

Message from the Chair

“Reform” means the improvement or amendment of what is wrong, corrupt, unsatisfactory, etc. It does not require a revolution in which a radical change is necessary to overhaul the entire system. The Criminal Justice Section works to reform certain areas of the criminal law that need some fine tuning, or at most re-dressing serious wrongs without altering the fundamentals of our system. It is with this tempered approach that our Section seeks to improve justice for all citizens of this State.



Serving as defense counsel for the indigent, I came face to face with hundreds (if not thousands) of New York’s poor citizens facing the regrettable choice of pleading guilty to crimes they did not commit for the lack of \$500 bail because another night behind bars would mean losing jobs, homes, and custody of their children. In my view, the bail system needs to be improved to educate lawyers, judges, and court personnel about alternative forms of bail and to only impose cash bail in the most serious of cases. Would the loss of \$500 cash bail seriously be incentive enough for an accused to be in court if they were inclined to flee the jurisdiction? Surely, our system can be improved to address this incongruity. Since January 2018, the Criminal Justice Section has made bail reform a priority because the poor, unconvicted of any crimes, are needlessly filling our jails. New York is in a unique position this legislative term to make serious and meaningful progress in making changes to a system that unwittingly discriminates against the poor.

Diversity of views is a key aspect of the Criminal Justice Section’s makeup and a critical component of our success on controversial issues. As defense counsel, prosecutors, police officers, and judges we do not always see eye-to-eye on the necessary changes that will improve the administration of justice. A prime example is Discovery reform. The mission of this section is “to anticipate, recognize, and address such [criminal] issues...as properly come before or should come before the New York State Bar Association.” See Section’s Mission Statement.

Discovery reform is coming to New York State. We need to recognize the importance of our role in the discussion and address the issue at a legislative level. How we accomplish this task and to what extent is often debated amongst the leadership. The New York State Bar Association is made up of an ever more diverse group of practitioners. Civil lawyers and citizens alike are baffled by the secretive methods of criminal prosecutions. No depositions of key witnesses? Limited access to evidence? Investigative notes and prior statements withheld until the 11th

hour? The stakes are not merely financial as they are in civil cases. In my view, the blindfold should be lifted and the Criminal Justice Section, together with Bar leadership, must move this new legislature to take appropriate corrective action without unduly jeopardizing the safety of those a part of the process.

The Bar Association has also established a Wrongful Convictions Taskforce to examine previous reforms such as video recording of confessions. In 2001, I presented the Appellate Division, Third Department with the issue of suppressing a youth’s confession for failure to electronically record the interrogation process that led to a written statement obtained by law enforcement. The court stated that “there is no authority in this State which supports defendant’s argument that failure to electronically record his statement requires that it be suppressed.” *People v. Ferguson*, 285 A.D. 2d 901 (2001). Although I believed then (as I do now) that Due Process required suppression of the unrecorded confession in serious felony cases, the courts

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are reluctant to change without statutory authority. It took over 15 years for the legislature to catch up with the times for electronic recording of custodial interrogations. The same is true for Discovery reform. Although Due Process seems to mandate open discovery for those facing incarceration, it will not come to pass without legislative authority. Critics justly point out the dangers to witnesses for the truly unscrupulous defendants. In my view, sufficient safeguards can be enacted to cure the objection. The Criminal Justice Section will be active; we will be thoughtful; and we will be relevant to the discussion as we approach the next legislation session.

In 2012, our executive committee worked tirelessly with our Sealing Committee to enact sealing legislation for former offenders. This, too, is now law in New York. Fast forward to 2018 and the *New York Times* reports that the federal government is seeking to overhaul the criminal justice system and the nation’s sentencing rules. Reform at the federal level should also include sealing of convictions in New York’s federal court system. The Criminal Justice Section continues to make this a legislative priority for our citizens previously convicted in federal court.

All in all, I believe the Criminal Justice Section continues to rise to the occasion of reform. It need not be revolutionary. Simple improvements will suffice. I look forward to continuing as your Chair until June 2019. Thank you.

Tucker C. Stancliff

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