

FEATURES

4 **Cross-Racial Identification of Defendants in Criminal Cases: A Proposed Model Jury Instruction**

By David E. Aaronson

Erroneous eyewitness identification is the single leading cause of wrongful conviction in the United States, and studies indicate most of the faulty identifications have a racial component. Prof. David Aaronson authored a book on Maryland's criminal jury instructions and here he makes the case for a model instruction that cautions jurors to consider the possibility of erroneous eyewitness identification, especially when the eyewitness and the defendant are of different races and when such identification is the primary evidence against the accused. In addition, he reviews those jurisdictions that currently employ a cross-racial identification jury instruction, as well as the arguments opposing it.

16 **Advising the Grand Jury Witness**

WHEN TALK IS NOT CHEAP

By Jon May

Preparing a client who has been subpoenaed by a grand jury is daunting; not knowing what went on behind the closed doors can be devastating. Clients are not always able—or willing—to recount their own testimony, so obtaining a transcript is invaluable. But not all courts agree. Following a typical scenario with a less-than-ideal client, the author suggests how to prep for the grand jury appearance and outlines what options are available in acquiring access to that all-important transcript.

24 **The American Prosecutor: Power, Discretion, and Misconduct**

By Angela J. Davis

Prof. Davis (American University School of Law) examines in this excerpt from her book, *Arbitrary Justice*, the dangers that reside in the exercise of unchecked power by today's prosecutors. A one-time public defender, the author is deeply troubled by the abuses she witnessed—from the use of minimum sentences in order to force plea bargains to unfair and uneven charging—by attorneys who confuse winning with justice. Acknowledging the need for discretion in the prosecutorial process, Davis argues for better and more stringent oversight. In this excerpt she reviews the breadth of the problem and looks at a complicity within the courts that results in a lack of consequences for prosecutors who cross the line.

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