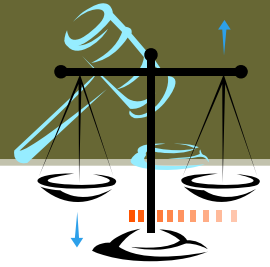




CRIMINAL LAW SECTION MONTHLY UPDATE

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THE FLORIDA BAR CRIMINAL LAW SECTION
651 East Jefferson Street, Tallahassee, FL 32399
www.flacsl.org E-mail: wgraham@flabar.org Phone: 850/561-5628

Message from the Chair

By: Donnie Murrell

This is my last month as Chair of the Criminal Law Section. Carolyn Snurkowski takes over in June at the Annual Meeting. The year has really flown by. We didn't get to do everything I wanted to do, but a lot got done.

We tried some new things this year, not the least of which is this new-fangled electronic newsletter. Despite my skepticism, and George Tragos' prediction that the world would stop turning if we went paperless, it really seems to have worked out. Production is easier, cheaper and faster. We have had a lot of feed-back from members who appreciate hearing about Section activities on a regular basis and being informed of current events in the state criminal justice system. And just like the old paper newsletter—we can always use articles. Several people have volunteered material and hopefully you will be seeing more content in the future. And of course, if you really like to feel paper between your fingers, print it out and read it.

Our Section sponsored the Budget Summit in Tallahassee to try and raise awareness of the severity of the budget shortfall on the criminal justice system. We followed that up by hiring Rod Smith to lobby for our Section on funding issues during the Legislative session. The session is still going on, but everyone seems to agree that hiring Rod was a good thing to do.

We also partnered with the Florida Association of Criminal Defense Lawyers on two separate issues this year. We joined with FACDL in presenting a Amicus brief to the Second DCA in an appeal where a defense attorney was forced to accept appointment in a RICO case, even though the attorney did not have his name on any list to accept court-appointed cases. The defendant is in custody and JAC refused to pay the hourly rate ordered by the trial court. All the issues we face everyday are brought into sharp focus in this one case. I would not want to have to decide it.

In January our Section passed a resolution opposing a proposed bill to abolish depositions in third degree felonies. One area where we remain weak is our

ability to lobby on substantive issues. FACDL, not surprisingly, took the same position on the bill that we did. FACDL also has a paid lobbyist, as well as a cadre of volunteers able to appear on the short notice often involved in legislative matters. FACDL appeared on our behalf and put forward our position to the committee members. No word yet on the result, but the important thing, we are participating in the process.

As usual, the Section sponsored some wonderful CLE programs again this year. Last month Scott Fingerhut put together a program in Tampa that was Webcast live, another first for our Section. The demand for the webcast CLE is clearly real, so I'm certain we will be presenting more in the future.

We had another first this year. It was our first year without Connie Stewart, our long time den mother, the woman who WAS the Criminal Law Section for many, many years. Connie organized our meetings, explained our budget, fixed our lunch and bandaged our knees for longer than most of us can remember. I will tell you all that I was terrified to be the first Chair without her. HOWEVER, Connie came through one last time and helped get us Paige Graham as our new coordinator.

Paige has been wonderful to work with. She is full of energy and great ideas. I asked Paige to take on several huge new chores this year, not the least of which was setting up four separate budget summit sessions and dealing with all the details that went into that. She also gets the newsletter out, and hounds anyone who doesn't meet the deadline. She has suggested several other projects that we just ran out of time on, but will be done in the future. We are lucky to have her and hopefully she'll be around for us as long as Connie was. If you haven't met her, make it a point to do so at the annual meeting in Orlando. You'll like her.

So, thanks for letting me serve as Chair. I was expecting drudgery, it was a blast. I really enjoyed it. See you in Orlando.

2009 Annual Florida Bar Convention
Criminal Law Section Executive Council Meeting
June 26, 2009
Orlando World Center Marriott

Message from the Chair continued...

The Vienna Convention on Consular Relations: A Modest Proposal

Sandy D'Alemberte has one of the most impressive resumes you will ever see. He has served as a state legislator, on the State Constitutional Revision Commission, as President of the ABA, Dean of FSU College of Law, and President of Florida State University. He has argued before the United States Supreme Court. He currently represents the Fifth District Court of Appeals—the entire Fifth DCA. He is admired and respected by all who know him. And when Mr. D'Alemberte speaks, people should listen.

Mr. D'Alemberte recently spoke out on an issue that is common in many criminal cases in this state—the Vienna Convention on Consular Relations (VCCR). By way of background, the VCCR is the treaty that gives a foreign national arrested in another country the right to contact his country's consulate. When your teenagers are traveling overseas and they get arrested by the crooked constabulary of some Third World country intent on a shake down, what do you want them to do? Demand to contact the American Embassy, of course. What gives them the right to do that? The VCCR.

What most people (Americans) overlook, is that this right is reciprocal. Foreigners arrested in the United States, even illegal foreigners, have the right to contact their embassy for assistance. The embassy may decline to get involved, or may offer only minimal assistance, but that is between the detainee and his country, not us. The problem is that American law enforcement agencies and courts routinely ignore the VCCR. Foreigners are rarely, if ever, informed of their rights under the treaty and even more rarely provided assistance in contacting their consulates.

Florida and federal courts have addressed this issue and most have held that any rights protected or bestowed by VCCR must be asserted by the offended country, not an individual. Or the courts have ruled that any claims have been procedurally defaulted by not being raised soon enough. An interesting Supreme Court case involving the VCCR is Medellin v. Texas, a death penalty case out of Texas. Medellin was

executed even though the US admitted a breach of the duty to inform the defendant of his right to contact the Mexican Consulate.

The International Court of Justice has ruled in several cases that the United States has violated the VCCR. Germany and Paraguay have both brought cases to the ICJ alleging American non-compliance and both have prevailed. Last year Mexico won a similar decision in the Avena case.

Mr. D'Alemberte argues that if America is to promote the rule of law worldwide, it must honor, not only its treaty obligations, but the rulings of the International Court of Justice on human rights issues. He believes an easy first step is to be certain that foreign nationals arrested in the United States are informed of their rights under the VCCR. In order to accomplish that, he suggests a simple, no cost solution: include the notification in the rights explained at first appearances. Every first appearance begins with the Court explaining to the defendants the basic rights they all have, including the right to counsel and the right to remain silent. The addition of a single sentence explaining the right to contact a consulate or embassy, and subsequent assistance in doing so if requested, would fulfill our obligations under the VCCR. It would also go a long way in restoring America's reputation as a country fully supporting the rule of law.

This is an important issue that deserves attention from the Criminal Law section. At a minimum, the Criminal Law Section should debate the merits of a rule change to address the issue. An issue like this is the reason the Section was created. Let's discuss it.

SHARING THE NEWS

We want to hear from you! Please email your information to wgraham@flabar.org.

2008-2009

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Fax: 850/561-5825
E-Mail: wgraham@flabar.org

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