	(NLADA) J. Vincent Aprile II, Louisville, KY
	2009 Mary Boland, Chicago, IL
	2010 Lynn Branham, St. Louis, MO
	2009 Stephen Bronis, Miami, FL
	2010 TBD
	2010 Christopher Chiles, Huntington, WV
	2011 James Felman, Tampa, FL
	2009 Michael Hamden, Chapel Hill, NC
	2011 Jan Handzlik, Los Angeles, CA
	2011 Kamala Harris, San Francisco, CA
	(NDAA) Mathias H. Heck, Jr., Dayton, OH
	2010 Cynthia Hujar Orr, San Antonio, TX
	2009 Lt. Col. Gary Jackson, Accokeek, MD
	2009 Cheryl K. Jacobs, Baltimore, MD
	2011 TBD
	(Law Student Rep.) Cynthia Jones, Humble TX
	(NACDL) Albert J. Krieger, Coral Gables, FL
	(Fed. P.D.) Terence F. MacCarthy, Chicago, IL
	2011 Matthew Redle, Sheridan, WY
	(Young Lawyers) 2009 Tanisha Simon, Brooklyn, NY
	(NAAG) JB Van Hollen, Madison, WI
	2010 Gary Walker, Marquette, MI
	(DOJ) Jonathan Wroblewski, Washington, DC
ADVISORS TO COUNCIL	2009 Douglas W. Burris, St. Louis, MO
	2009 John W Marshall, Richmond VA

**PAST CHAIRS:**

Stephen A. Saltzburg, Washington DC  
Catherine Anderson, Sanibel, FL  
Sylvia Bacon, Washington, DC  
Michael Bender, Denver, CO  
William Erickson, Englewood, CO  
Robert M. Ervin, Tallahassee, FL  
Ronald Goldstock, Larchmont, NY  
John Greacen, Regina, NM  
Paul B. Johnson, Tampa, FL  
Robert A. Johnson, Anoka, MN  
Tom Karas, Phoenix, AZ  
Sheldon Krantz, Washington, DC  
Albert Joseph Krieger, Coral Gables, FL  
Richard H. Kuh, New York, NY  
Norman Leftstein, Indianapolis, IN  
Bruce Lyons, Ft. Lauderdale, FL  
Terence MacCarthy, Chicago, IL  
Ralph C. Martin II, Boston, MA  
E. Michael McCann, Milwaukee, WI  
Herbert S. Miller, Reston, VA  
Keith Mossman, Vinton, IA  
Cara Lee T. Neville, Minneapolis, MN  
Michael S. Pasano, Miami, FL  
Myrna S. Raeder, Los Angeles, CA  
Ronald C. Smith, Chicago, IL  
Andrew L. Sonner, Rockville, MD  
Neal R. Sonnett, Miami, FL  
Randolph N. Stone, Chicago, IL  
William W. Taylor III, Washington, DC

**LIAISONS TO:**

ABA Business Law Section  
ABA Commission on Immigration  
ABA Commission on Youth at Risk  
ABA Coordinating Committee on AIDS  
ABA Judicial Division  
ABA Section of Dispute Resolution  
ABA Section of Taxation  
ABA Special Committee on Death Penalty Representation  
ABA Task Force on Attorney-Client Privilege

ABA Young Lawyers Division  
American Correctional Association Commission on Accreditation for  
Correction  
American Law Institute Model Penal Code Revision Sentencing Project

Marvin G. Pickholz, New York, NY  
Robert McWhirter, Phoenix, AZ  
Robert Schwartz, Philadelphia, PA  
Richard Andrias, New York, NY  
Irma Raker, Rockville, MD  
Karen Gopee, Brooklyn, NY  
Justin A. Thornton, Washington, DC  
Susan Gaertner, Saint Paul, MN  
Bruce Green, New York, NY  
Jan L. Handzlik, Los Angeles, CA  
Stephen Saltzburg, Washington, DC  
Neal Sonnett, Miami, FL  
Marguerite L Carr, Farmington, NM  
Lynn Sanders Branham, St. Louis, MO  
Margaret Love, Washington, DC

Anti-Money Laundering Conference Planning Committee	Peter Djinis, Sarasota, FL Gordon Greenberg, Los Angeles, CA Ezra Levine, Chevy Chase, MD Martin Lybecker, Washington, DC Wilmer "Buddy" Parker, Atlanta, GA John Roth, Washington, DC Amy Rudnick, Washington, DC Bruce Zagaris, Washington, DC Amie Clifford, Columbia, SC James Holderman, Chicago, IL Pauline Weaver, Oakland, CA Hugo A. Rodriguez, Fort Lauderdale, FL David Goldstone, Boston, MA James Felman, Tampa, FL James Felman, Tampa, FL Robert J. Del Tufo, New York, NY Mary F. Harkenrider, Chicago, IL Patricia Blair, Tyler, TX Ronald C. Smith, Chicago, IL
Commission on the American Jury Project	
Hispanic National Bar Association Legal Technology Resource Center National Association of Criminal Defense Lawyers National Association of Criminal Defense Lawyers White Collar Crime Project National College of District Attorneys	
National Commission on Correctional Health Care National Criminal Justice Trial Advocacy Competition NCCUSL Drafting Committee on Electronic Recordation of Custodial Interrogation.	
NCCUSL Project on Uniform Law on Collateral Consequences of Conviction SOC/CPR Joint Committee on Professionalism & Ethics Unified Family Courts Coordinating Council CRIMINAL JUSTICE STANDARDS COMMITTEE	Prosecutor: Ann Swern, Brooklyn, NY Court Reporter: Andrew Taslitz, Washington, DC ABA Rep: Paul Giannelli, Cleveland, OH Margaret Love, Washington, DC Ellen Yaroshefsky, New York, NY Robert Schwartz, Philadelphia, PA Chair: Martin Marcus, Bronx, NY
<b>EQUAL JUSTICE DIVISION</b>	Executive Directors: Lynn Branham, Saint Louis, MO William Shepherd, W. Palm Beach, FL
JUVENILE JUSTICE COMMITTEE	Co-Chairs: Charles Ogletree, Cambridge, MA Law Student Liaison: Christopher Heck, Charlestown, MA Kathryn Richtman, Saint Paul, MN
MILITARY JUSTICE COMMITTEE	Co-Chairs: Eugene Fidell, Washington, DC Stephen Saltzburg, Washington, DC
PROBLEMS OF THE ELDERLY COMMITTEE	Co-Chairs: Lori G. Levin, Chicago, IL Benjamin F. Overton, Gainesville, FL
RACIAL & ETHNIC JUSTICE DIVERSITY COMMITTEE	Co-Chairs: Erek Barron, Mitchellville, MD Wayne S. McKenzie, New York, NY Vice Chair: Jolanta Juskiewicz, Fairfax, VA
VICTIMS COMMITTEE	Co-Chairs: Russell P. Butler, Upper Marlboro, MD Margaret Ann Garvin, Portland, OR Vice Chair: Angela A. Downes, Irving, TX Law Student Liaison: Michelle Sinkovits, Norridge, IL
WOMEN IN CRIMINAL JUSTICE COMMITTEE	Co-Chairs: Jane Harris Aiken, Washington, DC Sarah M. Buel, Austin, TX
<b>CORRECTIONS AND SENTENCING DIVISION</b>	Executive Directors: Dino Amoroso, Hempstead, NY Ernestine Gray, New Orleans, LA

ALTERNATIVE DISPUTE RESOLUTION AND RESTORATIVE JUSTICE COMMITTEE	Co-Chairs: Karen Gopee, Brooklyn, NY Marvin Johnson, Silver Spring, MD Kimberlee K. Kovach, Austin, TX
ALTERNATIVES TO INCARCERATION AND DIVERSION COMMITTEE	Co-Chairs: John Creuzot, Dallas, TX Mathew D’Emic, Brooklyn, NY Anne Swern, Brooklyn, NY
CORRECTIONS COMMITTEE	Co-Chairs: Brett Dignam, New Haven, CT Marc Elias, Washington, DC Martin F. Horn, New York, NY Law Student liaison: Jason Gonzalez, Fitchburg, WI
RE-ENTRY & COLLATERAL CONSEQUENCES COMMITTEE	Co-Chairs: Michael Costello, Newburyport, MA Lance P. Ogiste, Brooklyn, NY Lisa Charma Smith, Brooklyn, NY
SENTENCING COMMITTEE	Co-Chairs: Barry Boss, Washington, DC James Evan Felman, Tampa, FL Vice-Chair: Carl Reynolds, Austin, TX Law Student liaison: Karla Reyes, Gulfport, FL
<b>SPECIALIZED PRACTICE DIVISION</b>	Executive Directors: James M. Cole, Washington, DC Bruce Zagaris, Washington, DC
AMICUS PRACTICE COMMITTEE	Co-Chairs: Terence Anderson, Coral Gables, FL Rory K. Little, San Francisco, CA
APPELLATE AND HABEAS COMMITTEE	Chair: Jeffrey T. Green, Washington, DC
CYBER CRIME COMMITTEE	Co-Chairs: David Goldstone, Boston, MA Christopher Painter, Washington, DC
HOMELAND SECURITY COMMITTEE	Co-Chairs: Barbara B. Berman, Arlington, VA Steven Solow, Washington, DC
IMMIGRATION COMMITTEE	Co-Chairs: Sara Dill, Miami, FL Robert J. McWhirter, Phoenix, AZ Vice-Chair: Rebecca Horwitz, Austin, TX
INTERNATIONAL COMMITTEE	Co-Chairs: Luz Estella Nagle, St. Petersburg, FL Wilmer “Buddy” Parker, Atlanta, GA Law Student Liaisons: Bradford Merzgian, Boston, MA
GATEKEEPER TASK FORCE SUBCOMMITTEE	Chair: Edward J. Krauland, Washington, DC
<b>PROFESSIONAL DEVELOPMENT DIVISION</b>	Executive Directors: Barbara B. Berman, Arlington, VA Robert Litt, Washington DC
ACADEMICS	Co-Chairs: Lisa Smith, Brooklyn, NY Cecelia Klingele, Hyattsville, MD
CLE BOARD	Chair: 2010 Catherine Beane, New Orleans, LA Members: 2010 Jack Boese, Washington, DC 2011 Maureen Essex, Baltimore, MD 2009 Mary Galvin, Columbia, SC 2010 Bruce Green, New York, NY 2009 Stacy Sundstrom, St. Paul, MN 2011 David Simon, San Bernando, CA
CRIMINAL PROCEDURE, EVIDENCE AND POLICE PRACTICES COMMITTEE	Chair: David Aaronson, Washington, DC Law Student Liaison: Jared Burke, Lakeside Park, KY
INNOCENCE SUBCOMMITTEE TO ENSURE THE INTEGRITY OF THE CRIMINAL PROCESS	Co-Chairs: Paul Giannelli, Cleveland, OH Myrna Raeder, Los Angeles, CA
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SUBCOMMITTEE ON HABEAS REFORM	Vice Chairs: Robert Buschel, Ft. Lauderdale, FL
SUBCOMMITTEE ON PUBLIC DEFENSE	Scott Slonim, Chicago, IL
ETHICS, GIDEON AND PROFESSIONALISM	Law Student Liaison Marisa Franchini, Chicago, IL
COMMITTEE	Chair: Karyl Krug, Austin, TX
JUDICIAL FUNCTION COMMITTEE	Chair: Scott Slonim, Chicago, IL
PAST CHAIRS FUNCTION COMMITTEE	Co-Chairs: Bruce Green, New York, NY
PROSECUTION FUNCTION COMMITTEE	Ellen Yaroshefsky, New York, NY
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	Chair: Stephen Saltzburg, Washington, DC
	Co-Chairs: M. David Barber, Birmingham, AL
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& SMALL FIRM COMMITTEE	
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	Stephen Saltzburg, Washington, DC

**WHITE COLLAR CRIME DIVISION**

**WHITE COLLAR CRIME COMMITTEE**

**WHITE COLLAR CRIME REGIONAL  
SUBCOMMITTEE CHAIRS**

Executive Directors: Gary Collins, Stamford, CT  
Bruce Green, New York, NY

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Morris “Sandy” Weinberg, Tampa, FL

Law Student Liaison: Solomon Radner, Oak Park, MI

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Brian Hennigan, Los Angeles, CA

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DC Region: Preston Burton, Washington, DC  
Sherri Schornstein, Washington, DC  
David Zinn, Washington, DC

Southeast Region: Richard Glaser, Jr, Charlotte, NC  
G. Douglas Jones, Birmingham, AL  
Mitch Mitchelson, Atlanta, GA

Florida Region: Brian Dickerson, Naples, FL  
Roger Handberg, Orlando, FL  
Marcos Hasbun, Tampa, FL  
Brian James, Miami, FL  
Adam Schwartz, Tampa, FL

Central Regions: Peggy Daley, Chicago, IL

Midwest/Chicago Region: David Rosenbloom, Chicago, IL  
Kurt Stitcher, Chicago, IL

Midwest/Kansas City Region: Gerald Handley, Kansas City, MO  
JR Hobbs, Kansas City, MO

Midwest/Ohio Region: David Axelrod, Columbus, OH  
Sharlene Chance, Columbus, OH  
James Ervin, Columbus, OH

South Texas Region: Tom Hagemann, Houston, TX  
Greg Costa, Houston, TX  
Philip Hilder, Houston, TX

North Texas/Okla. Region: Paul Coggins, Dallas, TX

Mountain Regions: Gregory Goldberg, Denver, CO

Rocky Mountain Region: Kevin McGreevy, Denver, CO

Southwest/Arizona Region: Marci Gilligan, Denver, CO  
Ashley Adams, Phoenix, AZ  
Stacey Gottlieb, Phoenix, AZ  
Lee Stein, Phoenix, AZ

Northern California Region (Bay Area/San Francisco): Walter Brown, San Francisco, CA  
Miranda Kane, San Francisco, CA  
Timothy Lucey, San Francisco, CA



**WHITE COLLAR CRIME SUBSTANTIVE  
SUBCOMMITTEE CHAIRS**

Southern California Region (Los Angeles/San Diego)	Mark Byrne, Los Angeles, CA Dorothy Kim, Los Angeles, CA
Antitrust	Stephen Petersen, Raleigh, NC John Potter, San Francisco, CA Daniel Savrin, Boston, MA
Computer Crime, Intellectual Property and Trade Secrets	Richard Nelson, San Francisco, CA Warrington Parker, San Francisco, CA
Corporate Criminal Liability	Robert McGahan, Los Angeles, CA Jeffrey Rutherford, Los Angeles, CA Elliott Sagor, New York, NY Jennifer Short, McLean, VA Peter Sprung, Washington, DC
DOJ Dialogue Group	Amy Jackson, Washington, DC Todd Jones, Minneapolis, MN Gary Lincenberg, Los Angeles, CA Jack Selden, Birmingham, AL
Environmental Crimes	Robert Cochran, Columbus, OH Marc Greenberg, Long Beach, CA Ron Sarachan, Philadelphia, PA
Financial Institution Fraud/Money Laundering and Patriot Act	Lance Cassak, New York, NY Evan Jenness, Santa Monica, CA Frederick Petti, Phoenix, AZ Jason Pickholz, New York, NY Frank Razzano, Washington, DC Steve Wisotsky, Davie, FL
Health Care Fraud	Benjamin Gluck, Los Angeles, CA Bill Morrison, Dallas, TX Peter Spivack, Washington, DC
Newsletter	Jack Fernandez, Tampa, FL Nicholas Mitchell, New York, NY Sarah Teachout, Dallas, TX
Public Corruption and Extortion	Lisa Cuifolo, Philadelphia, PA Ross Garber, Hartford, CT Brian Heberlig, Washington, DC Justin Shur, Washington, DC
Qui Tam	Jeff Ifrah, Washington, DC Lesley Skillen, New York, NY David Stone, Short Hills, NJ Sarah Teachout, Dallas, TX
Securities Fraud	Philip Hilder, Houston, TX Thomas Hanusik, Washington, DC Daniel O'Connor, Boston, MA David Seide, Washington, DC David Willingham, Los Angeles, CA
Sentencing	Bradley Bolerjack, Chicago, IL J.P. Hanlon, Indianapolis, IN Eric Jaso, Short Hills, NJ Jeffrey Sklaroff, New York, NY
Tax Fraud	Scott Michel, Washington, DC Justin Thornton, Washington, DC Sarah Wirsky, Dallas, TX Tom Zehnle, Washington, DC

Trans-National Crime	William Devaney, New York, NY Ross Garber, Hartford, CT Brenda Johnson, Washington, DC Wendy Wysong, Washington, DC
WCC National Institute	Ray Banoun, Washington, DC
Young Lawyers	Meredith Auten, Philadelphia, PA Marcos Hasbun, Tampa, FL Adrian Mebane, Washington, DC

**SECTION STAFF:**

Jack C. Hanna	Section Director
Regina Ashmon	Committee Coordinator
Stacey Brown	Membership Coordinator
Shamika Dicks	Administrative Assistant
Christopher Gowen	Senior Staff Attorney
Elizabeth Harth	Section Administrator
Susan Hillenbrand	Director for Criminal Justice Standards
Pamela Meredith	Administrative Assistant
Carol Rose	Meetings Coordinator
Robert Snoddy	Outreach Coordinator
Kyo Suh	Technology/Publications Manager

**American Bar Association  
Criminal Justice Section  
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**Web: [www.abanet.org/crimjust](http://www.abanet.org/crimjust)**



