

The American Bar Association Criminal Justice Section

Presents

The 2009 Fall Conference

**Second Annual Sentencing Advocacy,
Practice and Reform Institute**
With Special Focus on Reentry



November 6, 2009
Washington, DC

The George Washington University
Marvin Center
800 21st St., N.W.

*Accreditation has been requested
from mandatory CLE states.*



The Section is holding a block of sleeping rooms at **The River Inn, 924 25th Street, N.W.**, a short walk to the Marvin Center at GWU, where the program will be held. Room rate is \$229 single/double and can be reserved by calling 800/424-2741. The block expires on Monday, October 5, 2009 at 5:00 p.m. CST.

Cosponsors:

National Association of Attorneys General
National Legal Aid & Defender Association
National District Attorneys Association
National Association of Criminal Defense Lawyers
Federal Public and Community Defenders
The Sentencing Project
National Crime Victim Law Institute
National Center for Victims of Crime
Prisoner Reentry Institute at
John Jay College of Criminal Justice
American Probation and Parole Association
Center for Court Innovation
American Correctional Association
Corporation for Supportive Housing
Families Against Mandatory Minimums

Program Sponsors:

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8:45 - 8:50 **Welcoming Remarks** – Hon. Charles Hynes, Chair, ABA Criminal Justice Section

8:50 - 9:10 **Call to Action**

9:15 - 10:30 **The State of the Sentencing Union: Sentencing Trends, Recent Developments, and Renewed Focus on Reentry Issues**

This panel will set the stage for our conference, giving an overview of current sentencing trends and statistics as well as the latest developments in sentencing practices. It will also give an overview of the renewed focus on reentry programs and the use of evidence-based practices to reduce recidivism and prevent the cycle of re-incarceration.

Jeremy Travis (moderator), President, John Jay College of Criminal Justice, New York, NY; Joseph Cassilly, NDAA, Alexandria, VA; Jonathan Wroblewski, U.S. Dept of Justice, Washington DC; April Frazier, Public Defender Service, Washington, DC; Marc Mauer, The Sentencing Project, Washington, DC

10:30 - 10:45 **Coffee Break**

10:45 - 12:00 **Breakout Sessions I**

A. Update on Sentencing Law: Supreme Court, Appellate, Legislation

This panel will focus on the recent decisions in the Supreme Court regarding federal sentencing practice in the post-Booker era. It will also address significant cases and trends in the courts of appeals interpreting these Supreme Court cases and addressing other important issues left unresolved by them. The panel will also include an update on recent legislative activity, including the latest information regarding ongoing efforts to eliminate the disparity in punishments for crack and powder cocaine.

James Felman (moderator), Kynes Markman & Felman, Tampa, FL; Hon. Ruben Castillo, Vice Chair, U.S. Sentencing Commission; Michael Dreeben, Deputy Solicitor General, Washington, DC; Bobby Vassar, Counsel, House Judiciary Committee, Washington, DC; Amy Baron-Evans, Federal Defender Sentencing Resource Counsel, Boston, MA; Hannibal Kemerer, Chief Counsel for Senate Judiciary Committee's Subcommittee on Crime and Drugs, Washington, DC

B. Research Report on Effective Reentry Programs, Practices and the Second Chance Act

A review of the demographic, performance, and outcome of findings from selected prison reentry projects will be offered, with data analysis from an interdisciplinary panel of researchers. Their individual and collective interpretations of accumulated program statistics will be used to give clarity to past, current and future trends that continue to shape the complexities of successful reentry outcome strategies.

Martin Horn (moderator), Distinguished Lecturer, John Jay College of Criminal Justice, New York, NY; Amy Solomon, Urban Institute, Washington, DC; Jessica Nickel, Council of State Government, Bethesda, MD; Gary L. Dennis, PhD, Senior Policy Advisor for Corrections, Bureau of Justice Assistance, US Department of Justice

C. Collateral Consequences

This panel will discuss different strategies for avoiding or mitigating collateral consequences, and the practice implications of each approach. Speakers will discuss the new Uniform Act on the Collateral Consequences of Conviction, Illinois' certificates of good conduct and pardon, Minnesota's "Ban-the-Box" law and newly enacted limits on employer liability, and DC expungement and pardon.

Margaret Love (moderator), former Pardon Attorney, Washington, DC; Richard T. Cassidy, Chair, Drafting Committee on the Uniform Collateral Consequences of Conviction Act, Burlington, VT; Jorge Montes, Chair, Illinois Prisoner Review Board, Chicago, IL; Hon. Pamela Alexander, Council on Crime and Justice, Minneapolis, MN; Sharon Dietrich, Community Legal Services of Philadelphia

D. Community Supervision: A Critical Link to Successful Reentry

Many people returning home from jails and prisons are under community supervision as a condition of their release. They must complete community supervision in order to exit the criminal justice system, and thus it is a critical component to their successful reintegration. Oftentimes, community supervision is not an easy system to navigate and causes many difficulties for persons returning home from incarceration. The goal of community supervision should be both public safety and to reduce recidivism. However, the enormous caseloads of supervision agencies make it impossible to assist clients adequately with their individual needs, and many of the conditions imposed by supervision agencies are unrealistic and counter-productive to successful reintegration. During this workshop, the panelists will discuss the challenges and innovative strategies being developed around the country to improve the community supervision and reduce recidivism.

Carl Wicklund (moderator), American Probation and Parole Assn. Lexington, KY; William D. Burrell, Corrections Management Consultant, formerly Chief of Adult Probation Services, NJ state court system, Lawrenceville, NJ; Douglas W. Burris, Federal Probation Office, St. Louis, MO; Thomas H. Williams, CSOSA, Washington, DC; Olinda Moyd, Chief, PDS Parole Division, Washington, DC

12:00 - 1:30 **Report and Update from the United States Sentencing Commission**

The members of the Sentencing Commission will provide an update on the Commission's activities during the past year.

Honorable Ricardo H. Hinojosa, Acting Chair; Honorable Ruben Castillo, Vice Chair; Honorable William K. Sessions III, Vice Chair; Honorable William B. Carr, Jr. Vice Chair; Honorable Beryl A. Howell, Commissioner; Honorable Dabney L. Friedrich, Commissioner; Honorable Jonathan Wroblewski, ex officio Commissioner; Honorable Edward F. Reilly, Jr., ex officio Commissioner

1:30 - 2:45 **Breakout Sessions II**

A. White Collar Sentencing After Booker: Calculation of Loss and Other Sentencing Issues in Economic Offenses

Bernard Madoff is sentenced to the maximum 150 years for running a giant Ponzi scheme; facing a 145-year Guidelines sentence for running a similar scam, Marc Dreier gets 20 years. Michael Milken and Ivan Boesky received pre-Guidelines sentences, and each served only 22 months. Jose Padilla and John Walker Lindh, trained by al-Qaida and the Taliban and convicted of terrorism charges, received sentences of 17 and 20 years. Is there something wrong with this picture? Are extraordinarily long white collar sentences, driven largely by the amount of loss calculated under the Sentencing Guidelines, appropriate to these crimes? Are they proportional to crimes involving violence, drugs and even terrorism? Do they deter would-be executive fraudsters? As in pre-Guidelines days, does it now matter under *Booker* more what judge is handing down the sentence than what the crime was?

Our distinguished panel brings a variety of perspectives, based on broad and diverse criminal-justice experience, to these and other pressing issues.

Eric H. Jaso (moderator), Counsel, Stone & Magnanini LLP, Short Hills, NJ; Ellen C. Brotman, Partner, Montgomery, McCracken, Walker & Rhoads, Philadelphia, PA; Hon. Rebecca Pallmeyer, District Judge, Northern District of Illinois; Paul Fishman, Partner, Friedman Kaplan Seiler & Adelman LLP, Newark, NJ; Joel R. Levin, Perkins Coie, Chicago, IL

B. Promoting Reentry Success: Housing and Sobriety

A panel of experienced reentry service providers specializing in housing and substance abuse treatment will lead a discussion that examines affordable, sober living quarters as a vital transitional resource for substance abusers recently released from prison, and its impact upon one's ability and willingness to internalize therapeutic tools that will enhance the attainment of a drug free and crime free lifestyle.

Lisa Smith (moderator), Brooklyn Law School, Brooklyn, NY; Kevin Costin, Counseling Service, Eastern District of New York; Andy McMahon, Corporation for Supportive Housing, Minneapolis, MN; Ray Larson, Commonwealth's Attorney, Fayette County, Kentucky

C. Sentencing Mitigation and Advocacy: Crafting and Presenting a Sufficient Sentence

The new sentencing landscape provides defense counsel myriad ways to achieve better and more appropriate sentences for our clients, and also provides victims with an opportunity to be heard. The panelists will discuss sentencing advocacy, and will focus on what has worked, what may now work, and what won't work at sentencing, and will include the feedback from a federal judge.

Janet Levine (moderator), Crowell & Moring, Los Angeles, CA; Marilyn Bednarsky, Kaye McLane & Bednarsky, Pasadena, CA; Hon. Ricardo M. Urbina, District Court, Washington, DC; Tess Lopez, Sentencing Mitigation Specialist, Novato, CA

D. Federal Reentry Efforts

An increasing number of federal districts are experimenting with a variety of reentry courts and similar measures designed to ensure prisoners' successful reentry into the community upon release. This panel will provide an overview of those programs and their preliminary success in reducing recidivism.

Hon. Dabney Friedrich, US Sentencing Commission; Bryan Lessley, Assistant Federal Public Defender, Eugene, OR; James Oleson, U.S. Probation Services, Washington, DC; Hon. Leo T. Sorokin, U.S. District Court, Boston, MA

2:45 - 3:00 Coffee Break

3:00 - 4:15 Breakout Sessions III

A. What Re-entry Teaches Us About Alternatives

The individual need considerations that underlay prison reentry programming and court reentry initiatives are analogous to the arguments for and structure embodied in community-based sentencing alternatives. This panel focuses on what lessons can and should be applied from the reentry context to front-end sentencing determinations, as well as how judicial involvement in reentry may shape courts' receptiveness to consider alternatives in the first instance.

James Felman (moderator), Kynes Markman & Felman, Tampa, FL; Todd A. Bussert, New Haven, CT; Melissa Aubin, Ph.D., Esq. (Supreme Court Fellow); Hon. Carol Jackson, Eastern District of Missouri, St. Louis, MO; Hon. William Carr, U.S. Sentencing Commission, Washington, DC

B. Employment and Breaking Down Barriers to Reentry

Representatives from nationally recognized community-based agencies serving formerly incarcerated men and women will discuss the challenges and solutions to helping the formerly incarcerated find work in the face of post-incarceration sanctions, including legally imposed disabilities and unintended consequences that impede successful entry into the workforce. Practical steps to overcome collateral consequences of conviction that serve as unconscionable barriers to successful community reintegration will also be explored.

Lance Ogiste (moderator), Kings County District Attorneys Office, Brooklyn, NY; Jodina Hicks, Chief Program Officer to the Safer Foundation, Chicago, IL; George McDonald, Doe Fund Inc. New York, NY; Glenn Martin, Fortune Society, Long Island City, NY; Judith M. Whiting, Legal Action Center, New York, NY

Continued on the next page.

Registration Form: Second Annual Sentencing Advocacy, Practice and Reform Institute

Seating is limited – Register early!

Return to: ABA Criminal Justice Section, 740 15th Street NW, Washington, DC 20005
or fax to 202-662-1501. Contact Carol Rose at 202-662-1519, carolrose@staff.abanet.org

Program Fee: \$195 for Government & Nonprofit Employees and Academics; \$175 for Section Member Government & Nonprofit Employees and Academics; \$250 for those in Private Practice; \$225 for Section members in Private Practice; \$25 for Law Students (Cancellations must be received by Oct. 9, 2009. Cancellations subject to an administrative fee of \$50.)

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Agenda, continued.

3:00 - 4:15 Breakout Sessions III (continued)

C. Sentencing Practice and Procedure: Plea Negotiations, Charging Practices, Sentencing Tactics, and Victims' Rights

This panel will include a focused discussion on how the procedural landscape has changed post-Booker. The participants will discuss the current DOJ charging practices including the extent to which the Ashcroft Memorandum remains binding; the opportunities for resolving cases via plea agreements, particularly in light of the Crime Victims Rights Act; and how recent developments have impacted the sentencing process. The panel will focus on federal practice and procedure.

Barry Boss (moderator), Cozen O'Connor, Washington, DC; Steve Bunnell, O'Melveny & Myers LLP, Washington, DC; Meg Garvin, National Crime Victim Law Institute, Portland, OR; Hon. Gerald Bruce Lee, Eastern District of Virginia, Alexandria, VA; Stuart Goldberg, First Asst. U.S. Attorney, Baltimore, MD

D. Sex Offenses and Registration Issues

The number of laws impacting persons convicted of sex offenses has increased exponentially over the last few years. While many of these laws are aimed at increasing public safety, some laws also make it nearly impossible for a person convicted of such crimes to rehabilitate themselves and become productive citizens. This panel will explore both the advantages and disadvantages of these new emerging laws and practices.

Brian Roberts (moderator), Public Defender Service, Washington, DC; Michael Penders, US Probation Office, Washington, DC; Linda Baldwin, Director, Smart Office, US Department of Justice, Washington, DC; Karen Wilkinson, Washington, DC

4:15 - 5:00 Impressions of the Day's Proceedings – Where do we go from here?

Lisa Smith, Brooklyn Law School, Brooklyn, NY; Eric H. Jaso, Counsel, Stone & Magnanini LLP, Short Hills, NJ; Stephen Saltzburg, George Washington University Law School, Washington, DC

Check www.abanet.org/crimjust/calendar for updates to the agenda.

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