

AALS Criminal Justice Section Newsletter

June 2009

Chair's Message

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Hello everyone – I hope this Chair's Message finds you doing well at the beginning of what will be a productive and relaxing summer. Your section officers, executive committee members, and subcommittee chairs have spent a good deal of time this last semester discussing, shaping, and proposing programming. We're looking forward to some great events at the Annual Meeting in New Orleans (cue Dixieland version of "When the Saints Go Marchin' In") this coming January.

Let me begin with a brief recap of this past year's Annual Meeting, in beautiful, warm San Diego. The effort was spearheaded by our immediate past Chair, Cynthia Lee of George Washington, and what a fine set of programs she put together. Our two panels were standouts, with excellent presenters and lively

discussion. We also had strong attendance, even at the one on Sunday morning. Our first panel, "The Model Penal Code Sentencing Proposals," featured a presentation by the MPC Reporter Kevin Reitz (Minnesota), and comments and responses by Alice Ristroph (Seton Hall), Doug Berman (Ohio State), and Robert Weisberg (Stanford), with Chris Slobogin (Vanderbilt), who organized the panel, serving as moderator. Further details about that panel are contained in this newsletter. Our second panel could not have been more timely: "Crimmigration: At the Intersection of Criminal and Immigration Law," featured presentations by Jennifer Chacon (U.C. Davis), Orde Kittre (Arizona State), Juliet Stumpf (Lewis and Clark), and Sandra Guerra Thompson (Houston). The panel was organized and moderated by Mario Barnes (Miami). We also had a chance to socialize and greet old friends at the Section's luncheon. The luncheon was also the occasion for the

announcement of the winner of our junior scholar paper competition, Anders Walker (St. Louis), who gave a short talk about his paper.

The meeting in San Diego included something new this year. Building on success of our informal section happy hour at the 2008 meeting in New York, the 2009 meeting gave us the opportunity to co-sponsor a reception with Pace University School of Law. The credit for making this happen goes to our immediate past Chair, Cynthia Lee, and to Leslie Garfield of Pace and her dean, Michelle Simon. Thanks very much for the relaxed and convivial time, with wonderful things to eat and drink.

Our section business meeting took place after the first of our panels in San Diego, and as those of you who attended remember, your section officers solicited ideas for next year's programs. The business meeting, and subsequent email solicitations of the crimprof listserve and the Section's executive committee, produced

about two dozen different ideas. (For those of you who have wondered how the ideas for panels are generated, the Section business meeting is ground zero, so I encourage you to take the fifteen minutes – yes, that’s really all! – and attend with your ideas.) After sorting through and considering a large number of suggestions and follow up comments, your section officers selected two panels for submission to AALS. Both have been approved for next year’s meeting. The first, organized and moderated by Susan Bandes (DePaul), will be “Neuroscience, Cognitive Psychology and the Criminal Justice System,” and will feature Warren Professor of Psychology John Darley of Princeton, and law professors Andy Taslitz (Howard), Nita Farahany (Vanderbilt), and Alafair Burke (Hofstra). (The panel includes presenters anonymously selected through a call for papers.) This panel will be held on Friday, January 8, from 10:30 a.m. to 12:15 p.m. and will be followed by the Section’s (fifteen minute!) business meeting. The Section’s annual luncheon will take place on Saturday, January 9, from 12:15 to 1:30 p.m.; I hope you can attend. Our second panel, “The Lessons of DNA and the Innocence Revolution for the Criminal Justice System,” will follow on the next day, Sunday, January 10, from 9:00 to 10:45 a.m. This group, organized and moderated by Mark Godsey (Cincinnati), will include Cynthia Jones (American),

Richard Leo (U. San Francisco), Brandon Garrett (Virginia), and Daniel Medwed (Utah). In addition, I’m very pleased to tell you that Pace University School of Law has told us that they’d like to join forces again for another evening reception. Thank you, Leslie Garfield, Dean Simon, and Pace! We’ll all be looking forward to it. More details on the reception in our next newsletter.

For those who are wondering, the Section will be sponsoring our annual junior scholar paper competition again this year. Please look for the announcement in this newsletter for more details, and if you’re eligible, consider participating.

As you may know, the Section submitted a proposal last year for a midyear Criminal Justice professional development meeting in 2010, like the one held in 2006 in Vancouver. Katherine Darmer (Chapman) ably chaired the effort and produced an excellent proposal. Unfortunately, the AALS decided against going forward with it; we were advised that it might be too soon for our Section to have another midyear meeting. Persistent folks that we are, we decided to submit another proposal this year, for 2011. This time, Penny Pether (Villanova) and John Parry (Lewis and Clark) served as co-chairs, and along with other volunteers, they produced yet another excellent proposal. As of this writing, the proposal

has been submitted to AALS, but no answer has been received. We will keep all of you apprised of the progress of the effort. Thanks to Penny and John and to everyone who assisted.

I look forward to seeing you at next year’s Annual Meeting in New Orleans. Please come to our panels, the luncheon, our reception with Pace, and to our (very short!) business meeting.

Thanks to Outgoing Chair Cynthia Lee

The Section owes an enormous debt of gratitude to our outgoing Chair, Cynthia Lee, of George Washington, for her dedication to the Section as Secretary, Vice-Chair and then Chair. Cynthia has been instrumental in fostering our mentoring programming and in planning timely programming. She was also critically involved in laying the groundwork for our proposed 2011 Midyear Meeting. She has continued to provide support and advice to the current Section officers, all of whom are grateful for her continued willingness to be involved.

AALS Panel on Sentencing

Chris Slobogin
Vanderbilt

The panel entitled “The Model Penal Code’s Sentencing Revisions” was moderated by Christopher Slobogin (Vanderbilt), who introduced the topic by noting that very few first-year criminal law courses teach sentencing outside the death penalty context and arguing that this is a mistake, given the huge impact sentencing provisions have on the resolution of (mostly plea bargained) criminal cases, the heavy influence sentencing philosophy can have on the elements of crimes, and the explosion in dispositional alternatives over the past decades. He also pointed out that criminal law is perhaps the only first-year class that does not address remedies.

The Reporter for the Model Penal Code Sentencing project (MPCS), Kevin Reitz (Minnesota) then gave an overview of the scope of the project, which has generated 700 pages of black letter proposals, official commentary, and explanatory materials since its inception in 2002. The revised Code offers a new and enforceable statement of the purposes of criminal punishment, and makes recommendations that every state should charter a permanent sentencing commission, that the

commission should create sentencing guidelines designed to control prison growth, that judicial discretion should not be unduly restricted and should be expanded in some ways (e.g., judicial power to depart from mandatory minimum penalties, statutory judicial power to review sentence proportionality with more bite than current constitutional law), and that racial and ethnic disparities in punishment should be attacked on a number of fronts. New drafting, not yet approved by the ALI, proposes that states should abolish the prison release authority of parole boards while retaining post-release supervision programming, that judges should make use of risk assessment instruments at sentencing (especially for diversion of low-risk offenders who would otherwise be prison bound), that sentences of life without parole should not be authorized except as an alternative to the death penalty, and that all long-term sentences should be reviewable after a prisoner has served fifteen years. Reitz spoke in greater detail about one of the new Code’s recommendations: that sentencing commissions be required to make projections of the racial, ethnic, and gender breakdowns of sentenced populations whenever new laws or guidelines affecting sentencing are proposed. These “demographic impact statements” (DIS) would supplement the fiscal impact projections regularly produced

by the better state sentencing commissions. Although the DIS was criticized when first proposed as politically unrealistic, recent events have proven otherwise. Minnesota became the first state to make use of racial and ethnic impact statements in 2008, with Iowa and Connecticut set to follow in 2009.

Douglas Berman (Ohio State) focused his remarks on the failure of the MPCS to face up to mass incarceration realities. He said that he feared that the MPCS revisions fail to address what is really broken in modern American sentencing and punishment systems, and that the revisions are overlooking enduring (and still timely) wisdom to be found in the original MPCS. He described the revision of the MPCS as representing at best a missed opportunity, at worst the codification of problematic modern sentencing dynamics that have fostered the punitiveness of modern criminal justice systems.

Alice Ristroph (Seton Hall) argued that in the United States there is both too much punishment and too much punishment theory. She noted that the first part of this claim, too much punishment, seems to motivate the proposed revisions to the MPC, which she viewed as a positive development. But she criticized the fact that the new Code, like a lot of criminal law scholarship, seems to assume sentencing reform requires a restatement of what’s good

about punishment. Against this assumption, she suggested some reasons to doubt that punishment theory, and desert theory in particular, will lead to less severe sentences.

Finally, Robert Weisberg (Stanford) noted that while the MPCs calls for evidence-based sentencing, it doesn't directly address how we are to determine whether the sentences it produces enhance public safety, save taxpayer money, or reduce prison populations. Thus, he suggested, policy that rests on empirical foundations may depend on how we assign the burden of proof. Professor Weisberg then described a number of modest empirical projects—focusing on relatively simple ways of measuring crime and recidivism rates, racial and ethnic disparity, imprisonment costs, and public “satisfaction” with criminal justice—that might in the meantime incrementally provide us with relevant information and make us feel more comfortable about making evidence-based decisions in the sentencing context.

Papers about the MPCs by Slobogin, Reitz, Berman, Ristroph, and Weisberg, as well as papers by Nora Demleitner (Hofstra) and Michael Marcus (Trial Judge, Oregon) will appear in the fall issue of the FLORIDA LAW REVIEW.

Junior Scholars Competition for 2010

The Criminal Justice Section announces our annual call for papers for our Junior Scholars Paper Competition. As in past years, the author of the best paper will be recognized at the Criminal Justice Section luncheon at the 2010 AALS Annual Meeting in New Orleans.

Any section member who has been a full-time law school faculty member for six years or fewer is eligible.

Submissions will be evaluated anonymously by the Section's officers or by a panel of individuals designated by the Section Chair. Papers should be submitted by September 1, 2009 to the Section Chair, David Harris, through his administrative assistant, Patty Blake, at pblake@pitt.edu, to assure anonymous review. Papers accepted for publication before September 1, 2009, and papers submitted by previous Competition winners, are not eligible.

(Please note: The Competition was approved by the AALS last year, with the idea that it would continue in subsequent years. The AALS now advises that we may need to change Section bylaws to continue the Competition, but this should not affect this year's competition. We will, of course, advise everyone if

anything to the contrary comes to our attention.)

Member News

Awards, Appointments, Moves, Promotions, Publications, & Other Such Notables

Helen A. Anderson (U. Washington) has published, *Penalizing Poverty: Making Criminal Defendants Pay for Their Court-Appointed Counsel Through Recoupment and Contribution*, 42 U. MICH. J. OF L. REFORM 323 (2009).

This article explores the widespread, although usually unprofitable, practice of ordering indigent criminal defendants to repay the cost of their public defender or to pay often large up-front "application" fees. Many of these recoupment programs are unconstitutional because they impose debts (1) with no determination of the indigent's ability to pay and (2) with no notice or opportunity to be heard. In addition, these programs create ethical problems, such as conflicts of interest and violations of the ethical rules about attorney's fees.

Fabio Arcila, Jr., an Assistant Professor at Touro Law Center since 2004, spent the 2008-2009 academic year visiting at Fordham University Law School. He will be an Associate Professor at Touro starting in Fall 2009,

having successfully won a tenure & promotion vote in May 2009. His scholarly interest is in the Fourth Amendment, with a particular focus upon civil search jurisprudence. In the past year he published his third article: *The Framers' Search Power: The Misunderstood Statutory History of Suspicion and Probable Cause*, 50 B.C. L. REV. 363 (2009). It argues that the Framers used probable cause toward a surprising end: to protect the government, rather than the public. They did so by establishing probable cause as an immunity standard. Another important finding is that they nearly always displaced the jury's common law role in assessing probable cause in favor of having judges--often federal judges--make the immunity determination. These factors show that the Framers' tendency was to decrease access to search remedies, a finding that challenges conventional originalist accounts. He also published his first essay: *A Response to Professor Steinberg's Fourth Amendment Chutzpah*, 10 U. PA. J. CONST. L. 1229 (2008). Professor Arcila continues to serve as a planning committee member for the Northeast People of Color Scholarship Conference, and is also on the planning committee for the Third National People of Color Scholarship Conference, which is scheduled for 2010. He is on the Executive Board of the AALS Minority Groups Section, and is active in the

Hispanic National Bar Association's New York Region. His papers can be accessed through the Social Science Research Network (SSRN) at: <http://ssrn.com/author=399048> <<https://webmail.tourolaw.edu/exchweb/bin/redir.asp?URL=http://ssrn.com/author=399048>>.

Kim Bailey (Chicago-Kent) published *The Aftermath of Crawford and Davis: Deconstructing the Sound of Silence* in the BYU LAW REVIEW in February.

Susan Bandes (DePaul) has published a number of recent works and has others forthcoming. Her review of George Thomas, *The Supreme Court on Trial* entitled *Protecting the Innocent as the Primary Goal of the Criminal Justice System* is forthcoming in the OHIO STATE JOURNAL OF CRIMINAL LAW (2009). Her article, *Repellent Crimes and Rational Deliberation: Emotion and the Death Penalty* is forthcoming in 33 VERMONT LAW REVIEW. That article is part of a symposium on emotion and institutions based on the conference on that topic that took place at the University of Chicago Law School in May 2008. A shorter version of Professor Bandes's previously published article, *The Heart has its Reasons: Examining the Strange Persistence of the American Death Penalty*, will be a core text in Robinson,

Garvey and Ferzan's CRIMINAL LAW CONVERSATIONS (Oxford University Press 2009), accompanied by eight comments and her reply. Her issue brief for the American Constitution Society entitled "The Roberts Court and the Future of the Exclusionary Rule" is available at <http://www.acslaw.org/files/Bandes%20Issue%20Brief.pdf> and her reply to Douglas Berman and Stephanos Bibas on the death penalty for child rape: *Child Rape, Moral Outrage, and the Death Penalty*, is available at 103 NORTHWESTERN LAW REVIEW COLLOQUY 17 (2008), <http://northwestern-colloquy.typepad.com/>

Tamar Birkhead's recent article, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. REV. 1443 (2008), has received significant attention at both the state and national levels. The Raleigh *News & Observer* published an Op-Ed written by Professor Birkhead on the subject of raising the age, and she has been interviewed by radio and print reporters across the state on her findings. She has testified before the N.C. Governor's Crime Commission on the history of raising the age of juvenile court jurisdiction, and Action for Children North Carolina, the state's premier child advocacy organization, issued a press release and fact sheet on her research. In addition, The Campaign for Youth Justice, a national organization dedicated

to ending the practice of trying, sentencing, and incarcerating youth under 18 in the adult criminal justice system, highlighted Professor Birckhead's research in their newsletter and interviewed her for their weekly radio program, Juvenile Justice Matters.

Frank Rudy Cooper (Suffolk) has published *Surveillance and Identity Performance: Some Thoughts Inspired by Martin Luther King*, 32 NYU Rev. L. & Soc. Change (2009) (suggesting how Judith Butler's theories might apply to surveillance law).

M. Katherine Baird Darmer (Chapman) published *Scalian Skepticism and the Sixth Amendment in the Twilight of the Rehnquist Court*, 46 U.S.F. L. REV. 347 (2008). Her symposium piece, *Civil Liberties Lost, Waterboarding, and the Legacy of the Bybee-Yoo Torture and Power Memorandum [BYTAP]* is forthcoming in the CHAPMAN LAW REVIEW. She and section member **Larry Rosenthal** participated in a debate with John Yoo, then a visiting professor at Chapman, on torture, the Fourth Amendment and the scope of executive power on April 21, 2009. Katherine organized and appeared in a *Hot Topics* Panel on Prop 8 and the future of marriage equality at the AALS Annual Meeting in San Diego and has spoken at more than ten other forums on Prop 8 and related topics since the

election. She and several Chapman colleagues filed an amicus brief in opposition to Prop 8 in the California Supreme Court. Her symposium piece on Prop 8 is forthcoming in NEXUS: A JOURNAL OF OPINION.

Reid Fontaine (Arizona Psychology) was jointly appointed Associate Professor of Law at Arizona as of Spring, 2009.

David Harris (Pittsburgh) testified in the U.S. House of Representatives in April 2009 on the enforcement of immigration law by local police agencies. The hearing was jointly convened by the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, and the Subcommittee on the Constitution, Civil Rights, and Civil Liberties. He also participated in a Fred Friendly-style program called "The Great Debate: Immigration and America," moderated by Arthur Miller, at Washington & Jefferson College. He gave talks, presentations and papers at the University of Delaware, the Judicial Conference of the U.S. Court of Appeals for the Armed Services, and at the Center for Race and Social Problems at the University of Pittsburgh, among others. In March, he served as co-convenor and presenter at a conference on the future role of the Department of Justice's Special Litigation Section in police reform; the conference produced a policy paper that is

now being circulated within the Department of Justice. He is working on two empirical projects: a study of search warrants in Allegheny County and Pittsburgh, PA (with Andy Taslitz of Howard and Jeannine Bell of Indiana), and an analysis of citizen complaints against the Pittsburgh Police Department using GIS mapping. This year he has served as guest editor of a special issue of the OHIO STATE JOURNAL OF CRIMINAL LAW, on the theme of "What Criminal Law and Procedure Can Learn From Criminology." The special issue, part of volume 7, will carry pieces by Richard Leo (University of San Francisco) and Jon Gould (George Mason), Erik Luna (Washington & Lee), Eric Miller (St Louis), and David Harris (Pittsburgh), and is due out in the Fall of 2009. He will publish *Law Enforcement and Intelligence Gathering in Muslim and Immigrant Communities After 9/11* in volume 34 of the N.Y.U. REVIEW OF LAW & SOCIAL CHANGE. This year he has served on the Allegheny County District Attorney's Task Force on the Use of Force, which has investigated Taser use by police, and a working group with the Pittsburgh Police Bureau that is revising the agency's policies on profiling and police encounters with immigrants. In 2009, David received the University of Pittsburgh School of Law's Excellence in Teaching Award from the School's graduating students.

During 2009, he will serve as Chair of the Criminal Justice Section.

Scott W. Howe (Chapman) will publish *Slavery as Punishment: Original Public Meaning, Cruel and Unusual Punishment and the Neglected Clause in the Thirteenth Amendment* in the ARIZONA LAW REVIEW (forthcoming 2009).

Adam Kolber (San Diego) has published *The Subjective Expectation of Punishment*, 109 COLUM. L. REV. 182 (2009). His upcoming article, *The Comparative Nature of Punishment* is forthcoming in the BOSTON UNIVERSITY LAW REVIEW. Adam will be visiting at Brooklyn Law School in the Fall.

Richard Leo's book POLICE INTERROGATION AND AMERICAN JUSTICE (Harvard University Press, 2008) received the 2009 Herbert Jacob Book Award from the Law and Society Association and the Distinguished Scholarship Award Honorable Mention from the Pacific Sociological Association. His forthcoming publications include *Studying Wrongful Convictions: Lessons From Social Science* (with Jon Gould), forthcoming in THE OHIO STATE JOURNAL OF CRIMINAL LAW; *Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony*

Inform Them Otherwise? (with Iris Blandon-Gitlin and Kathryn Sperry), forthcoming in PSYCHOLOGY, CRIME AND LAW; *Police-Induced Confessions: Risk Factors and Recommendations* (with Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson and Allison Redlich), forthcoming in LAW AND HUMAN BEHAVIOR; *What Do Potential Jurors Know About Police Interrogation and False Confessions?* (with Brittany Liu), forthcoming in BEHAVIORAL SCIENCES AND THE LAW; *From False Confession to Wrongful Conviction: Seven Psychological Processes* (with Deborah Davis), forthcoming in THE JOURNAL OF PSYCHIATRY AND THE LAW; *False Confessions: Causes, Consequences and Implications*, forthcoming in THE JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW; *The Three Errors: Pathways to False Confession and Wrongful Conviction* (with Steve Drizin) forthcoming in Daniel Lassiter and Christian Meissner, eds., INTERROGATIONS AND CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY (Washington, D.C.: American Psychological Association 2009); and *Psychological and Cultural Aspects of Interrogations and False Confessions: Using Research to Inform Legal Decision-making* (with Mark Costanzo and Netta Shaked),

forthcoming in Joel Lieberman and Daniel Krauss, eds., PSYCHOLOGICAL EXPERTISE IN COURT: PSYCHOLOGY IN THE COURTROOM (New York Ashgate Ltd 2009).

Cynthia Lee (George Washington) recently published *The Gay Panic Defense* in the UC DAVIS LAW REVIEW. She also contributed a chapter entitled *Hate Crimes and the War on Terror* to a 5-volume treatise on hate crimes (edited by Barbara Perry) which will be published this year. Her core text, *Reasonable Provocation and Self-Defense: Recognizing the Distinction between Act Reasonableness and Emotion Reasonableness*, will be published as a chapter in CRIMINAL LAW CONVERSATIONS (Oxford University Press forthcoming 2009). The second edition of her casebook, CRIMINAL LAW: CASES AND MATERIAL (with Angela Harris) (West), will also be pushed in 2009.

Wayne Logan (Florida State) has a forthcoming book, KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA, which will be published this August (2009) by Stanford University Press. His article, *Contingent Constitutionalism* will be published in volume 51 of the WILLIAM & MARY LAW REVIEW.

Michael Mannheimer (Northern Kentucky) has the following publications

forthcoming: *The Impact of Information Overload on the Capital Jury's Ability to Assess Aggravating and Mitigating Factors*, 17 WM. & MARY BILL OF RIGHTS J. ____ (forthcoming 2009) (with Katie Morgan) and *Toward a Unified Theory of Testimonial Evidence Under the Fifth and Sixth Amendments*, 80 TEMP. L. REV. ____ (2008).

Paul Marcus (College of William and Mary) is returning to Australia in the summer to conduct a comparative criminal justice class at the University of Melbourne. He will be considering key features of the justice systems of the United Kingdom, Australia, and the United States. Earlier in the year he delivered a lecture as part of the Distinguished Lecture Series at St. Thomas University. An article based on this talk will be published later this year in the ST. THOMAS LAW REVIEW: *Why the United States Supreme Court Got Some [But Not a Lot] of the Sixth Amendment Right to Counsel Analysis Right*.

Peter Margulies (Roger Williams) and **Jack Chin (Arizona)** were co-counsel on the ABA amicus brief in *Padilla v. Kentucky*, 08-651 (S. Ct.). *Padilla* presents the questions of whether 1) the Sixth Amendment requires defense counsel to advise a non-citizen client of immigration consequences of a guilty plea, and 2) assuming no general duty to advise, it is

incompetent to incorrectly advise that a guilty plea has no immigration consequences. **Stephanos Bibas (Penn)** is co-counsel on petitioner *Padilla's* brief.

Ira Robbins (American) serves as a member of the ABA Task Force on Postconviction Remedies. His recent publications include *HABEAS CORPUS CHECKLIST* (Thomson /West 2009) and *Lessons From Hurricane Katrina: Prison Emergency Preparedness as a Constitutional Imperative*, 42 MICH. J. L. REFORM 1 (2008).

Larry Rosenthal (Chapman) published *Second Amendment Plumbing After Heller: Of Standards of Scrutiny, Incorporation, Well-Regulated Militias, and Criminal Street Gangs* in the URBAN LAWYER.

Susan D. Rozelle (Capital) will join the faculty at Stetson University College of Law in Fall 2009. Her recent publications include *Sometimes a Control Test Is Just a Control Test; He Had It Coming: Provocation as a Partial Justification; No Excuse for You; and Making Waves: Radicalizing Act Reasonableness*, all in CRIMINAL LAW CONVERSATIONS (Paul H. Robinson, Kimberly Ferzan, and Stephen Garvey, eds.) (Oxford University Press, forthcoming 2009), and she moderated the Insanity panel at the annual Criminal Law Symposium at Texas Tech in April.

Andrew E. Taslitz (Howard) recently published several articles, books, and book chapters, including *Wrongly Accused Redux: How Race Contributes to Convicting the Innocent: The Informants' Example*, __ S.W.L.R. __ (2009) (by invitation to a symposium on innocence); *The Duke Lacrosse Players and the Media: Why the Fair Trial/Free Press Paradigm Doesn't Cut it Anymore*, in RACE TO INJUSTICE: LESSONS LEARNED FROM THE DUKE UNIVERSITY LACROSSE PLAYERS RAPE CASE (Michael Siegel ed., Carolina Academic Press 2009); *Chapter 5: Criminal Justice*, in THE AMERICAN ADVERSARIAL SYSTEM: A DISTANCE LEARNING COURSE (Lexis/Nexis 2009); CRIMINAL LAW: CONCEPTS AND PRACTICE (Carolina Academic Press 2d ed. 2009) (co-authored with Ellen Podgor, Peter Henning, and Alfredo Garcia); *Wrongful Convictions*, in AMERICAN BAR ASSOCIATION, THE STATE OF CRIMINAL JUSTICE: 2008 (2009); and *Neither Fool Nor Cynic: Jeff Powell's Happy Constitution*, __ DUKE L. MAG. __ (2009). Professor Taslitz also submitted a revised draft statute and set of comments in his role as Reporter for the NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM LAW COMMISSION, A UNIFORM CODE ON THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS WITH

COMMENTARY (forthcoming 2010). His book, *RECONSTRUCTING THE FOURTH AMENDMENT: A HISTORY OF SEARCH AND SEIZURE, 1789-1868*, paperback edition, mentioned as forthcoming in the last newsletter, is now in print.

Professor Taslitz also spoke at a variety of conferences, including on the following topics: *The Slave Power Undead: Criminal Justice Successes and Failures of the Thirteenth Amendment*, Conference, The Thirteenth Amendment's Promise of Liberty, University of Chicago Law School, April 16-18, 2009; *Why Did Tinkerbell Get Off So Easy?: The Roles of Imagination and Social Norms in Excusing Human Weakness*, Symposium on Excuses, Texas Tech University School of Law, April 2, 2009; *Judging Jena's D.A.: The Prosecutor and Racial Esteem*, Harvard University Law School, March 13-14, 2009 (also served as co-organizer of the symposium with Carol Steiker); and *Jena and Justice*, University of Pittsburgh School of Law, February 2009. The University of Chicago talk is the basis for a book chapter in a forthcoming Columbia University Press anthology on the Thirteenth Amendment, while the Texas Tech and Harvard talks are the bases for forthcoming articles to be published in journals at each of those respective institutions.

Professor Taslitz also continues his work as a

member of the ABA Criminal Justice Section's Federal Law Subcommittee, Committee on Policy and Legislation and as a member of that section's *Criminal Justice* periodical editorial board and Chair of its Book Board Committee, while also serving as a member of the ABA's Task Force on Transactional Surveillance Standards.

Professor Taslitz is also finishing a wonderful year-long visit at the University of Pittsburgh School of Law, where he taught Evidence, Criminal Law, and Free Speech, and where he continues his work with Professor David Harris on search warrant practices in Allegheny County, a project that has now entered the data-gathering phase.

George Thomas (Rutgers) presented *Newspapers and the Fourteenth Amendment: What Did the American Public Know About Section 1?* at the University of San Diego, January 7, 2009, to appear in the *Journal of Contemporary Legal Issues*. He also published *Helping Innocent Defendants in High-Stake Cases*, 157 U. PA. L. REV. PENNUMBRA 58 (2008) (responding to Josh Bowers, *Punishing the Innocent*, 156 U. PA. L. REV. 1117 (2008)). On February 27, 2009, he was named a Board of Governors Professor at Rutgers.

David Wexler (Arizona) has published *REHABILITATING*

LAWYERS: PRINCIPLES OF THERAPEUTIC JURISPRUDENCE FOR CRIMINAL LAW PRACTICE (Carolina Academic Press 2008).

Other

Announcements

The Stanford Criminal Justice Center (SCJS) launched a speaker series in November. Lisa Kung, Executive Director of the Southern Center for Human Rights, was the kick-off speaker. She urged Stanford Law students to seize the moment of the election of Barack Obama to make affirmative demands on the criminal justice system to protect the ideals of fairness and equality. In December 2008, SCJC also completed a process and outcome evaluation of the Fresno County Juvenile Behavioral Health Court.

In Winter 2009, SCJC co-sponsored the *STANFORD LAW REVIEW* Symposium on Media, Justice and the Law and co-sponsored the *STANFORD LAW & POLICY REVIEW*'s symposium on drug law reform.

The *FEDERAL SENTENCING REPORTER* devoted a recent issue to recent developments in the punishment and management of sex offenders. It includes an introduction from Michael M. O'Hear (Marquette), and articles from Mary Leary (Catholic) and criminologists Lisa Murphy, Michael Petrunik and Richard

Wright, among other contributors.

Other Past Conferences and Symposia

Texas Tech's third annual criminal law symposium was held on April 3, 2009. The topic was *Excuses and the Criminal Law* and, under the direction of Arnold Loewy, drew both nationally and internationally recognized speakers from as far away as Australia and Israel. The symposium addressed whether there is a difference between justification and excuse, whether excuses should be broadly or narrowly construed, whether excuses should be complete or partial and the insanity defense. Conference participants and attendees were treated not only to a comprehensive treatment of this important topic but also to the unparalleled hospitality of Professor Loewy and the Texas Tech Law Review editors and staff.

Highlights of the symposium included a keynote address from Joshua Dressler (Ohio State) and a lunchtime presentation by Paul Robinson (Penn). Panel speakers included Vera Bergelson (Rutgers-Newark), Roger Clark (Rutgers-Camden), Eric Colven (Bond-Australia), Michael Corrado (North Carolina), Deborah Denno (Fordham), Donald Dripps (San Diego), Arnold Enker

(Bar Ilan-Israel), Steve Garvey (Cornell), Arnold Loewy (Texas Tech), Linda Malone (William and Mary), Brian Shannon (Texas Tech), Chris Slobogin (Vanderbilt) and Andy Taslitz (Howard). Moderators were Russell Christopher (Tulsa), Katherine Darmer (Chapman), Calvin Lewis (Texas Tech) and Susan Rozelle (Capital).

Upcoming Conferences and Symposia

On September 25-26, 2009, Rutgers School of Law-Newark will host a conference entitled "Philosophical Foundations of Criminal Law," papers from which will be published by Oxford University Press in a book of the same name. Scheduled participants include Larry Alexander, Andrew Ashworth, Vera Bergelson, Mitchell Berman, Richard Dagger, Donald Dripps, Markus Dubber, Kim Ferzan, John Gardner, Adil Haque, Mireille Hildebrandt, Douglas Husak, Dan Kahan, Christopher Kutz, Nicola Lacey, Matt Matravers, Michael Moore, Paul Roberts, Kenneth Simons, Victor Tadros, Malcolm Thorburn, Peter Westen, and Lucia Zedner. The conference is being organized by Antony Duff and Stuart Green. For more information, please contact Stuart at sgreen@kinoy.rutgers.edu

The UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM will publish a symposium in November 2009 on *The Nature, Structure and Function of Heat of Passion/Provocation as a Criminal Defense*. The symposium will include an introduction by Kyron James Huigens, past Section Chair, and a featured article, *Adequate (Non)Provocation and Heat of Passion as Excuse not Justification* by Reid Fontaine (Arizona). Commentary will be provided by Gabriel J. Chin, Marcia W. Baron, Samuel H. Pillsbury, Peter Westen, Stephen J. Morse, and Robert Weisberg with an article in reply and concluding remarks by Reid Fontaine.

On April 9th and 10th of 2010, Texas Tech will hold its 4th annual criminal law symposium on the 4th Amendment. The panels will discuss (1) How important is (should) history (be) to the 4th Amendment and how good (or bad) a job does the Supreme Court do in construing history? (2) What value(s) is (are) the Fourth Amendment intended to serve? and (3) Is the exclusionary rule a good (the best) method of enforcing these value(s)?

Committed speakers thus far include Paul Butler, Erwin Chemerinsky, Tom Clancy, Morgan Cloud, Tom Davies, Catherine Hancock, Arnold Loewy, Larry Rosenthal, Carol Steiker, Scott Sundby, and George Thomas.

Disclaimer

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