PART I: INTRODUCTION AND OVERVIEW

CHAPTER 1

EXECUTIVE SUMMARY

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Crime rates rise and fall, but they are always too high. Most easily tracked are violent crimes, defined in the Uniform Crime Reporting (UCR) Program as those offenses which involve force or threat of force. Under the UCR system, violent crime is composed of four offenses: murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault. These UCR data are widely used and relied upon, but official reporting of them are always at least six months after the fact.

An estimated 1,417,745 violent crimes occurred nationwide in 2006. Compared to calendar year 2005, this estimated volume of violent crime in 2006 reflected an increase of 1.9 percent. The 5-year trend (2006 compared with 2002) indicated that violent crime decreased 0.4 percent. For the 10-year trend (2006 compared with 1997) violent crime has fallen 13.3 percent. Aggravated assault reported in 2006 accounted for the majority of violent crimes, 60.7 percent. Robbery accounted for 31.6 percent and forcible rape accounted for 6.5 percent. Murder, the least committed violent offense, made up 1.2 percent of violent crimes in 2006. In 2006, firearms were used in 67.9 percent of murders, in 42.2 percent of the robbery offenses, and in 21.9 percent of the aggravated assaults.

We also have preliminary violent crime figures for the first half of 2007. Those data indicate a decrease of 1.8 percent in the number of violent crimes reported in the first half of 2007 when compared with figures reported for the first six months of 2006. The number of property crimes in the United States from January to June of 2007 decreased 2.6 percent when compared with data from the same time period in 2006. Property crimes include burglary, larceny-theft, and motor vehicle theft. Arson is also a property crime, but data for arson are not included in property crime totals. Figures for 2007 indicate that arson decreased 9.7 percent in the first half of the year when compared to 2006 figures for the same time period. Trends in commission of white collar crime are much more difficult to pinpoint, even though high profile prosecutions of corporate executives do seem to be common.

Homicide rates have prompted particular concern among law enforcement officials. Urban communities in particular may be entering a period of sustained crime increases. Experts cited an increase in the number of young men in their crime-prone years, diminished crime-fighting assistance from the federal government, fewer jobs for people with marginal skills and even the ongoing growth in methamphetamine use in some places. The Justice Department inspector general's office has reported sharp declines in the number of FBI agents and investigations dedicated to traditional crimes since the terrorists’ attacks on September 11, 2001. In addition, law enforcement programs at the Justice Department have been cut by more than $2 billion since 2002 and overall funding for such programs has been reduced to levels of a decade ago. By late 2006, movement was clear in key agencies to address these issues.
Given that context of crime and criminal justice, this volume provides a snapshot of key criminal justice issues as of early 2008. Organizing the breadth and depth of these issues is a daunting task, and we have chosen to do so according to the various divisions within the Criminal Justice Section. Following are summaries of the contributions of each of these divisions and their constituent committees, task forces, and other working groups. Included in addition to these summary chapters are the policy statements formally adopted by the ABA which address criminal justice issues and that were sponsored or cosponsored by our Criminal Justice Section.

I. SUPREME COURT RULINGS AND FEDERAL LEGISLATION

United States Supreme Court

Setting the stage for the structured presentations in this volume is the stem-to-stern analysis of criminal law decisions by the U.S. Supreme Court during its 2006-2007 term. The basis for this fundamental chapter is Professor Rory Little’s widely acclaimed presentations at his regular annual programs at the ABA Annual Meetings. Little’s CLE handouts at these sessions are treasured by attendees, and the leading chapter in this volume is just a lightly edited version of his August 2007 handout.

The most significant Fourth Amendment case decided during the 2006-07 term was probably *Brendlin v. California,* the Court’s unanimous ruling that when a vehicle is stopped by the police, the passengers as well as the driver are “seized” for Fourth Amendment purposes. Further, an unintended person can be the object of the detention so long as the detention is willful and not merely the consequence of an unknowing act. *Los Angeles v. Rettele,* held that when executing a valid search warrant for possible armed African-American suspects, it is not unreasonable for officers to order nude white occupants out of bed to secure the premises. *Scott v. Harris,* found it not unreasonable for officers to attempt to stop a high-speed chase by taking actions that risk death or serious injury to the fleeing driver.

The 2006-2007 term gave us *Schriro v. Landrigan,* which refused to find an abuse of discretion to deny an evidentiary hearing on a claim of ineffective assistance of counsel for failure to investigate mitigation. In that case the defendant had actively opposed counsel’s efforts to introduce mitigating evidence, and the newly-proffered mitigating evidence would not have changed the death sentence.

Other death penalty cases in the 2006-2007 term included *Ayers v. Belmontes,* allowing an open-ended jury instruction as to aggravating factors (“any other factor which extenuates the gravity of the crime”) on the premise that it still permits consideration of all mitigating evidence. In three Texas Fifth Circuit cases, the Court reversed death sentences because the juries were not instructed that they could give a “reasoned, moral response” to any mitigating evidence provided. In *Panetti v. Quarterman,* the Court found that the constitutional prohibition against executing the insane requires careful procedures ensuring a fair adversarial process and an independent mental evaluation. The death row prisoner must have a “rational understanding” of the state’s reasons for the execution, not just know the facts of the matter.

Recent Federal Legislation

The Second Chance Act is a bipartisan bill authorizes assistance to states and localities to develop and implement strategic plans for providing and coordinating comprehensive efforts to enable juvenile and adult ex-offenders to successfully reenter their communities. Such efforts
include greater access to supports and services such as: family reunification, job training, education, housing, substance abuse and mental health services. The bill also establishes a federal inter-agency task force on offender reentry, provides for research on reentry, and creates a national resource center to collect and disseminate information on best practices in offender reentry. The legislation would provide grants to states to assist them in reducing crime by improving services and programs for state prisoners reentering communities, reforms to existing barriers in federal law that adversely affect people with both state and federal convictions, and provisions to strengthen federal protections for former prisoners in the areas of employment, housing, and voting. The legislation includes federal programs to provide expanded drug treatment in lieu of prison sentences, residential and family-based drug treatment, and to improve education programs at prisons, jail, and juvenile facilities.

The United States Sentencing Commission submitted to Congress its proposed changes in federal sentencing guidelines for 2007. The amendments package included two issues of great concern to the Section and the Association: a policy statement to give sentencing courts guidance on granting release to prisoners for extraordinary and compelling reasons and an amendment to improve crack cocaine sentencing. Both amendments went into effect on November 1, 2007.


Legislation to combat courthouse violence was cleared by the House and Senate in action in December 2007 taken on the eve of the holiday recess. The bill in final form contains redaction authority to protect judges private information, provide increased funding for judicial security programs and create a number of new crimes including a provision regarding “malicious recording of fictitious liens against federal judges and federal law enforcement officers.”

The House and Senate approved final funding for FY 2008 for federal Defender Services just before the December 2007 holiday recess at $835.6 million. The final appropriation figure was approved as part of H.R. 2764, the Consolidated Appropriations Act, 2008, omnibus funding legislation finalized and approved by the House and Senate on December 19, 2007.

II. WHITE COLLAR CRIME AND SPECIALIZED PRACTICE

The past year has witnessed an abundance of fraud and scandals. Much of 2007 focused on the Senate and House Committees' investigations of the firings of United States Attorneys in 2006. Starting on February 6, 2007, these inquiries caused a great of turmoil at the Department of Justice, eventually culminating in the resignation of Attorney General Alberto Gonzalez in late August.

Other high profile white collar crime cases included the conviction of Lewis "Scooter" Libby for making false statements to the grand jury concerning the leaking of information about CIA operative Valerie Plame.

The law firm Milberg Weiss was indicted for paying millions for people to become repeated plaintiffs and class representatives in class action lawsuits. This past year has also seen a number of noteworthy settlements of cases brought under the Foreign Corrupt Practices Act. These and many other white collar crime issues are discussed in chapter 4.


**Homeland Security**

The year 2007 was dominated by issues of warrantless surveillance with discussions involving all levels of government and much public debate. In addition, a key legislative highlight was the enactment of the 9/11 Commission recommendations and the passage of chemical security regulations. In the courts, controversies continued on the detention of “enemy combatants”, resulting in many important decisions made this year. In addition, there was an important ruling on the law enforcement activities in the finding that the issuance of “national security letters” and gag orders violated Internet Service Providers (“ISP”) First Amendment rights.

Perhaps this year’s most discussed issue was the Administration’s decision to end the National Security Agency’s ("NSA") warrantless surveillance used in the Terrorists Surveillance Program and to require appropriate electronic surveillance subject to Foreign Intelligence Surveillance Act (“FISA”) approval. In the wake of 9/11, the National Security Agency was authorized to intercept, without any FISA court approval, international communications of people with known links to Al Qaeda and other terrorist organizations. After much public debate, Congressional discourse, and litigation, efforts to reauthorize FISA have become a main focus of legislative activity.

The Terrorism Risk Insurance Act (“TRIA”) created a U.S. government “reinsurance facility” to provide reinsurance coverage to insurance companies following a declared terrorism event and was set to expire December 31, 2005, but was reauthorized on December 26, 2007 with the signing of The Terrorism Risk Insurance Program Reauthorization Act of 2007, extending TRIA through December 31, 2014. After much debate between Congress and the Administration, the final law defines terrorism as an act agreed upon by the Attorney General and the Secretaries of the Treasury, Homeland Security, and State to be a violent act that is dangerous to human life, property, or infrastructure or was committed to coerce U.S. civilians or the U.S. government.

In the wake of the failed attempt to develop comprehensive immigration legislation, the Administration proposed a set of enforcement measures including increased funding, enhanced assimilation, increased worksite enforcement and streamlining existing guest worker programs. Under the new regulation, the Department of Homeland Security (“DHS”) will use a “no match letter(s)” sent to employers when an employee’s social security number does not match the Social Security Administration (“SSA”) database.

DHS established the National Applications Office to facilitate the processing of requests for “national technical means,” including the use of satellite imagery of the U.S., which has raised concerns over privacy issues. DHS will limit the use of the data collected using satellites for homeland security and other civilian purposes. This information represents an important resources that if used properly can provide for access to better information during times of national crises or natural disasters.

**Military Justice**

Several significant changes to the Military Justice System were implemented during calendar year 2007. These developments include implementation of new death or injury to unborn child article, implementation of new stalking article, and implementation of procedures to allow the use of video-teleconferencing at Article 39a sessions. The most notable of these changes, which became effective October 1, 2007, involves the way the military proscribes sexual offenses.
For the better part of 2004 and 2005, the Joint Service Committee on Military Justice (JSC) developed and studied several proposals for modernizing the way the military proscribes sexual offenses. The rationale for the JSC study was not that the previous method of proscribing sexual offenses was ineffective, far from it; in fact, the previous method allowed the military to proscribe most, if not all, sexual offenses covered in other jurisdictions. However, the JSC and several Congressional members believed the UCMJ and MCM could be more effective and the JSC sat about making the way the military proscribes sexual offenses more effective.

In late 2005, Congress selected one of these proposals, modified it, passed it and submitted it to the President for enactment. On 6 Jan 2006, the President signed the modified proposal into law. This modified proposal, contained in Public Law 109-163, eliminated the current offense of rape under Article 120 and replaced it with a new Article 120 composed of non-consensual sexual offenses based on the United States Code.

III. Defense Issues

Defense Function

Chapter 7 addresses the goals of the criminal justice system from the perspectives of members of the defense functions and services committee. The chapter begins with the observation that “[i]t is likely that a majority of people would see the reduction or containment of crime as the major purpose of punishment, with punishment seen as a means to an end - that of controlling crime.”

Unquestionably crime rates have declined since the 1970’s, but the reason for the reduction is unknown. Although some attribute the decline to more severe prison sentences meted out by state and federal courts, others see the reduction linked to changes in demographics.

What is known is that the United States imprisons more people in absolute numbers and per capita than any other nation, including nations that have far greater populations. A disproportionate percentage of those imprisoned are African-American males. Indeed one out of every three African-American males is either in prison, on parole or probation, or has a criminal record. Most of those in prison are in prison for non-violent drug offenses. The long term impact of such incarceration is also unknown. But certainly it contributes to the number of children being raised by a single parent. It also results in more families dependent upon public support. It is conceivable that such a regime will lead to greater societal problems in the future. More males raised by a single parent in poverty will end up criminals. More people released from prison without skills or job opportunities will return to criminal behavior. Since inmates will return to their communities regardless of the existence of re-entry programs, the provision of adequate job training, job placement, drug rehabilitation, treatment for mental illness and reintegration into health care programs must be developed to anticipate and prevent their potential negative impact on their communities. The provision of these resources is less costly than incarceration.

Indigent Defense

The Standing Committee on Legal Aid and Indigent Defendants (SCLAID), organized in 1921, is the oldest standing committee of the American Bar Association. SCLAID’s primary goal is to promote improvements in the delivery of civil legal services for the poor and defense representation of the indigent in criminal, juvenile and capital cases.

During the past 25 years, SCLAID has furnished technical assistance to virtually every state in the country, through the consultant services of The Spangenberg Group, in an effort to
improve the quality of indigent defense services. SCLAID publishes numerous reports and studies on national issues impacting indigent defense services. These reports, which provide vital comparative data to jurisdictions engaging in systemic reform, are available free of charge. Also, SCLAID sponsors CLE programming throughout the year featuring strategies for effective indigent defense reform. Most notable is its nationally recognized Annual Summit on Indigent Defense Improvement, which is a national forum for bar leaders, heads of defender programs and others interested in effecting reform to learn from experts about national developments and to engage in a dialogue with peers from across the country.

Most recently, SCLAID has received a grant to work with the Justice Project to prepare a comprehensive guidebook and recommendations for dealing with the pervasive national problem of excessive caseloads. This new major project will follow-up and expand upon the findings that were made in SCLAID’s last major project, *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice*, released in December 2004.

**National Association of Criminal Defense Lawyers**

The National Association of Criminal Defense Lawyers (NACDL) endeavors to (1) ensure justice and due process for persons accused of crime; (2) foster the integrity, independence and expertise of the criminal defense profession; and (3) promote the proper and fair administration of criminal justice. The right to counsel, embodied in the Sixth Amendment to the United States Constitution, is the primary safeguard of a defendant’s rights within the criminal justice system. Adequate representation ensures that all other rights – the right to be free from unlawful search and seizure, the right against self-incrimination, right to confront witnesses, right to a jury trial, etc. – are protected. But, in the United States today, the right to counsel is not being enforced. NACDL is committed to improving indigent defense across the country to ensure that all those facing criminal charges receive equal justice.

In the United States Congress, inflexible mandatory sentencing, undue restrictions on post-conviction review, surveillance measures that eliminate judicial oversight, and other court-stripping measures continue to fuel ideological and legislative conflict. Given the dominant influence of public opinion and the media in these areas, recent revelations of government overreaching -- including wrongful convictions and unlawful surveillance activities – have played an important part in countering many ill-advised proposals.

The criminal justice legislative landscape at the state level is very different than it was five or ten years ago. It is better because there is a recognition by politicians and the public that the criminal justice system makes mistakes – and there are policy reforms that reduce those errors. At the same time, high profile media stories involving sex offenders have resulted in legislation featuring draconian prison terms and the expansion of offender registries available on the internet, residency restrictions, and GPS monitoring. State legislatures have recently been considering expanding DNA databases to include non-violent felons, misdemeanants, and even arrestees.

**IV.  Equal Justice**

**Juvenile Justice**

The movement to “recriminalize” the juvenile justice system gained momentum in the mid-1990s when arrests for juvenile crime were at a peak. Now ten years later, public concern about juvenile crime remains very high even though juvenile arrests have fallen dramatically. As
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a result, legislatures and courts continue to push juvenile courts away from the rehabilitative model and toward the punitive model, and placing juvenile offenders in adult criminal court remains popular. Consistent with this “get tough” approach to children are the zero-tolerance rules of schools and similar community attitudes. These punitive approaches to juvenile misbehavior tend to have a disproportionate impact upon African American, Latino and Native American youth.

In striking contrast to this punitive approach to juvenile transgressions are recent developments concerning the most severe sanctions. In *Roper v. Simmons*,15 the U.S. Supreme Court reiterated in the clearest terms that the behavioral characteristics for juveniles are not the same as for adults. *Simmons* held that adolescents’ impulsiveness, less developed sense of responsibility, and susceptibility to peer pressure result in a lesser juvenile culpability for even the most serious criminal behavior. This recognition of typical juvenile behavior is certainly nothing new for the highest Court, but the reiteration of this premise has provided new energy to efforts to turn away from treating juvenile offenders as if they were adult criminals.

Juvenile courts remain the focal point for juvenile justice issues. Juvenile court judges often handle cases combining issues of delinquent acts, status offenses, neglect, and mental illness, all arising out of dysfunctional families and schools and communities without adequate resources. Our society continues to expect juvenile justice professionals to be miracle workers in such cases, but the clear message is that juvenile justice is a broad issue for the entire community and not just a narrow point of law.

**Immigration Law**

Immigration has been one of the hottest topics over the past few years. The media and public interest groups on both sides of the issue have brought the sympathetic stories and the frightening problems to the forefront. The government has steadily increased patrols, raids, and enforcement of deportation orders. In fact, following raids in 2006, Immigration and Customs Enforcement agents deported 183,431 people nationwide, while the Border Patrol agents report a sharp decline in the number of individuals apprehended trying to cross the border.16 Changes in the law from Supreme Court decisions have the potential to impact thousands of individuals. Most notably, the interplay between criminal and immigration law grows stronger and practitioners should seek to educate themselves, as well as form bonds with practitioners, given the complex, and sometimes conflicting, nature of the two areas of law.

The past few years have shown that although Congress and others recognize the importance of immigration reform, nothing substantive has been done. However, raids and sweeps are growing more frequent, and the courts and immigration offices are ill-equipped to handle the problem. Additionally, given that there is no right to appointed counsel in immigration proceedings, many individuals face the process alone, without any legal advice or assistance. The prosecution of those aiding immigrants in an increasing concern, and poses a new dilemma for defense attorneys and prosecutors alike. Most importantly, criminal practitioners should seek to stay well informed of the daily changes in immigration law and enforcement so as to best advise clients and work with

**Ethics**

For the past three years, bar associations and other representative organizations have opposed Department of Justice (“DOJ”) policy on corporate criminal investigations and prosecutions. The ABA Task Force on the Attorney-Client Privilege, on which the Criminal
Justice Section is well represented, has been among those taking a leading role. A committee of the Section has also contributed on this issue closely. The key question is, what can DOJ fairly expect (or require) of corporations seeking credit for “cooperation” and, thus, lenient treatment. Among the types of “cooperation” by prosecutors that federal prosecutors have sought or encouraged at various times have been: (1) providing information otherwise protected by the attorney-client privilege or work product doctrine, such as notes of interviews made during an internal investigation; (2) firing employees who will not cooperate with the prosecutors; (3) refraining from joint defense agreements and other information sharing arrangements with individuals.

Durham Country District Attorney Michael Nifong, another Wikipedia entrant, lost his law license for misconduct in the so-called “Duke Lacrosse Case.” The initial charges for violating restrictions on discussing the case in the media were ultimately supplemented with more serious ones for withholding exculpatory material and making false statements to the court. In June 2007, after five days of hearings, the disciplinary committee sustained the majority of the charges and voted to recommend Nifong’s disbarment. Rather than continuing to defend himself, Nifong surrendered his law license the following month.

The detention of alleged “enemy combatants” has raised various questions about the role of defense lawyers. At the outset, questions were raised whether it was even ethical for lawyers to attempt to defend the detainees, given the restrictions placed on them by the government. If lawyers cannot freely communicate with their clients and cannot meaningfully advocate on their behalf – in other words, if they cannot provide competent counseling, engage in competent information gathering, and provide zealous advocacy as contemplated by the conventional rules of ethics – is it ethical for them to participate at all?

Finally, in a development in which our committee takes particular pride, the Council of the Criminal Justice Section has voted this year to propose that the ABA adopt amendments to the prosecutorial ethics rule, Rule 3.8 of the ABA Model Rules of Professional Conduct. The proposed provisions, based on similar ones adopted by the New York State Bar Association, would apply to prosecutors who learn of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which he was convicted. Broadly speaking, if the conviction was obtained in the prosecutor’s jurisdiction, the prosecutor would be required to disclose the evidence to the court and the defendant, conduct or instigate an investigation, and, if clear and convincing evidence ultimately established the defendant’s innocence, seek to remedy the conviction. (Where the conviction was obtained in a different jurisdiction, the prosecutor would have to refer the evidence to the appropriate prosecutor or court of the relevant jurisdiction.)

V. CORRECTIONS AND SENTENCING

Effective Criminal Sanctions

During 2007, the Commission continued to keep the conversation about sentencing and corrections policy at the center of discussions about the health of the legal system. In unprecedented fashion, the Commission was able to gain support for many of its recommendations from the National District Attorneys Association. National defender organizations also supported its recommendations.

In the spring of 2007, the Commission organized a conference in Chicago on "Overcoming Legal Barriers to Reentry." This conference brought together policy-makers, government officials, business leaders, people with criminal records and community advocacy
groups from across the country to study and explore ways in which they can together encourage and support successful offender reentry within their respective jurisdictions. The premise of the conference was that strong reentry programs reduce recidivism and make our communities safer. At the conclusion of the conference, the Commission approved a broad policy recommendation encouraging jurisdictions to limit access to non-conviction records, and to some conviction records after a certain crime-free period, when the risk that a person will recidivate is greatly reduced.

**Corrections**

In 2003, Congress passed the Prison Rape Elimination Act (PREA), which established a commission to study federal, state, and local government policies and practices respecting the prevention, detection and punishment of prison sexual assaults. As a result of consistent and more detailed reporting, in 2007 the Bureau of Justice Statistics released its first comparative analysis of trends in the reporting of data on sexual assault from 2004 to 2006. The data revealed that during 2004, an estimated 8,210 allegations of sexual violence were reported by correctional authorities. Almost 42 percent of the reported allegations of sexual violence involved staff-on-inmate sexual misconduct, 37 percent were inmate-on-inmate nonconsensual sexual acts, 11 percent were staff sexual harassment of inmates, and 10 percent were inmate-on-inmate abusive sexual contacts.

On June 8, 2006, the Commission on Safety and Abuse in America’s Prisons released a report making recommendations for improvement in areas ranging from the training of correctional officers to the administration of prison health care. With regard to oversight, the commission recommended that every state create an independent agency to monitor prisons and jails and that a national non-governmental organization capable of inspecting prisons and jails at the invitation of corrections administrators be developed. The Commission urged that the investigation and enforcement activities of the U.S. Department of Justice be reinvigorated and that prisons and jails strive for transparency, insuring outside access to correctional data.

Prisons and jails are a necessary part of a justice system in a democratic society, and it is vitally important that the public is confident that our nations’ jails and prisons are operated in a manner consistent with democratic values. To avoid the loss of legitimacy, it is necessary that the operation of prisons and jails be transparent. To that end, the Corrections Committee has undertaken to study and make recommendations concerning the need for state and local governments to establish a system for public oversight of prisons and jails, to insure transparency in their operation. The Committee’s work is focusing on ways in which governments can provide effective oversight while recognizing the importance for both local input and independent review.

**Alternative Dispute Resolution**

While over the last thirty years much has evolved in the use of Alternative Dispute Resolution (ADR) within the civil justice system, its presence in the criminal system remains vague. So while much time has been spent in the consideration of private processes in civil courts, (by lawyers, courts as well as the American Bar Association, it is now timely and fitting to reconsider alternative processes with a spotlight on implications for the criminal justice system. That is, at least in part, the mission of the ADR and Restorative Justice Committee.

One goal is that through a contemporary reexamination and reconsideration of the use of alternative means for case processing and resolution, additional innovative programs can be
established. And as part of that task, the committee has planned a number of projects and programs which will ideally assist in the implementation of innovative programs and policies. In doing so, it is hoped that the potential for future expansion of ADR, particularly mediation, and its derivatives, in the distinct components and segments of the criminal justice system is realized. The benefits from integrating innovative dispute resolution efforts are many and varied, ranging from a reduction in time and expense in case processing to tailor designed consequences for the offender to increased participation, and hence system satisfaction, on the part of victims and others impacted by the criminal system.

A variety of uses of mediation over the last three decades has been experimented with and new programs established. It is hoped that a number of potential innovations are considered to re-incorporate mediation and mediation-like processes within criminal justice initiatives, both within the system itself as well as through outside private ventures. Options are numerous and range from a change in the role of courts to using mediation in reaching pleas and consequences. Also considered are necessary educational efforts which no doubt accompany innovations. In essence, the potential of ADR use in criminal matters has a variety of different options along the time line of criminal case processing.

Capital Punishment

States are ending or comprehensively studying the death penalty. On December 17, 2007, New Jersey abolished the death penalty. It was the first state to do so by legislative action since the 1960's. In New York State, capital punishment is also inoperative. This resulted from events beginning in June 2004, when New York’s highest court held unconstitutional a statutory mandate that juries be advised, in the penalty phase, that if they do not vote unanimously for either the death penalty or life without parole, the judge will automatically impose life with the possibility of parole. In October 2007, New York's highest court vacated New York's final death sentence, relying on stare decisis and the legislature's having not solved the constitutional problem identified in the court's 2004 decision. New York's Capital Defender Office began preparing to go out of existence, due to its Executive Director's belief that the legislature would not enact legislation to correct the constitutional problem with the statute. Tennessee's legislature voted in June 2007 to create an 18-member legislative study commission to study the accuracy and fairness of Tennessee's capital punishment system. On the other hand, legislation was enacted in 2006 in Georgia, South Carolina and Oklahoma that provides for capital punishment for sex offenses that do not result in homicides. Similar legislation was adopted in Texas in July 2007. This brings to seven the number of states with such laws, most of which are limited to cases in which children are victims. In May 2007, the Louisiana Supreme Court affirmed the death sentence of Patrick Kennedy, the first person sentenced to death under any of these statutes. On January 4, 2008, the United States Supreme Court granted Mr. Kennedy's petition for certiorari in that case.

There has been a significant drop in the number of death penalties being imposed each year. In 2006, 115 people were sentenced to death, well under half of those sentenced to death in 1999, when 284 were sentenced to death. That was the peak of death sentences since the re-introduction of capital punishment following Furman v. Georgia. During this same time frame, the number of executions dropped from 98 in 1999 to 53 in 2006. The number in 2007 stopped at 42 well before the end of the year, due to stays (discussed below) arising from the Supreme Court's pending case regarding the manner in which lethal injection is carried out. Among the likely reasons for the decline in death sentences are the increased awareness that the sentence of life without parole really means without any possibility of parole, and that in
most jurisdictions it will be imposed if there is no death sentence;\textsuperscript{29} improved defense counsel services in some places; prosecutors becoming less prone to seek the death sentence for capital murder – including an important change in North Carolina, where prosecutors are no longer statutorily mandated to seek the death penalty in every capital murder case; and increased awareness of the danger that innocent people can be, and have been in many instances, convicted of capital murder.\textsuperscript{30} The decrease in capital sentencing is consistent with a significant drop in public support for capital punishment when the poll question includes life without parole as the alternative. The Gallup Poll released on June 1, 2006 showed that when given that choice, 47% preferred the death penalty and 48% preferred life without parole.\textsuperscript{31}

Although state prosecutors have been moving away from seeking and securing death sentences, the same is not true of federal prosecutors. The number of people on the federal death row more than doubled between 2001 and early 2007, including several in states without their own death rows. This resulted from an intensified push by the Justice Department, including its insistence that the death penalty be sought despite contrary recommendations by United States Attorneys.

VI. CONCLUSIONS

As promised, these 16 chapters explore a wide-ranging array of criminal justice issues circa early 2008. The prominent cases and headlined debates will change over the years, but these issues remain central to serious analyses of the criminal justice system. The above snippets are intended only to whet your appetite for the in depth discussions in each of the following chapters. Each is written by recognized experts in their respective fields. Every effort has been made to leave the authors’ voices in their original form and to avoid pureeing all of the chapters into the same personality. You will find yourself agreeing with some and disagreeing with others, but you will not find yourself bored. Enjoy.

Endnotes, Chapter 1


2 Id.


4 127 S. Ct. 2400 (June 18, 2007).


7 127 S. Ct. 1933 (May 14, 2007).

8 127 S. Ct. 469 (Nov. 13, 2006).

10 127 S. Ct. 2842 (June 28, 2007).


13 SCLAID maintains a special subcommittee, the Indigent Defense Advisory Group, composed of experts representing diverse defense backgrounds and various geographical areas of the nation, whose function is to advise the Committee on indigent defense issues that arise.

www.indigentdefense.org.


17 42 U.S.C. § 15601, et seq.


19 Id.


26 Kennedy v. Louisiana (No. 07-343), cert. granted (January 4, 2008).


28 Id.

29 Texas, one of the last hold-outs, enacted a life without parole sentence in 2005.


31 Gallup News Service, June 1, 2006. Gallup did not ask this question in its 2007 poll on capital punishment.