

MESSAGE FROM THE CHAIR

by Kimberly Kupferer

Chair, State Bar Criminal Law Section Executive Committee

Dear Members,

This past year has been one of much change in the field of criminal law. Federal criminal court decisions have not had such a major impact on state practices in years. After the *Blakely* decision, federal sentencing and in turn federal sentencing guidelines, were turned upside down. *Blakely* extended not only to the federal court arena, but also to state cases where both prosecutors and defense attorneys had to interpret just what *Blakely* meant in terms of state sentencing and just what needed to be proved to a jury.

After the Court issued its decision in *Crawford vs. Washington*, the criminal law community had to reexamine the Constitutionality all of the statutes that had been passed at a state level over the last decade that had eroded a criminal defendant's Sixth Amendment right of confrontation. This past year has also brought forward the aftermath of the Patriot Act and a real questioning of the appropriateness and legality of it. Long time criminal defense lawyer Lynne Stewart's fate currently rests in the hands of a jury as to whether or not her confidential "government recorded" meetings with her client and passing on something her client said to another, constitutes terrorists acts on her part. Criminal defense attorneys across the country await the result in Stewart's case and activists fear the chilling effect that a conviction could have on criminal defense attorneys being willing to take on unpopular cases or clients.

While there has been much change in our practice this past year, similarly, there has been a big shift at within the Criminal Law Executive Committee as well. With the advent of the new State Bar web site and our own Criminal Law Section page, we are in the unique position of being able to provide our members with new and better services than before.

In the past our committee was able to put forward The Criminal Law Journal newsletter and a host of legal presentations at the State Bar Annual Meeting and SEI. With the State Bar going live on the internet, our section will now have the capability of providing many additional perks to our members through our members only section of our web page. Our plan this year is to provide members with access to a variety of past recorded legal presentations, have copies of our current and past newsletters on line, provide access to links to free legal research and other relevant sites, provide member discounts and much more in our members only section of our web site. We are also working to present you with monthly case law updates by e-mail. This year our section, under the guidance of Michael Begovich, plans to continue with legal MCLE presentations at the State Bar Annual Meeting and SEI, however, we are also working in conjunction with CEB, other state bar sections and local bar associations to provide stand alone MCLE legal workshops on topics interesting and relevant to our membership in various locations around the state.

While legislation may not have a direct impact on you as an individual, it can be an overall benefit for our profession. As a result, our committee, which is made up of both prosecutors and defense attorneys, is involved in the legislative process and commenting on legislation or even presenting it, in appropriate circumstances at the state level. Recently, we have also been asked to review and comment on Guidelines for Indigent Defense Counsel, California Criminal Jury Instructions and Guidelines in Death Penalty cases. We have reupped our efforts in the area of legislation this year so that we can positively influence criminal legislation in a way that is workable based on our practice rather than on

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United States Supreme Court upheld the intent of the Founders of the Constitution by ruling that out-of-court testimonial statements are admissible only when the declarant is unavailable and there has been a prior opportunity for cross-examination of that declarant. Although the Court provided some limited guidance, it left the definition of the term "testimonial" to be determined later and also declined to state the limitations imposed by the Confrontation Clause, if any, on non-testimonial statements.

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something that is over the top done by a legislator to gain political points or constituent backing.

Finally, our newsletter, will continue to address current criminal law issues such as *Blakely* and *Crawford* and other relevant cases as they come down.

These are just a few of the things that our Criminal Law Executive Committee is working on to bring to you. On behalf of our entire committee, I can tell you that we are very excited about the positive change that we plan to have this year. I look forward to working with them, and for you, in the upcoming year.