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AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE SECTION

*SOUTHEASTERN*  
**WHITE COLLAR CRIME**  
**INSTITUTE**

**SEPTEMBER 10-11, 2015**



*Château Élan Inn*

**100 Rue Charlemagne ~ Braselton, Georgia 30517**

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*Co-Chairs:*

**Joe D. Whitley** Baker Donelson Bearman Caldwell & Berkowitz  
**William R. Mitchelson, Jr.** Alston & Bird LLP  
**Brian F. McEvoy** Polsinelli PC

# 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, 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:**

- Electronic Communications and Data Discovery in Criminal Cases: The Bits & Bytes Required to Satisfy the Interests of Justice
- Knowledge, Willfulness, Intent and Motive: Prosecuting and Defending *Mens Rea* in White Collar Cases
- Sentencing Considerations in White Collar Crime Cases
- Health Care Fraud and *Qui Tam* Litigation: Have Prosecutions and Lawsuits Replaced Administrative Discretion and Policymaking?
- A View from the Top: A Look at Federal Law Enforcement Initiatives
- Supreme Court Update & Other Notable Developments in Criminal Law
- Major SEC White Collar Cases

# FACULTY

**Lena Amanti**

U.S. Attorney's Office for the Northern District of Georgia  
Atlanta, GA

**Henry W. Asbill**

Jones Day  
Washington, DC

**Raymond Banoun**

Cadwalader, Wickersham & Taft  
Washington, DC

**Robert M. Cary**

Williams & Connolly  
Washington, DC

**James M. Cole**

Sidley Austin LLP  
Washington, DC

**John S. Davis**

Williams Mullen  
Richmond, VA

**Jack P. DiCanio**

Skadden, Arps, Slate, Meagher & Flom  
Palo Alto, CA

**James E. Felman**

Kynes, Markman & Felman, P.A.  
Tampa, FL

**Robert E. Gallagher**

PwC  
Atlanta, GA

**Gary G. Grindler**

King & Spalding  
Washington, DC

**Caitlin J. Halligan**

Gibson, Dunn & Crutcher  
New York, NY

**Philip H. Hilder**

Hilder & Associates  
Houston, TX

**John Horn**

Acting U.S. Attorney for the Northern District of Georgia  
Atlanta, GA

**Michael D. Kendall**

McDermott, Will & Emery  
Boston, MA

**Frederick W. Kramer III**

U.S. Attorney's Office for the Southern District of Georgia  
Savannah, GA

**W. Bruce Maloy**

Maloy Jenkins Parker  
Atlanta, GA

**Brian F. McEvoy**

Polsinelli PC  
Atlanta, GA

**William R. Mitchelson, Jr.**

Alston & Bird LLP  
Atlanta, GA

**Michael J. Moore**

U.S. Attorney for the Middle District of Georgia  
Macon, GA

**Paul B. Murphy**

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**Edward J. Tarver**

U.S. Attorney for the Southern District of Georgia  
Savannah, GA

**Anne M. Tompkins**

Cadwalader, Wickersham & Taft  
Charlotte, NC

**Leticia B. Vandelaar**

U.S. Attorney's Office for the District of New Jersey  
Newark, NJ

**Amy Levin Weil**

The Weil Firm  
Atlanta, GA

**Joe D. Whitley**

Baker Donelson, Bearman, Caldwell & Berkowitz, PC  
Atlanta, GA and Washington, DC

**Hon. Lisa Godbey Wood**

U.S. District Court for the Southern District of Georgia  
Savannah, GA

**Jonathan J. Wroblewski**

DOJ Executive Office Sentencing Commissioner and  
Observer to the Task Force, Harvard Law School  
Cambridge, MA

# Day One – Thursday, September 10

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## REGISTRATION & CONTINENTAL BREAKFAST

7:30 - 8:30 AM

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## WELCOME AND INTRODUCTIONS

8:30 - 8:45 AM

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## A DIALOGUE WITH THE FORMER DEPUTY ATTORNEY GENERAL: LOOKING BACK AND AHEAD ON THE MISSION OF DOJ

8:45 – 9:30 AM

For nearly 5 years James (Jim) Cole served as the second highest ranking official at the DOJ, after an accomplished career in private practice where he served as the Monitor in the AIG Case. Jim ,also, earlier served as an attorney in the Public Integrity Section of the Criminal Division. As Deputy, Jim's day was filled with many meetings as the "COO" of the DOJ. While at DOJ, Jim led the effort to address the resolution of financial crimes in a "global" fashion. Jim addressed the appropriate utilization of the Park Doctrine to hold executives accountable for the criminal conduct of corporations. Jim led DOJ's Smart on Crime initiative. Jim resolved 100's of appeals and disputes between the DOJ and private parties over criminal dispositions, fine amounts and whether the conduct of individuals or corporations was to be treated as criminal conduct. Jim, also, worked on the Commutation efforts of the Administration, the marijuana initiative and the recognition of LGBT rights. During his service at DOJ, Jim served as member of the National Security Council and as a consequence he presided over many critical national security matters dealing with terroristic conduct.

**James M. Cole**

*Former Deputy Attorney General, U.S. Department of Justice*  
Sidley Austin LLP, Washington, DC

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## ELECTRONIC COMMUNICATIONS AND DATA DISCOVERY IN CRIMINAL CASES: THE BITS & BYTES REQUIRED TO SATISFY THE INTERESTS OF JUSTICE

9:30 - 10:40 AM

In complex white collar crime investigations and prosecutions, electronic data and digital evidence often contain the key facts upon which the cases for both the government and the defense rest. This panel will explore the issues involving electronic evidence in criminal cases. What are the limits to "searching" for evidence in a criminal investigation when the evidence is electronically stored and found on devices used for multiple purposes? What are the unique challenges under constitutional principles and federal procedural requirements when important evidence is in an electronic form? When during an investigation should the government begin securing evidence and what evidence is it obligated to secure? What are the defendant's reciprocal obligations? How can ever growing quantities of data be processed efficiently and utilized by government and defense lawyers alike?

**Robert M. Cary**, Williams & Connolly, Washington, DC (*Moderator*)

**Jack P. DiCanio**, Skadden, Arps, Slate, Meagher & Flom, Palo Alto, CA

**Leticia B. Vandehaar**, U.S. Attorney's Office for the District of New Jersey, Newark, NJ

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## BREAK

10:40 – 10:50 AM

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## KNOWLEDGE, WILLFULNESS, INTENT AND MOTIVE: PROSECUTING AND DEFENDING MENS REA IN WHITE COLLAR CASES

10:50 - 12:00 PM

It has been said that the primary difference between "blue collar" and "white collar" criminal trials is that, in a typical blue collar criminal case, everyone agrees that a crime has been committed, but the defendant asserts that he didn't commit it. Conversely, in a White Collar case, a defendant often acknowledges his conduct, but asserts that no crime has been committed. This panel examines the unique challenges facing both federal prosecutors and defense attorneys in litigating mens rea issues in federal economic crimes cases in the context of increasingly diluted intent language in the ever expanding federal criminal code.

**Brian F. McEvoy**, Polsinelli PC, Atlanta, GA (*Moderator*)

**Henry W. Asbill**, Jones Day, Washington, DC

**Raymond Banoun**, Cadwalader, Wickersham & Taft LLP, Washington, DC

**Frederick W. Kramer III**, U.S. Attorney's Office for the Southern District of Georgia, Savannah, GA

**David A. O'Neil**, Debevoise & Plimpton, Washington, DC



SENTENCING CONSIDERATIONS IN WHITE COLLAR CRIME CASES

12:30 - 1:40 PM

This panel of Judges and sentencing guidelines experts will discuss the recently released "Amendments to the Sentencing Guidelines" that were made available at the Sentencing Commission's public meeting on April 9, 2015. In particular, the panel will consider the Amendments as they relate to Economic Crime under § 2B.1.1 of the Sentencing Guidelines.

- Joe D. Whitley, Baker Donelson, Bearman, Caldwell & Berkowitz, PC, Atlanta, GA and Washington, DC (Moderator)
- James E. Felman, Kynes, Markman & Felman, P.A., Tampa, FL
- Hon. William H. Pryor, Jr., U.S. Court of Appeals for the Eleventh Circuit, Birmingham, AL
- Hon. Lisa Godbey Wood, U.S. District Court for the Southern District of Georgia, Savannah, GA
- Jonathan J. Wroblewski, DOJ Executive Office Sentencing Commissioner and Observer to the Task Force, Harvard Law School, Cambridge, MA

BREAK

1:40 – 1:50 PM

HEALTH CARE FRAUD AND QUI TAM LITIGATION: HAVE PROSECUTIONS AND LAWSUITS REPLACED ADMINISTRATIVE DISCRETION AND POLICYMAKING?

1:50 – 3:00 PM

Over the last several years, some of the largest health care False Claims Act recoveries have come from qui tam litigation, including several noteworthy cases entirely pursued by relator’s counsel after the government declined to intervene. Many of these cases raise significant questions of health care policy, from how concepts within the Stark law and Anti-kickback and their exceptions and safe harbors should be construed to complex questions about medical necessity and proper utilization. Has policy making, agency guidance, and administrative enforcement given way to litigation -- litigation conducted, at least in notable part, by relator’s counsel and their whistleblower clients? How have these cases affected the way the government treats qui tam litigation and interacts with relator’s counsel? Has the “statement of interest” become a new vehicle for policymaking? Is there a more prominent place in qui tam litigation for the “alternate remedy”?

- William R. Mitchelson, Jr., Alston & Bird LLP, Atlanta, GA (Moderator)
- Lena Amanti, U.S. Attorney's Office for the Northern District of Georgia, Atlanta, GA
- Michael D. Kendall, McDermott, Will & Emery, Boston, MA
- Anne M. Tompkins, Cadwalader, Wickersham & Taft, Charlotte, NC

AMENITIES & ACTIVITIES

3:30 - 6:00 PM

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



**COCKTAIL RECEPTION & DINNER**  
(Ticketed Event - \$55 additional)

**7:00 PM – 9:00 PM**

# Château Élan Winery



*Dinner Sponsored by:*

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# Day Two – Friday, September 11

**CONTINENTAL BREAKFAST**

**7:30 – 8:30 AM**

**SOUTHEASTERN SUBCOMMITTEE ON WHITE COLLAR CRIME COMMITTEE  
MEETING & NETWORKING BREAKFAST**

**7:30 – 8:30 AM**

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

**8:30 - 9:30 AM**

Three U.S. Attorneys will provide an overview of their white collar casework over the last year. In addition, panel members will provide their forecast of cases that their offices may bring in 2015-2016, together with DOJ priorities.

**William N. Shepherd**, Holland & Knight, LLP (*Moderator*)  
**John A. Horn**, Acting U.S. Attorney for the Northern District of Georgia, Atlanta, GA  
**Michael J. Moore**, U.S. Attorney for the Middle District of Georgia, Macon, GA  
**Edward J. Tarver**, U.S. Attorney for the Southern District of Georgia, Savannah, GA

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

**9:30 – 10:30 AM**

How has the landscape changed over the last year for white collar defense counsel and prosecutions as a consequence of Supreme Court and Court of Appeals decisions, together with Congressional Action? This panel will provide a close look at cases that may impact future prosecutions and defense of cases in the federal courts.

**W. Bruce Maloy**, Maloy Jenkins Parker, Atlanta, GA (*Moderator*)  
**Caitlin J. Halligan**, Gibson Dunn & Crutcher, New York, NY  
**Jackson R. Sharman III**, Lightfoot Franklin White, LLC, Birmingham, AL  
**Amy Levin Weil**, The Weil Firm, Atlanta, GA

**BREAK**

**10:30 – 10:45 AM**

**MAJOR SEC WHITE COLLAR CASES**

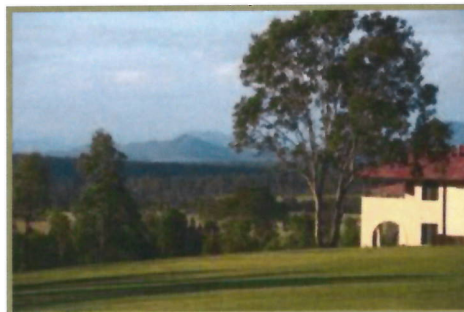
**10:45– 12:00 PM**

This panel will focus on recent enforcement actions by the SEC together with the DOJ in NYC and elsewhere in the U.S. to include FCPA cases. Also, the panel will discuss the impact of the Dodd-Frank whistleblower provision. Next, the panel will share practice pointers for the practitioners in attendance. Finally, the panel will look into the future in terms of enforcement trends in 2015 and 2016.

**Philip H. Hilder**, Hilder & Associates, Houston, TX (*Moderator*)  
**John S. Davis**, Williams Mullen, Richmond, VA  
**Robert E. Gallagher**, PwC, Atlanta, GA  
**Gary G. Grindler**, King & Spalding, Washington, DC  
**Paul B. Murphy**, King & Spalding, Atlanta, GA

**ADJOURN**

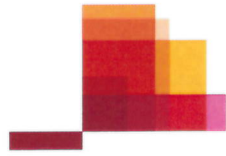
**12:00 PM**



*Save the Date*

**SEPTEMBER 8-9, 2016**

*A Special Note of Thanks to Our Sponsors:*



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RECOMMIND



# REGISTER & SAVE

## Step 1: Registration Rates

	Early Bird Rate through June 10	June 11 - July 31	August 1 - September 10	Onsite
<u>Non- ABA CJS Members &amp; General Public</u>	\$285	\$315	\$345	\$399
<u>ABA CJS Members Only</u>	\$250	\$275	\$310	\$349
<u>Government/Academia</u>	\$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:

- Cocktail Reception & 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 10<sup>th</sup> beginning at 3:30 PM.
- Golfing** – I am interested in Golfing on Friday, September 11<sup>th</sup> beginning at 2:00 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.*

<b>Course</b>	Chateau Course
<b>Rate per Golfer</b>	\$70.00 plus tax

- 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](http://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

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

## 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> )	\$ _____
Cocktail Reception & Dinner – <i>Chateau Elan Winery</i> \$55/person (from Step 2)	\$ _____
Printed Course Materials (on-site) - \$50 (from Step 3)	\$ _____
<b>Total</b>	\$ _____

## Step 6: Payment Information

Name (as it appears on credit card) \_\_\_\_\_

Account Number	Expiration Date	Security Code
_____	_____	_____

Signature \_\_\_\_\_

## Step 7: 4 Easy Ways to Register



Visit:

Meeting Code: CR1509

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Mail form to:

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Chicago, IL 60654



Fax to: (312) 988-5850

\* Please allow up to 2 weeks for processing. Thank you.

### MCLE

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NM, NV, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. 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. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit [www.ambar.org](http://www.ambar.org).

### 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](http://www.learningmarket.org).

## **Scholarships**

For more information on scholarships, email Carol Rose at [carol.rose@americanbar.org](mailto: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](mailto: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.

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Braselton, GA 30517

For Reservations:

Call (800) 233-9463 and reference “**2015 WCC SE Regional Conference**”.

Online: <https://booking.chateauelan.com/default.aspx?p=&arrival=09/09/2015&depart=09/12/2015&GROUP=63R8P9&ratecode=15ZABA>

Must book *by Monday, August 10* 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](http://www.aa.com)
- Delta Airlines: Call (800) 328-1111 – ABA File Meeting Code: NMFUD Delta Airlines Discount available at [www.delta.com](http://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](http://www.united.com) – Online Discount Code: ZR45461920
- Virgin America Airlines: Go to [www.virginamerica.com](http://www.virginamerica.com) – Discount Code: VXABA312

More details at [www.americanbar.org/travel](http://www.americanbar.org/travel).



