

AALS Criminal Justice Section Newsletter

May 2008

Chair's Message

Cynthia Lee

The George Washington University
Law School

It gives me great pleasure to write this Chair's Message. We have been hard at work this year, preparing for next year's Annual Meeting and taking the necessary steps to submit a proposal for another professional development workshop to be held in conjunction with the 2010 AALS Midyear Meeting.

At this year's Annual Meeting, the officers of the Criminal Justice Section hosted an informal social hour on Friday, January 4, 2008 at the New York Hilton's Lobby Lounge. About a dozen people came, including many past Chairs of the Criminal Justice Section, such as Joshua Dressler, Ellen Podgor, Andrew Taslitz, Sandy Guerra Thompson, Stuart Green, and Wayne Logan. Several junior (untenured) professors, including Song Richardson (DePaul), Emily Hughes (Washington University), and Dan Markel (Florida State University), also came to mingle with other Section members.

On Saturday, January 5, 2008, approximately 50 people attended our annual Criminal Justice Section luncheon. After welcoming Section members, outgoing Chair Kyron Huigens invited individuals who had just started law teaching to stand and

give their names and school affiliations. He then spoke about our junior scholar paper competition and announced the winner of this year's competition: Erin Murphy (Boalt Hall School of Law, U.C. Berkeley). Erin gave a short presentation on her winning paper, *Paradigms of Restraint*.

Following our Section lunch, we had our first panel entitled "Police Practices and Procedures Post 9/11: Is the War on Terror Changing Domestic Criminal Law and Procedure?," organized by Chair-Elect David Harris and moderated by outgoing Chair Kyron Huigens. David Harris (Pittsburgh) started by discussing the effect of the enemy combatant designation on cases involving terrorist suspects pursued through the criminal justice system. Aziz Huq (Deputy Director of the Justice Program at the Brennan Center at New York University) spoke on parallels between the war on crime and the war on terror. John Parry (Lewis & Clark) examined two pairs of cases (one pre-9/11 and the other post-9/11): *Tennessee v. Garner* and *Scott v. Harris*; and *Florida v. Bostick* and *U.S. v. Drayton*. Bill Stuntz (Harvard) spoke on ways in which the war on terror has impacted (or not impacted) the law of criminal investigations, the law of criminal trials, and the substantive law of organized crime.

We held our Business Meeting immediately following the Police

Practices panel. Twenty-six people signed up to serve on the Executive Committee, and since then, many others have asked to be added to the list. We started by nominating David Harris (Pittsburgh) to serve as Chair-Elect and Susan Rozelle (Capital) to serve as Secretary this year. I then spoke of revamping our Mentoring Program. Instead of assigning individual senior faculty members to mentor individual junior faculty members, we will reserve a room at next year's AALS Meeting and invite all Section members to come for an informal social hour for the purpose of giving untenured faculty in criminal law/procedure an opportunity to meet senior faculty in criminal law/procedure to get advice on writing, teaching, and the tenure process. We hope that by giving our Section members this opportunity to meet and mingle in a setting geared towards mentoring the younger faculty, mentoring relationships will develop naturally and be more meaningful. Andy (the Taz) Taslitz volunteered to chair the Mentoring Program Committee.

We then solicited ideas for panels for next year's AALS Meeting which will be in San Diego, California. We received a number of terrific ideas from the members. It was difficult to decide which panels to select because we had so many great ideas. The Section Officers ultimately decided to sponsor a panel on Model Penal Code Sentencing Proposals and a panel on "Crimmigration."

Chris Slobogin has organized and will be moderating the panel on MPC Sentencing Proposals, which will feature Kevin Reitz (Minnesota), the Reporter for the ALI Model Penal Code Sentencing Project, Doug Berman (Ohio State), Alice Ristroph (Seton Hall), and Robert Weisberg (Stanford). Mario Barnes has organized and will be moderating the panel on "Crimmigration: At the Intersection of Criminal and Immigration Law" which will feature Jennifer Chacon (UC Davis), Juliet Stumpf (Lewis and Clark), Orde Felix Kittrie (Arizona State), and Sandy Guerra Thompson (Houston).

On Sunday morning, January 6, we had our second panel entitled "Manslaughter: New Thoughts on an Old Topic," organized by Tony Dillof (Wayne State University). Stephen Garvey (Cornell) started the discussion by arguing that provocation should focus on whether the actor tried to control himself or herself. If the actor failed to make efforts at self-control, Garvey would not allow that actor the provocation mitigation. Next, Samuel Pillsbury (Loyola Los Angeles) argued that provocation should be about whether the defendant had good reasons for acting, not whether the defendant acted like a reasonable person in losing his or her self-control. Ken Simons (Boston University) argued that we should not use reasonable person language in the provocation doctrine. Simons would use language that is more directly normative. For example, instead of asking whether the reasonable person would have lost his or her self-control, we should ask whether it is understandable that the defendant lost control. Caroline Forell (Oregon) spoke about changes in provocation doctrine in other countries, and proposed that we follow the example of Tasmania and Victoria, two states in Australia that have abolished the defense of provocation. Victoria replaced the crime of manslaughter with the crime of defensive homicide, which provides a partial defense for intimates who kill out of fear when that fear does not satisfy the

requirements of perfect self-defense. Forell argued that the law of provocation no longer comports with American social norms. The panel provoked many interesting comments and questions.

As mentioned before, we are starting to plan for another Criminal Justice Midyear Meeting like the one that was held in 2006 in Vancouver. Katherine Darmer (Chapman) volunteered to serve as Chair of the Midyear Planning Committee and the following Section members have volunteered to serve on this committee: Frank Rudy Cooper (Suffolk), Stuart Green (Rutgers-Newark), Orin Ker (George Washington), Arnold Loewy (Texas Tech), John Parry (Lewis & Clark), Penny Pether (Villanova), Song Richardson (DePaul), Susan Rozelle (Capital), and Andrew Taslitz (Howard). A big thanks to Katharine and her committee for taking on this important work.

I look forward to seeing you all at next year's Annual Meeting in San Diego! Please come to our Mentoring Networking Happy Hour, which Andy Taslitz is organizing, our panels, and our business meeting.

Thanks to Outgoing Chair Kyron Huigens

The Section wishes to express a deep gratitude to outgoing Chair Kyron Huigens, of the Benjamin N. Cardozo School of Law, for his tireless work on behalf of the Section. Kyron always kept the business of the Section running smoothly, and we enjoyed an outstanding Annual Meeting in January 2008 that was crafted under his leadership.

We are so grateful to have had you serve as our Chair, and look forward to your continued contributions in the years to come. Thank you, Kyron!

Erin Murphy Wins 2008 Junior Scholars Paper Competition

In January 2008, Erin Murphy of the University of California, Berkeley School of Law was honored as the recipient of the 2008 Junior Scholars Paper Competition sponsored by the AALS Criminal Justice Section. Erin is a graduate of Harvard Law School (1999) and worked for the Public Defender Service in Washington, D.C. for five years before joining the law faculty at Boalt Hall. Congratulations, Erin!

Professor Murphy's winning article, *Paradigms of Restraint*, is forthcoming in the Duke Law Journal (2008). Her abstract for the piece follows:

Incapacitation of dangerous individuals has conventionally entailed the exercise of physical control over an actual body: the state confines the person in jail. But advances in technology over the past ten years have changed that convention. A variety of new technologies - such as GPS tracking bracelets, biometric scanners, online offender indexes, and DNA databases - now vest the government with the power to control dangerous persons without relying upon any exertion of physical control. The government can engage in constant real-time location tracking, receive remote notification that an individual has ingested alcohol, or electronically zone a person into her home or out of a public park. It can prove conclusively that a particular person wore a hat or took a sip from a discarded soda can, or identify a single face in a 10,000 person crowd. In this day and age, restraint of the dangerous can be as much about keeping a person away from a place as it used to be about locking him up in one.

But whereas physical incapacitation of dangerous persons has always invoked some measure of

constitutional scrutiny, virtually no legal constraints circumscribe the use of its technological counterpart. Across legal doctrines, courts erroneously treat physical deprivations as the archetypal “paradigm of restraint,” and thus largely overlook the significant threat to liberty posed by technological measures. Similarly, much scholarly interest has focused on the use of physical incapacitation as a means of regulatory control over, for example, illegal immigrants, pretrial detainees, or the mentally ill. An equivalent degree of notice has been given to the question of information privacy in general society. Yet virtually no attention has been paid to the connection between these two areas.

This Article examines the generally unheeded intersection between two well-documented trends: the state's increasing desire to preventively regulate targeted classes of individuals, and its increasing capacity to use innovative technologies, rather than physical incapacitation, to realize that desire. This Article identifies four loosely grouped emerging technologies of control: DNA databasing, electronic monitoring, electronic indexing, and biometric scanning. It then reviews the legal landscape upon which they operate, and demonstrates that, across the range of doctrines, courts unduly focus upon the physical world as the relevant metric against which all restraints are judged. As a result, technologies of restraint are imposed without necessary procedural safeguards. This Article then outlines four concerns peculiar to the technological nature of these restraints, and illustrates how these significant concerns are wholly overlooked when the physical world is the determinant referent of review. The Article closes by urging greater judicial scrutiny of technological restraints, and by laying out a series of potential inquiries that might aid in such an effort.

Junior Scholars Competition on Hold for 2009

In preparation for this year's upcoming Junior Scholars Paper Competition, the Criminal Justice Section made inquiries with the National leadership of AALS about budgeting for the competition, and was surprised at the response we received.

Although we have carefully read the applicable AALS regulations and believe our competition fully meets the stated criteria, a representative of the National Executive Board told us informally that our paper competition may not be in compliance with AALS rules.

To clarify our situation and ensure our compliance, the officers of the Section have submitted a formal application for approval from the AALS Executive Board to continue to hold our traditional junior scholars paper competition.

We have not yet been informed of their decision, but hope to hear something in the next month or so. We will keep you posted of the AALS's response to our formal application via the CrimProf listserv.

In the meantime, we encourage junior Section members to keep the paper competition in mind. Assuming it is approved, we will be sending out a “Call for Papers” from junior scholars, and the author of the best paper will be recognized at the Criminal Justice Section luncheon at the 2009 AALS Annual Meeting in San Diego.

Any section member who has been a full-time law school faculty member for six years or less is eligible. Submissions will be evaluated anonymously by the Section's officers or by a panel of individuals designated by the Section Chair. If the competition is approved by AALS, papers should be submitted by August 1, 2008 to the Section

Chair, Cynthia Lee, at cylee@law.gwu.edu. Papers accepted for publication before August 1, 2008, and papers submitted by previous Competition winners are not eligible.

Member News

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

Susan Rozelle (Section Secretary) thanks all those who responded to the call for news.

Norman Abrams, Professor of Law Emeritus, UCLA, reports that the 3rd edition of NORMAN ABRAMS, ANTI-TERRORISM AND CRIMINAL ENFORCEMENT (Thomson-West, 2008) will be published in early June, 2008. The new edition will be hardcover.

Fabio Arcila, Jr., an Assistant Professor who joined Touro Law Center in 2004, will be visiting at Fordham University Law School for the 2008-2009 academic year. His scholarly interest is in the Fourth Amendment, with a particular focus upon civil search jurisprudence and the pressure it places upon Fourth Amendment law due to developments such as the rise of the modern regulatory state and the increasing interest in preventative searches, such as for national security purposes. He has previously published in the *Administrative Law Review*. His article, *In the Trenches: Searches and the Misunderstood Common Law History of Suspicion and Probable Cause*, was recently published as the lead article in the *University of Pennsylvania Journal of Constitutional Law* (10 U. PA. J. CONST. L. 1 (2007)). It provides an in-depth historical analysis of probable cause under the common law and argues that, even after the Fourth Amendment's adoption, many if not most judges believed that they could issue search warrants without independently assessing the adequacy of probable cause. He also has an essay forthcoming in the

University of Pennsylvania Journal of Constitutional Law, which responds to the Fourth Amendment scholarship of Professor David Steinberg. His most recent work, "Originalism and Early Regulatory Searches: The Misunderstood Statutory History of Suspicion and Probable Cause," is far enough along that he has posted it onto SSRN. This piece again challenges leading originalist accounts of the Fourth Amendment, arguing that the Framers used probable cause towards 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 federal judges make the immunity determination. These factors show that the Framers' tendency was to decrease access to search remedies. Professor Fabio continues to serve as a planning committee member for the Northeast People of Color Conference, which this year will be held at Boston University Law School. At this year's AALS Annual Meeting, he was elected to the Executive Board of the Minority Groups Section and serves on numerous subcommittees. He also is active in the Hispanic National Bar Association's New York Region.

Kimberly Bailey has an article forthcoming in the January 2009 issue of the Brigham Young University Law Review entitled *The Aftermath of Crawford and Davis: Deconstructing the Sound of Silence*.

Susan Bandes, DePaul, has three forthcoming articles: *Victims, "Closure," and the Sociology of Emotion*, forthcoming in Law and Contemporary Problems in 2009; *Framing Wrongful Convictions*, forthcoming in the Utah Law Review as part of the conference Beyond Biology: Wrongful Convictions in a Post-DNA World; and *Emotions, Values and the Construction of Risk*, a reply to Dan Kahan, to be posted on PENnumbra on March 21, 2008. Her recent presentations include

Victims, "Closure," and the Sociology of Emotion, at the Seminar on Advanced Criminal Law: Criminal Sentencing and the Death Penalty, Fordham Law School, the Vanderbilt Law School Law and Human Behavior Program, the St. Johns Law School Faculty Workshop Series, the Ohio State Law School workshop series, and the University of Chicago Law School Works in Progress; After Innocence: Framing Wrongful Convictions, at the conference Beyond Biology: Wrongful Convictions in a Post-DNA World, S.J. Quinney Law School, University of Utah, November 15, 2007; and The Heart Has its Reasons: The Strange Persistence of the American Death Penalty, at the Georgia State Law School workshop series.

Tamar R. Birkhead, Assistant Professor of Law, UNC-Chapel Hill, has two recent publications: *Two Steps Forward, One Step Back: North Carolina, Juvenile Justice Policy, and the Resistance to Reform*, 86 N.C. L. REV. (forthcoming 2008); and *The Age of the Child: Interrogating Juveniles after Roper v. Simmons*, 65 WASH. & LEE L. REV. (forthcoming 2008). Recent speaking engagements include being a featured guest on "The State of Things" with Frank Stasio on WUNC-NPR, March 19, 2008 (discussed the state of the juvenile justice system in North Carolina in the wake of the murder of UNC undergraduate, Eve Carson); "Recent Developments in Juvenile Defense," presented at the UNC School of Law Festival of Legal Learning, February 2008; serving as a panelist on "Welcome to Durham," the Award-Winning Gang Documentary on Juveniles and Gang Violence, UNC-Chapel Hill, October 30, 2007; "The Age of the Child: Interrogating Juveniles after Roper v. Simmons," Faculty Workshop Series, University of Maryland School of Law, October 25, 2007; and "The Age of the Child: Interrogating Juveniles after Roper v. Simmons," Faculty Workshop Series, UNC School of Law, August 30, 2007.

In November 2007, **Paul Cassell** resigned as a federal district court judge for the District of Utah to return to teaching criminal law at the S.J. Quinney College of Law at the University of Utah. He plans to work on scholarship involving crime victims' rights, and to do pro bono litigation for crime victims with the National Crime Victims Law Institute and other organizations.

J. Herbie DiFonzo and **Ruth C. Stern** recently published an article and gave a presentation on issues related to DNA evidence, the "CSI effect," and forensic testimony in criminal cases: J. Herbie DiFonzo & Ruth C. Stern, *Devil in a White Coat: The Temptation of Forensic Evidence in the Age of CSI*, 41 NEW ENGLAND L. REV. 503 (2007), and J. Herbie DiFonzo & Ruth C. Stern, "DNA Evidence, Forensics, & the 'CSI Effect,'" Artists & Lecturers Programs, Farmingdale State College, Farmingdale, NY, Mar. 6, 2008.

Joshua Dressler, *Reforming Complicity Law: Trivial Assistance as a Lesser Offense?*, 5 OHIO ST. J. CRIM. L. 427 (2008).

Markus D. Dubber, SUNY Buffalo, is finishing up his year as Visiting Faculty Fellow at the University of Toronto's Centre for Ethics, where he has been working on a book on criminal law theory. Aspen has just published his NEW YORK PENAL LAW AND RELATED PROVISIONS, an annotated collection of statutory and regulatory materials on criminal law and procedure, to be followed by a casebook on New York criminal law. The first volume of the NEW CRIMINAL LAW REVIEW, which he edits, has now been published by University of California Press, and his Stanford University Press series CRITICAL PERSPECTIVES ON CRIME AND LAW has entered its second year.

Charles Patrick Ewing, SUNY Distinguished Service Professor and forensic psychologist, released a new book, INSANITY: MURDER, MADNESS, AND THE LAW (Oxford

University Press, 2008). Drawing on personal evaluations of hundreds of defendants and extensive research, Ewing conveys the psychological and legal drama of 10 landmark insanity cases, while challenging misconceptions of the general public and many in the legal community.

Roger A. Fairfax, George Washington University Law School, organized the Legal Scholarship Roundtable on the Grand Jury, which brought together leading grand jury and criminal procedure scholars, prominent federal and state judges, and leading prosecutors and criminal defense attorneys to discuss scholarship on the constitutional role of the grand jury in the American criminal justice system. Participants included paper presenters Sara Sun Beale, Susan Brenner, Judge Michael Daly Hawkins, and Andy Leipold; commentators Niki Kuckes, Stephen Saltzburg, Ric Simmons, and Kevin Washburn; and roundtable discussants Paul Butler, Angela Jordan Davis, Tamara Lawson, Cynthia Lee, and Julie Rose O'Sullivan, among others. Professor Fairfax recently published an article, *Harmless Constitutional Error and the Institutional Significance of the Jury*, 76 *FORDHAM L. REV.* 2027 (2008).

Stuart Green will be leaving LSU (where he has spent the last 12 years) to take a position on the faculty at Rutgers Law School in Newark. Among his current projects are a monograph tentatively titled *Property, Crime, and Morals: Theft Law in the Information Age* (under contract with HUP); and a collection of essays (co-edited with R.A. Duff) entitled *Philosophical Foundations of Criminal Law* (under contract with OUP).

Stephen Henderson was pleased to get tenure at Widener University, and even more pleased to welcome his son, Hyrum Peter, into the world. Along with Hyrum's four sisters, it is nice to have sufficient progeny to field a basketball team or a state supreme court.

Adam Kolber, Laurance S. Rockefeller Visiting Fellow, Princeton University, Center for Human Values, Associate Professor of Law, University of San Diego, will be visiting at Brooklyn Law School this Fall, where he will teach criminal law, as well as a seminar entitled, "Law and the Brain." His essay, *The Subjective Experience of Punishment*, is forthcoming in the *Columbia Law Review*.

Wayne Lafave (Illinois), **Jerold Israel** (Florida & Michigan), **Nancy King** (Vanderbilt) and **Orin Kerr** (George Washington) are pleased to announce that the third edition of their West treatise, *CRIMINAL PROCEDURE*, was published in December 2007. The treatise is now seven volumes, and it is available on Westlaw under the database CRIMPROC.

Cynthia Lee's article, *Cultural Convergence: Interest Convergence Theory Meets the Cultural Defense*, was published in Volume 49 of the *Arizona Law Review*. Her current work, *The "Gay Panic" Defense: The Importance of Making Sexual Orientation Salient*, was recently accepted for publication with the *U.C. Davis Law Review*. She plans to present this paper at the Law and Society Meeting in Montreal, Canada on Friday, May 30, 2008 at 8:15 a.m. In addition, she recently finished drafting a chapter entitled *Hate Crimes and the War on Terror*, which will be part of a five volume treatise on hate crimes published later this year.

Richard Leo's book, *POLICE INTERROGATION AND AMERICAN JUSTICE*, was published by Harvard University Press in February, 2008. His next book (with Tom Wells), *THE WRONG GUYS: MURDER, FALSE CONFESSIONS AND THE NORFOLK 4*, will be published by the New Press in October 2008.

Dan Markel is finishing his third year teaching at Florida State University College of Law. He will be publishing a book with Oxford University Press in 2009

tentatively entitled "Privilege or Punish: Criminal Justice and the Challenge of Family Ties" (with Ethan Leib and Jennifer Collins). He also has two recently-accepted-for-publication articles: first, *Retributive Damages*, forthcoming in the January 2009 issue of the *Cornell Law Review*; and second, *Punishing Family Status*, forthcoming in *Boston University Law Review* (with Leib and Collins). Dan's research can be found at www.danmarkel.com. He also runs www.Prawfs.com, a group blog for law professors. Members of the section are invited to reach him if they are interested in doing a blogging stint for a month at markel@post.harvard.edu

Michael O'Hear, Marquette University Law School, is pleased to announce that the plea-bargaining issue of the *Marquette Law Review* is now in print. The issue includes papers presented at Marquette's plea-bargaining symposium in April 2007, which he organized with his colleague, Andrea Schneider. Professor O'Hear has a few extra copies of the issue and would be happy to send one to any Section member upon request. His recently published articles include: *The End of Bordenkircher: Extending the Logic of Apprendi to Plea Bargaining*, 84 *WASH. U. L. REV.* 835 (2006); *The Second Chance Act and the Future of Reentry Reform*, 20 *FED. SENT. REP.* 75 (2007); *Dispute Resolution in Criminal Law*, 91 *MARQ. L. REV.* 1 (2007); and *Plea Bargaining and Victims: From Consultation to Guidelines*, 91 *MARQ. L. REV.* 323 (2007).

Geary Reamey, Professor of Law, St. Mary's University School of Law, has been appointed a Visiting Professor at the University of Vienna's Institute for Criminal Law in May, teaching a course in Comparative Criminal Procedure.

Susan D. Rozelle is pleased to have been granted tenure at Capital University Law School. Her recent publications include *Fear and Loathing in Insanity Law: Explaining*

the Otherwise Inexplicable Clark v. Arizona, 58 CASE WESTERN RESERVE LAW REVIEW 39 (2007) (top-10 download on SSRN for Evidence & Evidentiary Procedure), and Daubert, *Schmaubert: Criminal Defendants and the Short End of the Science Stick*, an invited contribution to the forthcoming Tulsa Law Review symposium organized by Tamara Piety. Professor Rozelle also has a new book chapter entitled *The Type of Possession Is Nine-Tenths of the Law: Criminal Responsibility for Acts Performed Under the Influence of Hypnosis or Bewitchment*, in LAW AND MAGIC (Carolina Academic Press, forthcoming 2008). She presented her work at the Law, Culture, and Humanities conference held at the University of California at Berkeley this Spring, and is very much enjoying her service as Secretary to the AALS Criminal Justice Section.

Christopher Slobogin, University of Florida, will join the faculty at Vanderbilt Law School in the Fall of 2008.

In January 2009, **Melissa L. Tatum**, Professor of Law & Co-Director, Native American Law Center, University of Tulsa College of Law, will join the University of Arizona as Research Professor of Law and Associate Director of the Indigenous Peoples Law & Policy program.

Andrew E. Taslitz has been named the Welsh S. White Distinguished Visiting Professor of Law for the 2008-09 academic year at the University of Pittsburgh School of Law. On March 3, 2008, he presented a talk entitled *Hudson and Harm: The Roberts' Court's Narrowing Vision of Fourth Amendment Injury*, at the University of Texas Law School, as part of a symposium on the Future of the Fourth Amendment under the Roberts Court. He also was recently a speaker on the topic "Innocence, Race, and Informants: Of Ratchets and Procedural Justice" at the Conference on Innocence at the Southwestern University Law School. Other recent talks have

included "Criminal Procedure as Conversation: Using Reconstruction History in Interpreting the Fourth Amendment," at the George Washington University Law Center, and "Police and Prosecutorial Culpability and the Duty to Preserve Evidence Relevant to Innocence: A Commentary on the Work of Cynthia Jones," at the Washington College of the Law, American University. Professor Taslitz has been named to the Editorial Board of the *The Open Law Journal*, an open access, peer-reviewed, on-line journal published by Bentham Science Publishers (submissions, usually relatively short ones, are invited), and is the incoming Chair of the ABA Criminal Justice Section's Book Publications Committee (book proposals aimed at practitioners are invited). He recently served as co-organizer (with Cynthia Lee) of the first Washington, DC Criminal Justice Roundtable at the George Washington University Law Center, and he has just been appointed as the Reporter for the Custodial Interrogation Drafting Committee of the National Conference of Commissioners on State Laws, and as a member of the newly-formed National Institute for Justice, Eyewitness Identification Study Group, Eyewitness Field Identification Project. He continues his work as a Liaison from the Criminal Justice Section to the ABA *Journal*, as a member of the ABA's Task Force on Transactional Surveillance Standards, as a member of the ABA Standards Committee, and as Co-Director of the Division on Communications, ABA Criminal Justice Section. He is pleased to report two especially positive reviews of his recent book, RECONSTRUCTING THE FOURTH AMENDMENT: A HISTORY OF SEARCH AND SEIZURE, 1789-1868 (NYU Press 2006), one by historian Daniel Hamilton, in the March 2008 edition of the *Journal of American History*, and a second by political scientist Priscilla Zotti in volume 17 of *The Law and Politics Book Review*, at page 282. He recently published *Racial Blindsight: The Absurdity of Color-Blind Criminal Justice*, 5 OHIO ST. J. CRIM. L. 1 (2007),

Privacy as Struggle, 44 SAN DIEGO L. REV. 501 (2007), and *Review Essay, Christopher Slobogin's Proving the Unprovable*, 22 CRIM. J. ___ (2007), and has recently submitted manuscripts for a book chapter in a forthcoming anthology on the Duke rape case and a book chapter on the Thirteenth Amendment and criminal justice in a forthcoming anthology on the Thirteenth Amendment. He is pleased to report that he and his co-editor, Professor Carol Steiker, have organized a symposium on the Jena 6 case to be held at Harvard Law School March 13-14, 2009.

George Thomas has two new articles: *The Riddle of the Fourteenth Amendment: A Response to Professor Wildenthal*, 68 OHIO STATE LAW JOURNAL 1627 (2007), and *Bigotry, Jury Failures, and the Supreme Court's Feeble Response*, 55 BUFFALO LAW REVIEW 947 (2007).

Sandra Guerra Thompson, UH Law Foundation Professor of Law & Director of the Criminal Justice Institute, University of Houston Law Center, recently published three pieces: *Beyond a Reasonable Doubt?: Reconsidering Uncorroborated Eyewitness Identification Testimony* will appear in the U.C. Davis Law Review; *Immigration Law and Long-Term Residents: A Missing Chapter in American Criminal Law* will appear in the Ohio State Journal of Criminal Law; and *Speech, Latinas and Their Families in Detention: The Growing Intersection of Immigration Law and Criminal Law* will be published by the William and Mary Journal of Women and the Law. She will moderate a panel and contribute an essay at a symposium entitled "Convicting the Innocent" to be held at Texas Tech School of Law on April 4th.

Daniel Williams of Northeastern Law School recently published *After the Gold Rush--Part I: Hamdi, 9/11, and the Dark Side of the Enlightenment*, 112 PENN. STATE L. REV. 341 (2007). Part II of this two-

article series is slated to appear in the summer issue of the Penn. State Law Review.

Other Announcements

NEW FOURTH AMENDMENT HISTORY BOOK

Professor Andrew E. Taslitz is pleased to report the recent publication of his New York University Press book, *RECONSTRUCTING THE FOURTH AMENDMENT: A HISTORY OF SEARCH AND SEIZURE, 1789-1868*. The book tells the largely under-noticed story of the history of search and seizure practices during, and arising out of, first slavery, then the plight of the freedmen and their white supporters during Reconstruction. The book also links this history to that of the "original" Fourth Amendment of 1791, emphasizing similarities and differences between search and seizure practices and understandings at the time of the original amendment versus the time of the reconstructed one of 1868, via the ratification of the Fourteenth Amendment, the point at which the book's story ends. The book approaches the relevant history as a conversation between everyday Americans (whether impressed sailors during British rule, abolitionists finding their mail seized, or slaves facing cabin searches authorized by the 19th century equivalent of general warrants) and political elites. The book has been praised by, among others, constitutional law scholar H. Jefferson Powell, Fourth Amendment specialist Tracey Maclin, and historian William Cuddihy, as well as being lauded in recent reviews in the *Law and Politics Book Review* (describing the book as "insightful," providing "the reader with an aspect of search and seizure not often considered: the role of the [fourth] amendment with regard to the

African American experience...") and the *Journal of American History* (describing the book as a "bracing contribution to the somewhat dormant field of constitutional history," a "careful and nuanced account that will be of interest to any historian of the Constitution").

New Resource for Profs with New Preps

Help spread the word about the AALS New Law Professors Teaching Materials Network, a contact list of kind-hearted souls in every discipline who have indicated a willingness to share teaching notes, PowerPoints, handouts, and other precious gems with fellow lawprofs who are putting together a new prep.

Searchable by course and casebook, the database presently contains contact information for faculty members offering to share materials in over 100 different courses.

To find a resource, or to sign up to be one, click on www.law.capital.edu/AALS_New_Law_Professors/.

The list contains contact information only, so there are no security concerns with joining. It is not a secure website, however, so before merrily sending off your teaching notes to anyone who asks, please do verify that the person who contacted you is a fellow law professor, and not one of your more enterprising students.

Upcoming Conferences

2009 AALS Annual Meeting Update

At the business meeting in January 2008, we solicited panel suggestions for the upcoming Annual Meeting, to be held in San Diego, California in

January 2009, and followed up with a solicitation to the general membership via CrimProf. Thanks to everyone for so many terrific panel topic suggestions. We regret that there is not time to adopt them all.

After multiple conferences, the Section officers decided to sponsor two panels: one on Sentencing, which will be organized by Chris Slobogin; and one on Crimmigration (the intersection of Criminal Law and Immigration Law), which will be organized by Mario Barnes. Thanks to both Chris and Mario for undertaking this important task.

Criminal Justice Section Proposal Planned for Midyear Meeting in 2010

The Section is in the process of applying for another professional development workshop/midyear meeting, a two- or three-day conference devoted to criminal law and procedure topics.

The last Criminal Justice Section midyear meeting was held in 2006 in Vancouver, British Columbia, and AALS is currently accepting applications for 2010.

Katherine Darmer (Chapman University) has volunteered to chair the Midyear Meeting Planning Committee and is working with a great group of volunteers from our Section, including Frank Rudy Cooper (Suffolk), Stuart Green (LSU, soon to be Rutgers Newark), Orin Kerr (George Washington), Arnold Loewy (Texas Tech), John Parry (Lewis & Clark), Penny Pether (Villanova), Song Richardson (DePaul), Susan Rozelle (Capital), and Andy Taslitz (Howard). The Section officers thank these individuals for volunteering for this committee.

Criminal Appeals Symposium Call for Papers

Michael O'Hear and Chad Oldfather (Marquette) are in the early stages of

organizing a symposium on criminal appeals, which will be held at Marquette in May or June of 2009. Please contact Professors O'Hear or Oldfather if you are interested in presenting a paper at the symposium. (And who can resist the opportunity for an all-expense-paid trip to Milwaukee--brewery tour included!) Panel topics may include sentencing appeals, quantitative analysis of appellate decisionmaking in criminal cases, specialized versus generalist appellate courts, impact of judicial elections, representation of indigents on appeal, and the murky waters of plain error and harmless error. They hope for a range of interdisciplinary perspectives on such topics, and expect that papers will be published in a special symposium issue of the Marquette Law Review.

ABA Annual Meeting

The American Bar Association's Annual Meeting will be in New York City this year from August 9-14, 2008. Registration information can be found on the ABA's website at: <http://www.abanet.org/annual/2008/>.

Emotion in Context: Exploring the Interaction Between Emotions and Legal Institutions, University of Chicago Law School, May 9-10, 2008. Details available at: <http://www.law.uchicago.edu/Lawec/on/events/emotions.html>

Past Conferences

Texas Tech Criminal Law Symposium

On April 4, 2008, the second annual Texas Tech Criminal Law Symposium was held at the Texas Tech Law School. Besides the convener, Arnold Loewy, the participants included law professors Ron Allen (Northwestern), Keith Findley (Wisconsin), Virginia Hench (Hawaii), Jancy Hoeffel (Tulane), Erik Lillquist (Seton Hall), Dan Simon (Southern California), and Sandra Thompson (Houston). In addition to these law professors,

participants included Stephen Bindman (Canadian Innocence project), Jeff Blackburn (West Texas Innocence project), Juan Melendez (wrongfully convicted 18-year death row inmate), Christine Mumma (North Carolina Innocence Commission), Michael Radelet (Sociology professor, Colorado), Richard Roper (U.S. Attorney for the Northern District of Texas), Don Sorochan (Executive Secretary, International Society for the Reform of Criminal law), and Fred Whitehurst (Retired FBI agent). The panelists discussed such topics as 'Why do we convict as many innocent as we do?', 'Is there a way to convict fewer innocent without acquitting too many guilty?', and 'Given that we know we sometimes convict innocent people, what if anything does that say about the death penalty?'. The papers from the symposium will be published in a forthcoming edition of the Texas Tech Law Review, and will be made available to all those listed in the AALS directory as teaching criminal law or criminal procedure.

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