



AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE SECTION

SOUTHEASTERN
WHITE COLLAR CRIME
INSTITUTE

SEPTEMBER 11-12, 2014



Château Élan Inn

100 Rue Charlemagne ~ Braselton, Georgia 30517

Co-Chairs:

Joe D. Whitley, *Greenberg Traurig LLP*

William R. Mitchelson, Jr., *Alston & Bird LLP*

Brian F. McEvoy, *Chilivis, Cochran, Larkins & Bever LLP*

About the Program

The Southeastern White Collar Crime Institute will be a two-day program featuring expert panelists and speakers who deal with significant issues such as the effective use of criminal discovery, litigating prosecutorial conduct, FCPA and international bribery crimes, Supreme Court updates and other developments in criminal law; law enforcement initiatives, sentencing issues in economic crimes, and white collar criminal enforcement.

There will be ample networking opportunities, as well as down time to take advantage of the numerous amenities and activities of the host resort.

Topics Agenda:

- The Effective Use of Criminal Discovery: Tactics for the Defense and the Government
- Litigating Prosecutorial Conduct: The Line Between Ethics and Tactics
- The Foreign Corrupt Practices Act (FCPA) and Other International Bribery Crimes: When Other Nations Join the Enforcement Party
- Supreme Court Update and Other Notable Developments in Criminal Law
- A View from the Top: A Look at Federal Law Enforcement Initiatives
- You Can't Always Get What You Want: Sentencing Issues in Economic Crimes and the Limitations of USSG § 2B1.1
- White Collar Criminal Enforcement: Is the Government More Willing Than Ever To Go To Trial?

This course is expected to qualify for 10.75 CLE credit hours in 60-minute states, including 1.5 ethics credit and 12.9 credit hours, including 1.8 ethics credit in 50-minute states.

FACULTY

Raymond Banoun (*invited*)
Cadwalader, Wickersham & Taft LLP
Washington, DC

Lanny A. Breuer
Covington & Burling, LLP
Washington, DC and New York, NY

Robert M. Cary
Williams & Connolly LLP
Washington, DC

Randy Chartash
Assistant U.S. Attorney, Northern District of Georgia
Atlanta, GA

Representative (*invited*)
U.S. Department of Justice
Washington, DC

E. Bart Daniel
The Law Firm of E. Bart Daniel
Charleston, SC

Richard H. Deane
Jones Day
Atlanta, GA

W. Thomas Dillard
Ritchie, Dillard, Davies & Johnson, P.C.
Knoxville, TN

James D. Durham
First Assistant U.S. Attorney, Southern District of Georgia
Savannah, GA

Nathaniel Edmonds
Paul Hastings
Washington, DC

Alice S. Fisher
Latham & Watkins
Washington, DC

Professor Bruce Green
Fordham University School of Law
New York, NY

Daniel P. Griffin
Miller & Martin PLLC
Atlanta, GA

Frederick W. Kramer III
Assistant U.S. Attorney, Southern District of Georgia
Savannah, GA

Adam S. Lurie
Cadwalader, Wickersham & Taft
Washington, DC

W. Bruce Maloy
Maloy Jenkins Parker
Atlanta, GA

Richard Marmaro
Skadden, Arps, Slate, Meagher & Flom
New York, NY

Brian F. McEvoy
Chilivis, Cochran, Larkins & Bever LLP
Atlanta, GA

William R. Mitchelson, Jr.
Alston & Bird LLP
Atlanta, GA

Michael J. Moore
U.S. Attorney, Middle District of Georgia
Macon, GA

Paul B. Murphy
King & Spalding
Atlanta, GA

Jack W. Selden
Bradley Arant Boult & Cummings LLP
Birmingham, AL

William N. Shepherd
Holland & Knight, LLP
West Palm Beach, FL

Edward J. Tarver
United States Attorney, Southern District of Georgia
Macon, GA

Anne M. Tompkins
U.S. Attorney, Western District of North Carolina
Charlotte, NC

Glenn T. Ware
PwC
Washington, DC

Daniel Webber
Ryan Whaley Coldiron Shandy PLLC
Oklahoma City, OK

Amy Levin Weil
The Weil Firm
Atlanta, GA

Joe D. Whitley
Greenberg Traurig LLP
Atlanta, GA and Washington, DC

Sally Yates
U.S. Attorney, Northern District of Georgia
Atlanta, GA

Day One – Thursday, September 11

REGISTRATION & CONTINENTAL BREAKFAST

7:30 - 8:15 AM

WELCOME AND INTRODUCTIONS

8:15 - 8:30 AM

Incoming Chairs: James E. Felman, Kynes, Markman & Felman, P.A., Tampa, FL
Cynthia E. Hujar Orr, Goldstein, Goldstein & Hilley, San Antonio, TX

Joe D. Whitley, Greenberg Traurig LLP, Atlanta, GA and Washington, DC

OPENING KEYNOTE SPEAKER

8:30 – 9:30 AM

Lanny A. Breuer
Covington & Burling, LLP, Washington, DC and New York, NY
Former Assistant Attorney General for the Criminal Division, United States Department of Justice

THE EFFECTIVE USE OF CRIMINAL DISCOVERY: TACTICS FOR THE DEFENSE AND THE GOVERNMENT

9:30 – 10:45 AM

In a dissent to a denial of en banc review, Ninth Circuit Chief Judge Alex Kozinski recently wrote: “There is an epidemic of *Brady* violations abroad in the land. Only judges can put a stop to it.” This panel will explore the practices employed by both the defense and the government in addressing criminal discovery, including whether there are strategies and practices that will reduce the likelihood of failures to disclose favorable and material evidence. The panel will also look at the challenges presented by voluminous electronically stored information often now encountered in complex criminal cases and government and defense policies and practices to address discovery obligations related to ESI. The panel will also explore issues relating to the timing of Jencks Act disclosures, challenges when critical information lies in the hands of government agencies or third parties, and other discovery issues on the cutting edge of recent, prominent white collar prosecutions.

William R. Mitchelson, Jr., Alston & Bird LLP, Atlanta, GA (*Moderator*)
Robert M. Cary, Williams & Connolly LLP, Washington, DC
Richard Marmaro, Skadden, Arps, Slate, Meagher & Flom, New York, NY
Anne M. Tompkins, United States Attorney for the Western District of North Carolina

BREAK

10:45 – 11:00 AM

LITIGATING PROSECUTORIAL CONDUCT: THE LINE BETWEEN ETHICS AND TACTICS

11:00 – 12:30 PM

This panel will focus on how widespread instances of prosecutorial misconduct are, as well as the fine line of conduct that actually constitutes prosecutorial misconduct (i.e., is the breach of a plea deal an act of prosecutorial misconduct or simply a breach of contract?). Tactical discovery decisions made by federal prosecutors and whether such conduct “crosses the line” will also be discussed during this presentation. Panel members will also explore what remedies are available (for example, the viability of civil suits against prosecutors, suits for attorneys’ fees, exclusion of evidence, dismissal, and professional discipline), and whether those are effective to meaningfully address and deter prosecutorial misconduct in federal criminal litigation.

Brian F. McEvoy, Chilivis, Cochran, Larkins & Bever LLP (*Moderator*)
Raymond Banoun, Cadwalader, Wickersham & Taft LLP, Washington, DC
W. Thomas Dillard, Ritchie, Dillard, Davies & Johnson, P.C., Knoxville, TN
James D. Durham, First Assistant United States Attorney for the Southern District of Georgia

SOUTHEASTERN SUBCOMMITTEE ON WHITE COLLAR CRIME COMMITTEE MEETING & NETWORKING LUNCHEON

12:30 PM – 1:30 PM

AMENITIES & ACTIVITIES AVAILABLE

12:30 PM – 5:00 PM

- Biking (*rentals available*)
- Golfing (*see registration form for details*)
- Hiking
- Fitness Facility
- Spa Facility
- Swimming
- Tennis
- Winery & Culinary Studio
Tours/Tastings



WINE TOUR & DINNER *Château Élan Winery* **6:30 PM – 9:00 PM**
(Ticketed Event - \$55 additional)



Day Two – Friday, September 12

CONTINENTAL BREAKFAST

7:30 – 8:30 AM

SPEAKER

8:30 – 9:30 AM

U.S. Department of Justice Representative, Washington, DC (*invited*)

**THE FOREIGN CORRUPT PRACTICES ACT (FCPA) AND
INTERNATIONAL BRIBERY CRIMES: WHEN OTHER
NATIONS JOIN THE ENFORCEMENT PARTY**

9:30 – 10:45 AM

The Foreign Corrupt Practices Act (FCPA) was sparingly used by federal law enforcement for many years after its passage by Congress in 1977. However, the FCPA has seen a surge in enforcement over the last decade that is nothing short of remarkable. Every general counsel, corporate compliance officer and “C” suite executive needs to be aware of the conduct of their employees and contractors in all corners of the world. The consequences of benign neglect or indifference to the FCPA may result in catastrophic fines and penalties and in some cases confinement. No longer are questionable foreign payments (aka “bribes”) simply a cost of doing business. This panel will examine recent major FCPA cases brought by DOJ and the SEC. Also, the panel will look at how best to defend against FCPA violations through effective compliance programs. Next, the panel will look at the guidance issued by the Criminal Division on the FCPA. The panel will address key decision points for corporations in terms of voluntary disclosure and conducting effective internal investigations within attorney-client privilege. In addition, the panel will look at cautionary tales about conducting investigations globally within the law of countries whose laws on privacy and privilege may vary greatly from the United States. Finally, they will share how lawyers can best partner with forensic accountants to achieve effective internal investigation outcomes.

Joe D. Whitley, Greenberg Traurig LLP, Atlanta, GA and Washington, DC (*Moderator*)
Nathaniel Edmonds, Paul Hastings, Washington, DC
Alice S. Fisher, Latham & Watkins, Washington, DC
Adam S. Lurie, Cadwalader, Wickersham & Taft, Washington, DC
Glenn T. Ware, PwC, Washington, DC

BREAK

10:45 – 11:00 AM

**SUPREME COURT UPDATE AND OTHER NOTABLE
DEVELOPMENTS IN CRIMINAL LAW**

11:00 AM – 12:15 PM

Recent Supreme Court and Court of Appeals decisions and Congressional activity have changed the landscape of White Collar criminal law. These rulings have covered concepts of intent, the reach of federal criminal statutes, and significant evidentiary rulings. Prosecutors and defense lawyers will have to let these events shape their future litigation.

W. Bruce Maloy, Maloy Jenkins Parker (*Moderator*)
Professor Bruce Green, Fordham University School of Law, New York, NY
Amy Levin Weil, The Weil Firm, Atlanta, GA

LUNCH (*included with registration*)

12:15 – 12:45 PM

**A VIEW FROM THE TOP: A LOOK AT FEDERAL LAW
ENFORCEMENT INITIATIVES**

12:45 – 1:45 PM

Georgia’s three United States Attorneys will discuss the white collar prosecution practices in their offices together with the priorities set by the Attorney General Eric Holder. Also, the U.S. Attorneys will discuss recent major white collar cases brought by their offices. Finally, the U.S. Attorneys will share their observations on the direction on the white collar criminal enforcement in their Districts for 2015 and beyond.

Michael J. Moore, United States Attorney for the Middle District of Georgia
Edward J. Tarver, United States Attorney for the Southern District of Georgia
Sally Yates, United States Attorney for the Northern District of Georgia

**YOU CAN'T ALWAYS GET WHAT YOU WANT:
SENTENCING ISSUES IN ECONOMIC CRIMES AND
THE LIMITATIONS OF USSG § 2B1.1**

1:45 – 3:00 PM

Mick Jagger and Keith Richards were right when they wrote: “but if you try sometime, you just might find, you get what you need.” This panel will discuss sentencing strategies in white collar crime cases and will offer perspectives on some of the key issues presented by Section 2B1.1, including how to handle those issues during negotiation with the government and presentation to the court. The panel will also address what we really need sometimes -- a departure and a variance!

Daniel P. Griffin, Miller & Martin PLLC, Atlanta, GA (*Moderator*)
E. Bart Daniel, The Law Firm of E. Bart Daniel, Charleston, SC
Richard H. Deane, Jones Day, Atlanta, GA
Jack W. Selden, Bradley Arant Boult & Cummings LLP, Birmingham, AL
William N. Shepherd, Holland & Knight, LLP, West Palm Beach, FL

BREAK

3:00 – 3:15 PM

**WHITE COLLAR CRIMINAL ENFORCEMENT:
IS THE GOVERNMENT MORE WILLING THAN EVER
TO GO TO TRIAL?**

3:15 – 4:30 PM

This panel will discuss, among other things, government considerations in deciding whether to seek criminal charges (and ultimately to take a case to trial); whether and to what extent the defense should flag government proof problems during pre-indictment discussions; government charging and proof strategies – and the extent to which those are designed to force a guilty plea; and plea negotiations and how much to reveal in terms of flagging the other side’s potential vulnerabilities at trial. They will also share defense strategies that might successfully undermine the government’s willingness to take the case to trial, and discuss recent notable government trial successes and failures – and what went right or wrong for the government.

Paul B. Murphy, King & Spalding (*Moderator*)
Randy Chartash, Assistant United States Attorney for the Northern District of Georgia
Frederick W. Kramer III, United States Attorney’s Office for the Southern District of Georgia
Daniel Webber, Ryan Whaley Coldiron Shandy PLLC, Oklahoma City, OK

AJOURN

4:30 PM



A Special Note of Thanks to Our Sponsors:



Wine Tour & Dinner Sponsored by:



REGISTER & SAVE

Step 1: Registration Rates

	Before March 31	April 1 to May31	June 1 to July 31	Aug. 1 to Sep. 10	Onsite
Non- ABA CJS Members & General Public	\$255	\$285	\$315	\$345	\$399
ABA CJS Members Only	\$225	\$250	\$275	\$310	\$349
Government/Academia	\$215	\$235	\$255	\$275	\$295

Enter your registration rate on line 1 at Step 5.

- Group Discount:** I qualify for a \$25/person discount. Enter your \$25 discount on line item 2 at Step 5. To qualify for a group discount, three or more people must register together. Please call us to register your group or send all registrations in the same envelope. Not applicable to government rates.

Step 2: Please check if you would like to attend:

- Wine Tasting & Dinner** – *Chateau Elan Winery* – \$55/person. Enter this amount on line item 3 at Step 5.
- Golfing** – I am interested in Golfing on Thursday, September 11th beginning at 1:00 PM. *Attendees must notify the reservation agent when calling to make hotel accommodations in order to receive the group discount rate. The rate per golfer includes green fees, golf cart, and driving range warm up balls. Payments are made directly to the Resort by the Attendee on the day of the event.*

Date	Thursday, September 11, 2014
Course	Chateau Course
Rate per Golfer	\$70.00 plus tax
Start Time	Tee Times Beginning 1:00pm

- Spa** – I am interested in utilizing the Spa Facilities. *Attendees must notify the reservations agent when calling to make hotel accommodations in order to receive the group discount rate and to schedule an appointment. Payments are made directly to the Resort by the Attendee.*

Step 3: Course Materials*

Electronic course materials are provided on-site as part of your registration. Printed course materials are available on-site for an additional fee.

- Please provide printed course materials on-site for \$50. Enter your \$50 fee on line item 6 at Step5.

* If you cannot attend, but would like to order the Course Materials, please visit us at www.americanbar.org/groups/criminal_justice.html or call (202-662-1519) for pricing and availability. Course materials will be shipped after the event.

Step 4: Your Information

Name		
Law Firm/Organization		
Address		Suite/Apt.
City	State	Zip code
Telephone		
Email	ABA Member ID	

Step 5: Total Due Amount

Registration Rate (from Step 1)	\$ _____
Three or More People Registering (from Step 1) (<i>\$25/person discount. Applications must register together to receive discount. Not applicable to government rates.</i>)	\$ _____
Wine Tasting & Dinner – <i>Chateau Elan Winery</i> \$55/person (from Step 2)	\$ _____
Printed Course Materials (on-site) - \$50 (from Step 3)	\$ _____
Total	\$ _____

Step 6: Payment Information

Name (as it appears on your card)

Account Number

Expiration Date

Security Code

Signature

Step 7: 4 Easy Ways to Register



Visit www.ambar.org



Call: (202) 662-1519

Complete this form:

The American Bar Association
c/o Carol Rose
1050 Connecticut Avenue, NW
Washington, DC 20036



Fax to: (202) 662-1501

MCLE

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NASBA

The American Bar Association is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.learningmarket.org.

Scholarships

For more information on scholarships, email Carol Rose at carol.rose@americanbar.org.

Attire

Business casual attire is appropriate for all activities.

Cancellations

Cancellations received five business days or more before the program will receive a full refund, less a \$50 cancellation fee. No refunds will be provided for cancellations after that date; however, substitute registrants are welcome at any time. To cancel your registration or substitute another individual, please call Carol Rose at (202) 662-1519. Registrants who do not cancel within the allotted time period and who do not attend the program will receive a copy of the course materials after program completion.

Services for Persons with Disabilities

If special arrangements are required, please contact Carol Rose at (202) 662-1519 or carol.rose@americanbar.org. Reasonable advance notice is requested.

Program Confirmation

Written confirmation of your registration will be sent to you upon receipt. If you do not receive the confirmation notice prior to the program, please call the ABA at (202) 662-1519 at least 24 hours in advance to confirm that your registration was received and that the program is being held as scheduled.

Hotel Location

Chateau Élan
100 Rue Charlemagne
Braselton, GA 30517

Reservations: Call (800) 233-9463 and reference “2014 WCC SE Regional Conference” or click on the following link: [ABA Regional White Collar Crime Conference](#).

Must book by August 9 at 5:00 PM Eastern for \$189 single/double rate.

Airline Information

Airline discount codes are available for ABA meetings as follows:

- American Airlines: Call (800) 433-1790 – Discount Code: A5414SS Discount NOT available at www.aa.com
- Delta Airlines: Call (800) 328-1111 – ABA File Meeting Code: NMFUD Delta Airlines Discount available at www.delta.com – Online Meeting Event Code: NMFUD
- United Airlines: Call (800) 426-1122; Agreement Code: 461920, Z Code: ZR45 Discount available at www.united.com – Online Discount Code: ZR45461920
- Virgin America Airlines: Go to www.virginamerica.com – Discount Code: VXABA312

More details at www.americanbar.org/travel.

