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New York Criminal Law Newsletter

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Inside

NYSBA

Message from the Chair

A Review of the Section's Recent Activity on Criminal Justice Issues

The Executive Committee of the Criminal Justice Section (CJS Executive Committee) held its first official meeting after the summer break on September 12, 2008 in New York City. The first item on the agenda consisted of verbal reports by District Attorneys Robert F. Carney (Schenectady County) and Gerald F. Mollen (Broome County). The second item on the agenda included a discussion of a report and proposed legislation by the NYSBA Committee on Children and the Law requiring the electronic recording of custodial interrogations of children. These agenda items will be discussed in more detail below.

Agenda Item No. 1: Reports by DAs Carney and Mollen re Electronic Recording of Interrogations

The highlights of the CJS Executive Committee meeting were the reports by DAs Carney and Mollen on their respective offices' programs developed to electronically record custodial interrogations of adults in their entirety. DA Carney addressed the Executive Committee in person, and DA Mollen addressed the group via telephonic conference call. These county-based programs should not be confused with the videotaping of confessions. These programs, which are currently operating on a voluntary basis, are designed to record the interrogation of an adult in custody from the time questioning begins until it ends. The purpose of this procedural and evidentiary initiative is to create a thorough record of custodial interrogations and to prevent the unfortunate consequences of false confessions. Briefly stated, both DAs felt very strongly about the evidentiary value of the recordings and believed that these programs should be instituted statewide.

This Section is particularly interested in the outcome of these two voluntary programs as members of this Section, in cooperation with members of the New York County Lawyers Association (NYCLA), drafted legislation in 2004, which was presented to state legislators in 2005 and 2006, requiring electronic recording of interrogations on a statewide basis. Unfortunately, the legislation has not been passed. We also lobbied for and obtained the funds necessary to help finance the Broome and Schenectady county programs.

Agenda Item No. 2: Proposed Legislation Requiring the Electronic Recording of Custodial Interrogation of Children.

The second item on the meeting agenda included a discussion and vote indicating the Section's position on a report by NYSBA's Committee on Children and the Law proposing legislation to require electronic recording of interrogations of children in custody. This proposed legislation was modeled after the same legislation that was drafted by this Section and NYCLA. After a discussion of the report, the CJS Executive Committee decided to consult with a juvenile justice practitioner before voting on the report and the proposed legislation. That follow-up discussion took place on October 20, 2008.

Executive Committee Meeting, October 20, 2008

After a lengthy discussion on the topic, a majority of the CJS Executive Committee voted in favor of the report and proposed legislation requiring the electronic recording of interrogations of children in custody. Other members of the Executive Committee were opposed to the proposed legislation because it calls for the suppression of confessions that are not electronically recorded when the circumstances under which they are obtained do not fall within the specified exceptions to the rule. While a similar exclusionary provision exists in the legislation drafted by this Section and NYCLA, a minority of the Executive Committee members believe that the proposed legislation is too severe in its requirement to suppress confessions that are not electronically recorded.

Since 2005, when our Section's legislation was presented to state legislators, we have learned that our legislation met with strong opposition on two fronts. First, opponents believed that while the electronic recording of interrogations was an excellent evidentiary tool, they believed that confessions should not be suppressed simply because they were not electronically recorded. Instead, it was suggested that the legislation provide for the reading of a curative instruction permitting the trier of fact to appropriately weigh the veracity of the unrecorded confession or to institute some lesser remedial measure to address the fact that the confession was not electronically recorded. Second, opponents of the proposed legislation believed that electronic recording of interrogations should only be required for the most serious violent felonies—not all felonies. This was a financial consideration, as many jurisdictions believed that they did not have the financial resources or the human resources to electronically record all felonies. These issues will likely arise for the legislation requiring electronic recording of interrogations of children in custody.

During the October 20 meeting, the CJS Executive Committee discussed and voted on a second report by NYSBA's Committee on Children and the Law proposing legislation for the funding of a study to determine whether the juvenile delinquency age should be raised from 16 to 18 years of age. A majority of the CJS Executive Committee voted in favor of the report and the proposed legislation.

Best wishes for a healthy and happy holiday season,

Jean Walsh

Message from the Editor

As we begin our fifth year of publication, we are pleased to continue our policy of providing both interesting and practical information for our readers. As our first feature article, we continue to provide details on the legislation passed in 2008 that affects the practice of criminal law. As in the past, we are pleased to have Barry Kamins provide this update for us. Barry is a recognized expert in the field of criminal law, and he has been gracious enough to provide our publication with valuable articles over the course of our five years of publication. We were also overjoyed to learn that Barry has been appointed a Judge of the New York City Criminal Court, where we are sure he will serve with great distinction.

The future makeup of the U.S. Supreme Court was one of the underlying issues during the recent presidential election. We are also pleased to provide an updated profile on the current members of the U.S. Supreme Court, and to speculate on the future opportunity that the new President may have in reshaping the Court's membership. The month of January 2009 is a busy one for our Criminal Justice Section, with our Annual Meeting, awards luncheon, and CLE program being held at the New York Marriott Marquis. Details regarding all of these programs are provided in our "About Our Section" column. We also provide information regarding the many new members who have joined our Section and welcome those new members to our Section.

Since the New York Court of Appeals resumed its activities in early September, several criminal law decisions have come down from that Court, and we report those matters to you. We also pay tribute in a special article to Chief Judge Judith S. Kaye, who has served on the Court for 25 years, and who retired at the end of 2008. The U.S. Supreme Court commenced its new 2008–2009 term in early October, and we report on some procedural changes in that Court. With the election of the new President, we also present an article on the current members of the Court and their years of service, and speculate as to whether any new appointments to the Court will be forthcoming in the near future. During the last several months, even while the Appellate Divisions were closed for the summer recess, several Appellate decisions involving issues of first impression and 3-2 split decisions were reported, and we present these cases for the benefit of our members.

Our "For Your Information" section continues to provide general information on a variety of topics for the benefit of our readers, including the current status of judicial pay increases, new judicial and governmental appointments, and the changing demographics of our nation. I hope that these items will be of interest to our readers.

On a final note, possibly because of the summer recess, I have not received as many articles for publication as I have in the past. I therefore urge our members to make a contribution to our *Newsletter* by providing me with articles for possible publication. Submitted articles should include a hard copy, a disc, and a short biography of the contributor. I again thank our readers for their support of our publication.

Spiros A. Tsimbinos

New 2008 Criminal Law and Procedure Legislation

By Barry Kamins

Introduction

The 2008 legislative session produced a smaller number of substantive pieces of criminal justice legislation than in prior years. This article will discuss three significant new laws that will have a substantial impact on the criminal justice system.

Post-Release Supervision

As of July 9, 2008, the court system has a new process for returning inmates to court for possible resentencing who are serving determinate sentences, and where the sentencing court failed to impose a term of Post-Release Supervision (PRS). In 1998, the legislature ended indeterminate sentences for defendants convicted of violent felonies and enacted Jenna's Law, named for Jenna Grieshaber. Ms. Grieshaber was a 22-year-old nursing student who was murdered by an individual who had been released from prison after serving two-thirds of his indeterminate sentence for a violent felony. Jenna's Law eliminated indeterminate sentences and required determinate sentences for those convicted of violent felonies. Jenna's Law also created a schedule of *mandatory* terms of PRS as part of a determinate sentence. The purpose of this supervision was to ensure that violent offenders are appropriately monitored upon their reintroduction into society.

Unfortunately, in a number of cases, courts did not inform defendants either at the time a guilty plea was entered or, at the time of sentencing, that they would be subject to a period of PRS following their determinate sentences. In those cases, the Department of Correctional Services (DOCS) administratively added a period of PRS onto those sentences. On April 29, 2008, the New York Court of Appeals held that DOCS had no authority to take this action and that only the sentencing judge is authorized to pronounce the PRS component of a sentence.[1]

In a companion case, *People v. Sparber*, 10 N.Y.3d 457 (2008), the Court held that when courts fail to pronounce the PRS term, rather than striking the PRS imposed by the DOCS from the sentence, the matter must be remitted to the sentencing court for resentencing. The Court concluded that while a sentencing court errs in this omission, the error can be remedied through resentencing.

These decisions by the Court of Appeals will affect the thousands of inmates still serving determinate sentences without a judicially imposed period of PRS, as well as those who have been released from prison after completing the determinate sentence. The decisions have already led to the review of the sentencing records of hundreds of parolees and inmates; 335 inmates have been released where they were incarcerated for violating the terms of improperly imposed periods of PRS. The legislature responded to the court decisions by enacting a statutory framework that allows for an orderly judicial resolution in these cases to determine which defendants are to be subject to PRS and which are not.[2]

The resentencing proceedings apply to all inmates in custody of DOCS or "releasees" on parole after serving determinate sentences for crimes committed on or after September 1, 1998, whose original court commitment order does not indicate imposition of any term of PRS. DOCS or the Division of Parole must notify the sentencing court and the individual that resentencing must take place in these cases.

Within 10 days of receiving notification, the sentencing court must appoint counsel and must then calendar the matter within 20 days of the notification. Within 30 days of the notification, the court must commence a proceeding to consider resentencing. At this proceeding, the court is required to utilize the sentencing minutes, plea minutes and any other relevant documents. Forty days after the original notification, the court is required to render a decision. However, all of the above time periods may be waived upon consent of the inmate or releasee.

It is important to note that the new law does not *compel* courts to resentence individuals to a period of PRS. A court may decline to impose a period of PRS with the consent of the prosecutor.[3] This may occur in situations where a court failed to advise a defendant during a plea colloquy that the court would impose PRS as part of the sentence. The Court of Appeals has held that the failure to so advise a defendant would enable the defendant to vacate the plea.[4] Thus, if a defendant is later brought back for resentence and the court had failed to mention PRS in the plea allocution, the new law permits the court to resentence the defendant to the original period of incarceration without imposing a period of PRS; this avoids the necessity of a plea *vacatur*.

Courts will also be faced with resentencing procedures in cases where a defendant has fully served a determinate sentence and has been released from prison. This presents a more difficult issue for courts and one the legislature may have anticipated. Correction Law § 601-d(5) requires a court to notify the Division of Parole when it determines that "it will not resentence the defendant under this section or *otherwise*" (emphasis added). Thus, the legislature has left a window of opportunity for defendants to raise other theories by which a court may decline to impose a period of PRS.

One theory, raised by attorneys in the Legal Aid Society, is that a court has no "inherent power to correct an illegal sentence after the defendant has served the judi-

cially pronounced term."[5] Thus, should a court impose a period of PRS after the defendant fully serves his or her determinate sentence, this may violate the provisions of the Double Jeopardy Clause.[6] Perhaps, in anticipation of such arguments, the statute makes clear that nothing in the resentencing procedure shall prohibit an inmate or parolee from seeking immediate relief through an Article 78 proceeding or a proceeding under CPL § 440.

Finally, in an attempt to prevent courts from finding themselves again in an entanglement of resentencing, the Penal Law has been amended to insure the transparency of PRS. Thus, a court is required specifically, when imposing a determinate sentence, to state the period of PRS.[7]

Identity Theft

A second new law enacted in the past legislative session will significantly ease the burden of New York prosecutors in prosecuting identity theft. Six years ago, the legislature criminalized identity theft in response to the increasingly pervasive conduct of those who falsely assume the identity of others. Identity theft may be the fastest growing crime in the United States and it has been estimated that banks lose hundreds of millions of dollars each year to this crime. Five years ago it was estimated that 750,000 cases of identity theft occur each year and, unfortunately, that number has continued to grow each year since.

The prosecution of identity theft presents unique problems for a prosecutor.[8] Frequently, identity theft is a multi-jurisdictional crime. The defendant may reside in one jurisdiction, steal a credit card from a victim in a second jurisdiction, and ship the proceeds of the credit card fraud to a third jurisdiction. When the legislature criminalized this conduct, it anticipated the complexity of its prosecution. It permitted a prosecution in any of the following counties: any county where the crime was committed, regardless of whether the defendant was actually present in such county; the county where a victim who suffered financial loss resided; or the county where the person whose PIN number was used resided.

However, the legislature apparently did not anticipate the difficulty prosecutors would have in presenting identity-theft cases before a grand jury. In presenting a case, it may be necessary for a prosecutor to offer the business records of the credit card company whose credit card was stolen and fraudulently used by the defendant. Frequently, the credit card company is located in another state and the prosecutor must produce a representative of that company before a grand jury in order to introduce those records. Obviously, the expense involved presents a problem for prosecuting authorities whose budgets have been curtailed in recent years.

Fortunately, the legislature has now been able to remedy this problem. It has added a new provision to CPL § 190.30, a section which contains evidentiary rules that apply uniquely to grand jury proceedings. This section has been utilized in the past to save the valuable time of individuals whose reports should speak for themselves before the grand jury. Thus, certified reports are routinely received by the grand jury in lieu of personal testimony by technicians in the field of medical, fingerprint, ballistic and chemical evidence. In addition, the section permits the introduction of sworn statements by victims of certain crimes. These written statements replace testimony that would merely recite cut-and-dried facts concerning the ownership or possessory interest in property, the value of such property and the defendant's lack of right to possession of such property.

The legislature has now added a new evidentiary rule in the grand jury in identity-theft cases that permits the introduction of business records provided by telephone companies and Internet providers as well as records of financial transactions provided by a bank, brokerage or insurance company.[9] The records must be accompanied by a notarized statement that establishes the essential evidentiary requirements for the introduction of any business record: the person providing the statement is a duly authorized custodian of the records, the records were made in the regular course of business and it was in the regular course of business to keep such records.

Finally, when a business record includes other material that would not be admissible in the Grand Jury, the prosecutor can choose between two options. He or she can redact the extraneous material or instruct the Grand Jury that it may not consider the material in connection with its deliberation of the evidence.

Mentally Ill Inmates

In a third significant piece of legislation, the legislature took a major step toward improving the treatment of inmates within our correctional system who suffer from some form of serious mental illness. It is estimated that there are approximately 8,000 inmates, or 12 percent of the state prison population, who are affected with this disability. In the past, studies have documented that these inmates, who are routinely subjected to solitary confinement, engage in acts of self-mutilation and commit suicide at an alarmingly high rate. In addition, many of these inmates are continuously shuttled between in-patient care in a psychiatric hospital and the general population of prison or even solitary confinement.

The new legislation is designed to prevent the Department of Correctional Services from continuing to place these inmates in Special Housing Units (SHU) for confinement.[10] Inmates who will benefit from this added protection are those who suffer from serious psychiatric disorders (schizophrenia, delusional disorder, bipolar disorder, etc.), inmates who are actively suicidal, inmates diagnosed with organic brain syndrome and inmates diagnosed with a severe personality disorder. Unless certain

"exceptional circumstances" exist, an inmate with mental illness will now be placed in a residential mental health treatment unit.

This unit will provide housing for inmates suffering from mental illness and will be operated jointly by the Department of Correctional Services and the Office of Mental Health. Inmates placed in this unit must be provided at least four hours a day (excluding weekends) of structured out-of-cell therapeutic programs or mental health treatment, in addition to exercise. Each unit will be limited to 38 beds.

The decision to transfer an inmate to a treatment unit must be made by a joint case management committee. This committee can deny transfer only where exceptional circumstances exist. Thus, the use of existing Special Housing Unit confinement will be limited to inmates with mental illness who are deemed a physical threat to themselves or others.

The new law will not apply to local correctional facilities.[11] In addition, the New York State Commission on Quality of Care for the Mentally Disabled will be given the responsibility of monitoring the quality of mental health care provided to inmates under the new law. The legislature has provided that the new treatment units must be in place no later than July 1, 2011.

Endnotes

1. *Garner v. NYS Dept. of Correctional Services*, 10 N.Y.3d 358 (2008).
2. Correction Law § 601-d, Penal Law 70.85; ch. 141, effective July 9, 2008.
3. Penal Law § 70.85; ch. 141, effective July 9, 2008.
4. *People v. Catu*, 4 N.Y.3d 242 (2005).
5. Pleadings drafted by Elon Harpaz and Kerry Elgarten of the Legal Aid Society.
6. *Id. See, e.g., United States v. Rico*, 902 F.2d 1065 (2d Cir. 1990); *United States v. Silvers*, 90 F.3d 95 (4th Cir. 1996).
7. Penal Law § 70.45; ch. 141, effective July 9, 2008.
8. *See* David Frey, *Prosecuting ID Theft Is Now Easier in New York*, N.Y.L.J., Aug. 12, 2008.
9. CPL § 190.30 (8); ch. 279, effective Aug. 6, 2008.
10. Correction Law § 137(6)(d)(e); ch. 1, effective no later than July 1, 2011.
11. Correction Law § 500-K; ch. 2.

Mr. Kamins is a New York City Criminal Court Judge. He is also the Co-Chair of the Chief Administrative Judge's Advisory Committee on Criminal Law and Procedure. Prior to his elevation to the Bench, Mr. Kamins was a long-time criminal law practitioner. He has authored numerous articles on criminal law and procedure, and has lectured widely. He is also the author of the learned treatise "New York Search and Seizure." He has also been a long-time contributor to our *Newsletter* and has, over the last several years, provided us with annual legislative updates.

A Tribute to Chief Judge Judith S. Kaye

By Spiros A. Tsimbinos

Chief Judge Judith S. Kaye retired from the New York Court of Appeals at the end of 2008. She has had a distinguished career on that Court, having served as an Associate Judge for 10 years and as Chief Judge for 15 years. She was first appointed to the Court and took her seat on that Bench in September of 1983. At the time, she was the first woman to serve on the New York Court of Appeals. On March 23, 1993, she was elevated to the position of Chief Judge. During her 25 years on the Court of Appeals, Judge Kaye has written hundreds of decisions and has had a major impact on the jurisprudence of that Court.

Judge Kaye was born in Monticello, New York, in 1938. She is a graduate of New York University School of Law and Barnard College. She was admitted to the New York State Bar in 1963, and prior to her elevation to the Court of Appeals, was a trial lawyer for 21 years with a leading New York City law firm. During her career, Judge Kaye has also authored numerous articles dealing with the legal process, constitutional law, women and the law and professional ethics.

During her 25 years of service on the Court of Appeals and in her role as Chief Judge of the Unified Court System, Judge Kaye has had an enormous impact on the New York State legal system. She has participated in thousands of decisions rendered by the Court of Appeals, and has instituted fundamental changes in the operation of the court system.

During the last few months of her service on the Court, Judge Kaye received many tributes and honors from various bar associations and the different segments of the legal system. In addition to her judicial duties, Judge Kaye has been active in various civic and legal organizations, and it is expected that her activity with respect to those institutions will continue. The Judge, during her tenure on the Court of Appeals, maintained a close working relationship with the New York State Bar Association, and she has served for many years as a member of the Board of Editors of the New York State Bar *Journal*. At last year's annual luncheon, Judge Kaye was honored by our Criminal Justice Section and was awarded the Vincent E. Doyle, Jr. award for outstanding jurist.

As part of this tribute, we annex a pictorial review of Judge Kaye's tenure on the New York Court of Appeals. The photos depict her presence on the Bench with her colleagues when she first arrived at the Court in 1983 and when she retired in December 2008.

We congratulate Chief Judge Kaye on her many years of distinguished service and her valuable contributions to the legal system, and we wish her all the best in her future endeavors.

Chief Judge Kaye, with Her Colleagues on the Bench, Over the Years

Judge Kaye with Her Colleagues in 1983, When She First Assumed the Bench

Judge Kaye with Her Colleagues When She Retired on December 31, 2008

New President Has Unique Opportunity to Affect Composition of U.S. Supreme Court

By Spiros A. Tsimbinos

During the recent Presidential election, one of the issues which received a great deal of attention was the possibility that the next President would make one or more appointments to the U.S. Supreme Court, thereby possibly affecting the outcome of future decisions on some of the major political and social issues of the day. The Court has basically been divided into two voting blocs, each having different judicial philosophies and differing views on major social and political issues. During the last several years, there have been many 5-4 decisions, reflecting the split in the Court, with Justice Anthony Kennedy often casting the critical swing vote. Now that the nation has elected Barack Obama as our new President, speculation continues as to when and how often the new President may have an opportunity to make additional appointments to the Court.

The U.S. Supreme Court consists of nine members, a Chief Justice and eight associate Justices. Once appointed by the President and confirmed by the Senate, the members of the U.S. Supreme Court have lifetime terms. The Justices often serve for many years on the Court. One of the critical factors regarding any future appointments is the age and years of service of the current members of the Court. Thus, listed below is a brief profile of the current Court, indicating the members' ages and years of service.

Chief Justice

John G. Roberts, Jr.
Age 53
Nominated by President George W. Bush
Assumed office on September 29, 2005
Has now served on the Court for three years

Associate Justices

John Paul Stevens
Age 88
Nominated by President Gerald Ford
Assumed office on December 19, 1975
On the Court 33 years

Antonin Scalia
Age 72
Nominated by President Ronald Reagan
Assumed office on September 26, 1986
On the Court for 22 years

Anthony M. Kennedy
Age 72
Nominated by President Ronald Reagan
Assumed office on February 18, 1988
On the Court for 20 years

David H. Souter
Age 69
Nominated by President George H.W. Bush
Assumed office on October 9, 1990
On the Court for 18 years

Clarence Thomas
Age 60
Nominated by President George H. W. Bush
Assumed office on October 23, 1991
On the Court for 17 years

Ruth Bader Ginsburg
Age 75
Nominated by President Bill Clinton
Assumed office on August 10, 1993
On the Court for 15 years

Stephen G. Breyer
Age 70
Nominated by President Bill Clinton
Assumed office on August 3, 1994
On the Court for 14 years

Samuel Alito, Jr.
Age 58
Nominated by President George W. Bush
Assumed office on January 31, 2006
On the Court for two years

Speculation has centered on Justice Ruth Bader Ginsburg and Justice John Paul Stevens as possible retirees from the Court in the near future. During the presidential campaign, Senator McCain stated that if elected, and he had the opportunity to make an appointment to the Supreme Court, he would appoint Justices in the mold of Chief Justice John Roberts and Justice Samuel Alito. He also pointed out that Senator Obama had voted against the confirmation of Justice Alito. Now President-elect Obama, through his comments in various interviews, his vote on Justice Alito, and his more liberal and judicial activist philosophy, is widely expected to select Justices who would not be in the Roberts and Alito mold but would instead mirror the philosophies of Justice Ruth Bader Ginsburg or Justice Stephen Breyer, both of whom were appointed by President Bill Clinton.

In fact, since Justice Ginsburg is the only female Justice on the Court and is one of the possible retirees, a great deal of pressure will be placed on President-elect Obama to select a woman to occupy a seat on the Supreme Court. Some speculation has even arisen that Senator Hillary Clinton would be at the top of his list for a possible appointment. Now that Senator Clinton's path to the White House has been blocked, it very may very well be that she would be interested in receiving a lifetime appointment to the Court, where she could exercise a long-term influence, somewhat in the nature of the position occupied by former Justice Sandra Day O'Connor.

As President, Barack Obama, in making any new appointments to the Supreme Court, will be able to maintain a strong judicial activist and more liberal-leaning segment of the Court. Since a solid bloc of at least four more conservative Justices will continue to serve on the Court, it appears that in the immediate future we will continue to have sharp divisions on the Court and many 5-4 decisions, with Justice Anthony Kennedy continuing to occupy the critical swing vote. For Supreme Court watchers, the next few years will be highly interesting and we await further developments.

Official Citations to Criminal Law Decisions from the New York Court of Appeals for the 2007–2008 Term

Covering Decisions from September 6, 2007 to September 10, 2008
(Listed in Chronological Order)

Case	Citation	Issue Involved
People v. Rivera	9 N.Y.3d 904 (2007)	Harmless Error
People v. Collier *People v. Salaam*	9 N.Y.3d 908 (2007) 9 N.Y.3d 911 (2007)	Post Release Supervision
People v. Taylor	9 N.Y.3d 129 (2007)	Death Penalty
People v. Hill	9 N.Y.3d 189 (2007)	Post Release Supervision
People v. Greene	9 N.Y.3d 277 (2007)	Doctor-Patient Privilege
People v. Jones	9 N.Y.3d 259 (2007)	Disorderly Conduct
People v. Olson	9 N.Y.3d 968 (2007)	Weight of the Evidence
People v. Porter	9 N.Y.3d 966 (2007)	Suppression of Confession
People v. Zimmerman	9 N.Y.3d 421 (2007)	Perjured Testimony
People v. Danielson	9 N.Y.3d 342 (2007)	Weight of Evidence Review
People v. Gajadhar	9 N.Y.3d 438 (2007)	11 Juror Verdict
People v. Cuadrado	9 N.Y.3d 362 (2007)	Failure to Preserve
People v. Allen	9 N.Y.3d 1014 (2008)	Search and Seizure
People v. Cumberbatch	10 N.Y.3d 728 (2008)	Post Release Supervision
People v. Rawlins *People v. Meekins*	10 N.Y.3d 136 (2008)	Crawford Issue
People v. Leon	10 N.Y.3d 122 (2008)	Right to Confrontation
People v. Urbaez	10 N.Y.3d 773 (2008)	Right to Jury Trial
People v. Taveras *People v. Jones*	10 N.Y.3d 227 (2008)	Dismissal of Fugitive Appeals
People v. White	10 N.Y.3d 286 (2008)	Miranda Warnings
People v. Sparber et al.	10 N.Y.3d 457 (2008)	Post Release Supervision
In re Garner	10 N.Y.3d 358 (2008)	
People v. Hall	10 N.Y.3d 303 (2008)	Body Search
People v. Windham	10 N.Y.3d 801 (2008)	Sex Offender Registration
People v. Mitchell	10 N.Y.3d 819 (2008)	Lack of Preservation
People v. Cabrera	10 N.Y.3d 370 (2008)	Criminally Negligent Homicide
People v. Umali	10 N.Y.3d 417 (2008)	Depravation of Counsel

People v. Luciano	10 N.Y.3d 499 (2008)	Peremptor Challenges
Santos Suarez v. Hon John Byrne	10 N.Y.3d 523 (2008)	Double Jeopardy
People v. Johnson	10 N.Y.3d 875 (2008)	Weight of Evidence Review
People v. Aziz	10 N.Y.3d 873 (2008)	Consecutive Sentences
People v. Finley *People v. Salters*	10 N.Y.3d 647 (2008)	Dangerous Contraband
People v. Malaussena	10 N.Y.3d 905 (2008)	Suppression of Confession
People v. Hunter	11 N.Y.3d 1 (2008)	Brady Violation
People v. Montilla	10 N.Y.3d 663 (2008)	Guilty Plea
People v. Barrett	11 N.Y.3d 31 (2008)	Vacating Guilty Plea
People v. Grasso	11 N.Y.3d (2008)	Attorney General's Criminal Law Jurisdiction
People v. Freycinet	11 N.Y.3d 38 (2008)	Right of Confrontation
People v. Estrella	10 N.Y.3d 945 (2008)	Search and Seizure
People v. Simmons	10 N.Y.3d 946 (2008)	Ineffective Assistance of Counsel

A Summary of the 2007 Annual Report of the Clerk of the New York Court of Appeals

By Spiros Tsimbinos

In late March 2008, Stuart M. Cohen, Clerk of the New York State Court of Appeals, issued the Annual Report for the year 2007, providing detailed information regarding the workings of the Court during the past year. It was reported that the Court in 2007 decided 185 appeals, 135 of which were civil and 50 criminal. The Court also handled 1,440 motions and 2,371 criminal leave applications. The Court thus dealt with nearly 4,000 matters. The number of appeals decided was down slightly from 2006, when the Court handled 189 appeals. The Court in 2007 also decided 12 fewer criminal appeals than it did in 2006.

Despite the fact that in a few cases the Court exhibited sharp differences of opinion and 4-3 splits, the Court overall had a high degree of consensus, with 155 appeals being decided without any dissenting opinions. With respect to applications for leave to appeal, the Court granted permission in 7% of the civil cases. On the criminal side, however, the number of criminal leave applications granted continues to drop, with only 36 granted from a total of 2,371 who applied, making for a leave-application rate of approximately 1½%. The number of criminal leave applications granted in 2007 dropped significantly from the 52 granted in 2006.

The Court of Appeals continues to maintain a prompt and efficient method of handling its caseload. The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release to the public of a decision in a normal-coursed appeal decided in 2007 was 229 days, or just under eight months.

It was also reported that the total cost for the operation of the New York Court Appeals and its ancillary agencies was slightly more than $15 million, representing approximately a 2.9% increase over the previous year's operating budget.

The annual report also contains a brief introduction from Chief Judge Judith S. Kaye, and Mr. Cohen, in his introduction, includes a brief review of Judge Kaye's many contributions to the Court and her impact on the New York legal system during her 25 years of service on the Court. The end of the report also contains a brief summary of some of the legal cases decided by the Court in the year 2007, broken down by subject matter.

The Annual Report issued by the Clerk of the Court of Appeals provides a wealth of information regarding the activity of the New York Court of Appeals. It provides valuable and interesting reading and we are grateful to the Clerk and the staff of the Court of Appeals for providing us with copies of the report each year for utilization in our *Newsletter*.

New York Court of Appeals Review

Discussed below are significant decisions in the field of criminal law issued by the New York Court of Appeals from September 4, 2008 to October 31, 2008. In order to provide Court of Appeals decisions to our readers as quickly as possible, we previously cited the *New York Law Journal* for all of the decisions of the 2007–2008 term, which were published in our last three issues. We are also now providing, as listed on page 12–13 of this issue, the official *New York Report* citations to cover the Court of Appeals decisions from September 2, 2007 to September 10, 2008.

Defendant's Right to Testify Before Grand Jury

***People v. Shemesh*, decided September 16, 2008 (N.Y.L.J. September 17, 2008, p. 26)**

In a unanimous decision, the New York Court of Appeals concluded that there was sufficient support in the record for a finding that the District Attorney failed to accord the defendant a reasonable time to exercise his right to appear as a witness before the grand jury. The Court of Appeals thus affirmed the order of the Appellate Division, which had remitted the matter back to the trial court for further proceedings.

Prosecutorial Misconduct

***Matter of DeFilippo v. Hon. Stephen J. Rooney, et al.*, decided September 16, 2008 (N.Y.L.J. September 17, 2008, p. 26)**

In a unanimous decision, the New York Court of Appeals affirmed the judgment of the Appellate Division which dismissed the petitioner's article 78 proceeding. The Court of Appeals concluded that the Appellate Division had correctly determined that the petitioner had failed to meet his burden of demonstrating that the alleged prosecutorial misconduct was conducted in a deliberate attempt to provoke him to move for a mistrial. The Court also found that the Appellate Division had properly concluded that the petitioner had failed to demonstrate a clear legal right to the drastic remedy of prohibition.

Fair Trial

***People v. Kozlowski* and *People v. Schwartz*, decided October 16, 2008 (N.Y.L.J., October 17, 2008, pp. 1 and 2 and 26)**

In a unanimous decision, the New York Court of Appeals upheld the convictions of two top Tyco executives who were accused of improperly defrauding their corporation. The defendants had argued that they were denied a fair trial because testimony was improperly allowed from an attorney who testified at their trial about his law firm's internal investigation and whether the defendants were authorized by company directors to receive the monies in question. The defendants had argued that the attorney's testimony had cast an impermissible "patina of officialdom" since the attorney had worked hand in hand with prosecutors in the internal investigation.

The Court of Appeals, however, rejected the defendant's argument, stating that the background testimony was not unduly prejudicial and that in general such testimony is admissible to provide a helpful context for the jury about a complex subject matter such as the internal investigation. The Court further noted that the testimony in question did not improperly convey to the jury an opinion regarding the defendant's guilt. The Court of Appeals affirmance means that the two defendants will have to continue serving their sentence of 8 1/3 to 25 years following their 2005 convictions for grand larceny and securities fraud.

CPL 160.50 Sealing Requirement

***Matter of City of Elmira v. Doe*, decided October 16, 2008 (N.Y.L.J., October 17, 2008, p. 29)**

In a unanimous decision, the New York Court of Appeals determined that certain sealed records in the case at bar, to wit, property tags, bags and logs showing the chain of custody of money surrendered by persons arrested and other records generated in the investigation of those arrests are not official records subject to a CPL § 160.50 sealing requirement. The appeal involved a special civil proceeding to vacate a sealing order. The Appellate Division order had determined that some of the sealed materials were not official records within the meaning of CPL § 160.50 (1) (c). The Court of Appeals agreed with the Appellate Division determination.

Sex Offender Registration Act

***People v. Jamie Smith*, decided October 16, 2008 (N.Y.L.J., October 17, 2008, p. 29)**

In a unanimous decision, the New York Court of Appeals reversed an Appellate Division order and remitted the matter back to the county court for a specification as to the reasons why the defendant was assessed with a rape risk factor of seven. The defendant had pleaded guilty to one count of rape in the third degree. The Court of Appeals found that the county court did not adequately set forth findings of fact and conclusions of law on whether it based its decision to assess 20 points against the defendant under the risk factor pertaining to the defendant's relationship with the victim. Further proceedings were therefore required.

Murder in the First Degree

***People v. Lucas*, decided October 21, 2008 (N.Y.L.J., October 22, 2008, p. 29)**

In a unanimous decision, the New York Court of Appeals affirmed both a conviction for kidnapping in the first degree and murder in the first degree. The defendant had argued that the indictment was legally insufficient because it "double counted" the death of the victim relying on it both as an element of first degree murder and as an element of first degree kidnapping. The defendant relied upon the Court of Appeals decision in 2003 of *People v. Cahill*, 2 NY 3d 14 (2003). The Court of Appeals rejected the defendant's argument and distinguished the Cahill case. The Court found that in the Cahill case there was only one criminal intent, while in the instant matter the defendant committed and the predicate crime that served as an aggravation rose from two distinct intents—the intent to kill the victim and the intent to abduct him. Thus, because there were two distinct criminal intents, the conviction for both crimes was deemed to be proper.

Specific Performance of a Plea Agreement

***People v. Jenkins*, decided October 23, 2008 (N.Y.L.J., October 28, 2008, pp. 6 and 26)**

In a 6-1 decision, the New York Court of Appeals held that the trial court was within its discretion to deny the defendant specific performance of a plea agreement since it concluded that the defendant had violated some of the terms of the original agreement. The defendant had been granted a plea agreement on the basis that he would successfully complete a drug treatment program. He subsequently argued that he had completed the program in question but had nonetheless been imprisoned for not complying with the requirements that were improperly added after his sentence. In particular, the sentencing court had directed that the defendant's live-in girlfriend attend family counseling sessions. This directive was not followed, and the Court of Appeals found that such a requirement was well within the discretion of the sentencing court. The failure to abide by this and other aspects of the plea deal authorized the sentencing court to deny specific performance of the plea agreement and to sentence the defendant to a period of incarceration. The Court of Appeals thus rejected the defendant's appeal. Judge Ciparick issued the opinion for the six-judge majority. Judge Pigott dissented and basically argued that under the circumstances herein the burden apparently was placed upon the defendant to show that he complied with all the various terms of the plea agreement, and that in fact the prosecutors should have been made to show why the issues in question were of such a substantial nature so as to warrant a finding that the original plea agreement had been violated.

New York Court of Appeals Gets New Chief Judge

Due to the retirement of Chief Judge Kaye, the Commission on Judicial Nomination forwarded to the Governor, in early December, a list of seven candidates for the position of Chief Judge of the Court of Appeals. TWO of the recommended nominees were sitting judges on the Court of Appeals who were seeking to move into the Chief Judge's slot. They are Judge Eugene F. Pigott, Jr., and Judge Theodore T. Jones, Jr. Judge Pigott was appointed in 2005 by Governor Pataki, and Judge Jones was appointed in 2007 by former Governor Spitzer. Judge Pigott is 61, and Judge Jones is 62. Thus, if one of the these two sitting Court of Appeals judges is elevated to the Chief Judge position, he will be able to serve only a portion of the full term, since under current law the Chief Judge must retire at the end of the year in which he or she turns 70.

In a surprising development, Judge Carmen Beauchamp Ciparick—who is the Court's Senior Associate Judge and who was widely viewed as a leading contender to replace Chief Judge Kaye—was not named in the group of seven. It was speculated that since she is currently 66 and would only be able to serve for four years, the nominating commission was reluctant to include her in the list submitted to the Governor.

Nonetheless, Judge Ciparick's absence from the list and the fact that all seven nominees were male drew some criticism of the Commission selections and even caused Governor Paterson to publicly express dissatisfaction with the fact that the group recommened to him was not more diverse.

In addition to the nominees who were already sitting on the Court of Appeals, the Commission also recommended two judges from the Appellate Division. These were Justice Jonathan Lippman, the presiding Justice of the Appellate Division, First Department, who has served for many years in various positions as a court administrator, and Justice Stephen W. Fisher of the Appellate Division, Second Department, who has been recommended on several previous occasions by the Judicial Commission. In another surprise, the other three nominees were George F. Carpinello, Evan A. Davis and Peter L. Zimroth, all practicing attorneys with leading law firms. The final selection of seven candidates was made from a list of candidates who were interviewed by the Commission on Judicial Nomination during November 2008.

After much speculation on who Governor Paterson would actually appoint to replace Chief Judge Kaye, the Governor indicated that he would make his final selection by January 15, 2009. Currently the most likely choices appear to be Judge Jones or Judge Lippman. We will provide a full detailed biography of the new Chief Judge in our next issue.

Recent United States Supreme Court Decisions Dealing with Criminal Law

The United States Supreme Court opened its 2008–2009 term on October 6, 2008. This year the Court will be operating under some new procedural rules which were adopted by Chief Judge Roberts at the end of the last term. The October and November sessions will hear three oral arguments per day, instead of the current two. Last year, the Court decided a glut of cases in the last month of the session, which placed a severe burden on the Court. The new rules are thus designed to frontload the system so that more cases are disposed of in the October and November terms, with a lesser volume to be handled as the Court approaches the end of its session.

Although last year the Court issued approximately 70 decisions, one of the lowest numbers in many years, based upon the current docketing of cases it is expected that during this term the Court will issue almost 100 decisions. Chief Judge Roberts appears to have anticipated the increase in the Court's productivity and has taken procedural steps to insure that the Court continues to efficiently and expeditiously handle its volume.

Since opening its session on October 6, the Court has dealt with several decisions dealing with the area of criminal law. On October 7, the Court heard oral argument in the case of *Herring v. United States*, which involved the issue of whether there will be any further limitations on the use of the exclusionary rule in search and seizure cases. The case involves an individual who was searched by police officers based upon a mistake that he was subject to an outstanding arrest warrant as a result of careless recordkeeping by another police department. Law enforcement officials had claimed that they believed they had a good-faith basis for the stop and subsequent search, and that suppression of the discovered evidence should not be subject to the exclusionary rule.

The Court's decision in this and other matters were being announced as we were approaching our printing deadline for this issue. Details regarding these matters will therefore be published in our next issue.

Cases of Interest in the Appellate Division

Discussed below are some interesting decisions from the various Appellate Divisions which were decided from August 4 to October 31, 2008.

People v. Quagliata (N.Y.L.J., August 4, 2008, pp. 1 and 25)

In a unanimous decision, the Appellate Division, Second Department, reversed an Order of a Nassau County Judge who had suppressed drugs and a gun which were discovered by police following an early morning traffic stop. The Appellate panel found that the evidence established that the defendant was approached and questioned in a non-confrontational manner and that the defendant consented to the search in question and cooperated with police by voluntarily opening the trunk to the vehicle. Under these circumstances, the Appellate Court determined that the search of the vehicle was consensual, and that the drugs and loaded firearm which were subsequently discovered should not have been suppressed.

People v. Quadrozzi (N.Y.L.J., August 22, 2008, pp. 1 and 5 and August 24, 2008, p. 18)

In a unanimous decision, the Appellate Division, Second Department, upheld the authority of the Brooklyn District Attorney's Office to prosecute an alleged polluter under the state's Environmental Conservation Law without first obtaining the permission of the state Attorney General or the Commissioner of the designated state agency. The New York State Environmental Conservation Law provides that "prosecutions" under this section shall be instituted by the Department or the Commissioner, and shall be conducted by the Attorney General in the name of the people of the State of New York. In the case at bar, Brooklyn D.A. Hynes had commenced the prosecution alleging dumping of industrial waste into Newton Creek in Brooklyn without first obtaining state authorization.

The charges against the defendant were initially dismissed by the Brooklyn Supreme Court, but the Appellate Division reversed, stating that district attorneys and the state Attorney General have concurrent jurisdiction over contested claims instituted under the Environment Conservation Law. The Appellate Division relied upon a catchall provision in Section 71-193 of the Environmental Control law which delegates "criminal enforcement authority and permits the District Attorney of the County in which the violation occurs to initiate or conduct prosecutions." Under these circumstances, the local District Attorney did not exceed his authority and the charges in question may proceed to trial.

The decision in question appears to be one of first impression and the issue may ultimately have to be decided by the New York Court of Appeals, since defense counsel has already indicated that he will seek leave to appeal to that Court.

People v. Arafet (N.Y.L.J., August 26, 2008, pp. 1 and 2 and August 28, 2008, p. 18)

In a 3-2 decision, the Appellate Division, Third Department, upheld the conviction for first degree grand larceny and first degree criminal possession of stolen property for a defendant who had hijacked a trailer containing more than $1 million in merchandise. In affirming the defendant's conviction, the three-judge majority rejected the defendant's claim that he had been denied a fair trial because the prosecution had been allowed to use as part of its case, in chief, proof of uncharged crimes.

In the case at bar, the prosecution submitted evidence involving uncharged crimes in which the defendant was alleged to have used the same *modus operandi* as the theft which was the subject of the trial. The three-judge majority concluded that

> while the hijacking of a large tractor trailer may be considered by some a "common occurrence" . . . the theft of such a large vehicle and the disposition of its cargo is a complicated criminal undertaking. Mr. Arafet's prior participation in such extraordinary criminal behavior under the circumstances presented is relevant to determine whether he was in fact the perpetrator of the hijacking at issue.

Justice Kavanaugh issued the majority opinion, which was joined in by Justices Kane and Malone. Justices Rose and Mercore dissented, arguing that the alleged *modus operandi* depicted by the prior uncharged crimes was not so unique as to render the evidence of the prior crimes probative of the fact that he had committed the theft for which the defendant was on trial. The dissenters further argued that the prejudicial impact outweighed any probative value and that the defendant was denied a fair trial. Based upon the many close questions which arise from the use of prior uncharged crimes, and the sharp division in the Appellate panel in the case at bar, it appears certain that this matter will eventually reach and be decided by the New York Court of Appeals.

People v. Chapman (N.Y.L.J., August 25, 2008, pp. 1 and 6, and August 26, 2008, p. 18)

In a 3-2 decision, the Appellate Division, Third Department, held that there was legally insufficient evidence to establish a defendant's conviction for rape in the first degree. The Court concluded that the victim's testimony failed to establish that the defendant used physical force or threat of imminent death or injury to force her to comply with his sexual demands. The Court also found that defense counsel's representation of the defendant was totally inadequate in that he failed to employ a legitimate trial strategy and the entire trial was completed in less than 3½ hours, with very little, if any, cross-examination of prosecution witnesses taking place. The matter was thus remanded to the trial court for a new trial. The three-judge majority consisted of Justices Cordona, Malone and Kavanagh. The majority issued its ruling in the interest of justice since defense counsel had not adequately preserved the issues for appeal.

The dissenting justices concluded that the record established that the teenage victim was in an intoxicated condition and had made verbal protests before the acts had been committed. They therefore concluded that the evidence of physical force was sufficient to establish a rape conviction in the first degree. The dissenters also rejected any claim that defense counsel had rendered ineffective assistance of counsel, and that the defendant was denied a fair trial. The dissenters consisted of Justices Carpinello and Spain. Based upon the sharp 3-2 split, it appears that an appeal to the New York Court of Appeals will be sought, and District Attorney Kortright, of Washington County, has already indicated his intention to seek leave to appeal.

People v. Simms (N.Y.L.J., September 2, 2008, pp. 1 and 6)

In a 3-1 decision, the Appellate Division, Second Department, reversed a robbery conviction after concluding that a juror's answer during the post-verdict polling undercut her assertion that she agreed with the guilty verdict. In the case at bar, the trial court had polled the jury after it had announced its verdict pursuant to the defense's request. When juror No. 10 was reached, she stated to the Court, "Well it is my verdict, although I feel like I was pressured to make that decision." When asked to clarify her statement, the juror further remarked that everyone was yelling at her and that after eight hours she had to give in.

Notwithstanding the juror's comments, the trial judge accepted the verdict and denied the defendant's motion for a mistrial. In ordering a reversal, the three-judge majority concluded that since the juror's response during polling engendered doubts about the verdict, the trial court had a responsibility to make a further inquiry and to resolve the uncertainties raised by the juror's remarks. The three-judge majority was comprised of Justices Spolzino, Ritter and Carni. Justice Santucci dissented, commenting that although the juror explained that she felt some pressure within the jury room, it did not provide a sufficient basis to reject the verdict.

People v. Kadarko (N.Y.L.J., October 10, 2008, pp. 1 and 6)

In a 4-1 decision, the Appellate Division, First Department, reversed a defendant's conviction because a trial judge failed to read in open court a note that had been received from the jury stating that the jurors remain divided. The Appellate Division found that the note should have been read in open court before asking the jury to continue deliberations and that this failure constituted reversible error. The Court concluded that meaningful notice was not provided to counsel nor were they granted an opportunity to recommend an appropriate response. Judge McGuire issued a dissenting opinion.

People v. Taylor (N.Y.L.J., October 10, 2008, pp. 1 and 2, and October 13, 2008, p. 18)

In a unanimous decision, the Appellate Division, Second Department, reversed a defendant's conviction and dismissed the 32-count indictment. The matter involved a Long Island personal injury attorney who had been accused of using steerers to sign up accident victims. The defendant had been tried non-jury. The Appellate Division found that there was insufficient evidence to establish the defendant's guilt. The Court concluded that the People failed to prove either the fraud or the false instrument convictions and that there was no proof that the settlement payments received were obtained by false or fraudulent pretenses.

People v. Harris (N.Y.L.J., October 20, 2008, pp. 1 and 4)

In a unanimous decision, the Appellate Division, Third Department, ordered a new trial for a defendant who had been found guilty of second degree murder. The Appellate Division ruling affirmed a post-conviction ruling by a Broome County judge. The defendant had been accused of killing his wife, but a witness had come forward at sentencing stating he had seen the victim with another man just hours after the People claimed that she had been killed by the defendant husband. The testimony of the witness was found to be credible and it was determined that it could have led to a different verdict if the jury had heard the account. The Appellate Division thus found that a new trial was warranted.

For Your Information

New Judges Appointed to Federal District Courts

In late July, the United States Senate confirmed two new federal judges for the District Courts in New York. The new appointees, who have recently taken their seats on the Federal Bench, are Kiyo A. Matsumoto, who had previously served as a magistrate within the Eastern District, and Paul G. Gardephe, who had been a partner at Patterson Belknap Webb & Tyler LLP. Judge Matsumoto will be sitting in the Eastern District of New York, while Judge Gardephe will be serving in the Southern District.

An additional vacancy still exists for the Southern District of New York, and another seat is available for the Northern District in upstate New York. Cathy Seibel, from the U.S. Attorney's Office, has been nominated for the open seat on the Southern District, and Glenn T. Suddaby, a U.S. Attorney, is expected to be appointed to the Northern District Court. The Southern District currently has a roster of 28 judicial positions, and the Eastern District has a total of 15 judges who are on active status. With the two confirmations that have already taken place, and the two new appointments that are expected shortly, both the Eastern and Southern Districts will be at full strength with respect to the number of active judges.

In late July, an additional vacancy also became available on the U.S. Court of Appeals for the Second Circuit. Judge Chester J. Straub announced that he was accepting senior status, thereby creating an additional vacancy on that Court. Many vacancies have existed in the past two years on the Federal Bench, and it is good to know that these Courts are finally reaching their full complement of judges. We congratulate the new appointees and will keep our members advised of future appointments.

U.S. Life Expectancy Lags Behind Other Industrialized Nations

The United States Center for Disease Control and Prevention recently reported that as a result of major advances in health care and disease control, the life expectancy in the United States has reached 78 years, which is a record high since statistics have been gathered. Despite this fact, the U.S. still lags behind other industrialized nations and its life expectancy rate is 29 among United Nations members. Several other industrialized nations, such as Japan, Sweden, Australia and Switzerland, have life expectancy rates in the low 80s, which means that the United States lags behind most Western nations by two to three years.

As in the past, the study also indicates that women have a higher life expectancy than men, although the disparity has shrunk to approximately five years, rather than eight years, which was the situation 15 years ago. The life expectancy rate has also increased for minority groups in the United States, and the disparity between life expectancy for whites and blacks has substantially narrowed.

The report identifies heart disease and cancer as still being the leading killers in the United States, with heart disease accounting for 629,000 deaths in 2006, while cancer was the cause of 560,000 deaths. Although these two illnesses continue to be the leading causes of death in the United States, the figures have declined somewhat over the last few years, thereby contributing to an increase in the life expectancy rate.

Women Gain in Governmental Positions

In the last few years, the number of women serving in the Senate and House of Representatives and as Governors in various states has dramatically increased. Now a new study clearly indicates that women have also made great strides in obtaining important leadership positions in state governments throughout the country. The study, which was undertaken by the Center for Women in Government at the University at Albany, reported that of all the Governor-appointed posts in the 50 states in the year 2007, 35% were held by women, an increase of 7% from a decade earlier. The report concluded that in 36 of the 50 states, women are doing better than they were in 1997. In many states, the number of women in senior policy positions is roughly even with their percentage of the general population.

Recent Study Concludes That Corporal Punishment Still Exists in Many U.S. Schools

A recent study conducted by Human Rights Watch and the American Civil Liberties Union concluded that although several states have outlawed any form of corporal punishment by teachers in schools, some states continue to authorize various forms of paddling and other means of corporal punishment as a disciplinary measure. The report found that the greatest use of corporal punishment is still authorized in the Southern states, particularly in Texas, Mississippi, Alabama and Arkansas. The study reported that corporal punishment is still legal in 21 states in the United States. It also determined that during the years 2006–2007, more than 1,000 students received corporal punishment in each of the Southern states which made up the confederacy. Corporal punishment is also authorized, although utilized to a lesser extent, in some

of the Midwestern and Western states. It has been totally banned in most of the Northeast, as well as in California and states along the West Coast. Overall, the study concluded that during the years 2006 through 2007, some 220,000 students were paddled at least once during the school year.

For those of us in New York, where corporal punishment is prohibited, and for New York Criminal Law attorneys who may have had occasion to represent teachers accused of improperly using physical force against a student, it is interesting to note how different parts of the country treat this issue in a different manner.

U.S. Population Becoming Older and More Diverse

A recent report issued by the U.S. Census Bureau indicates that the U.S. population is becoming older, and in many areas there has been a dramatic increase in the number of minority groups and new immigrants. The report stated that as of July 1, 2007, the national median age, whereby half are older and half are younger, rose to 37.9 years, up 1.4 years since the year 2000. The increase in our older population is largely being fueled by the baby boomer population, who are now quickly reaching senior status. As a result of our aging population, the number of workers 55 and older is rapidly increasing in our nation. Recently the Bureau of Labor Statistics estimated that by 2012, nearly 20% of the total U.S. workforce will be age 55 or older, an increase of about 12% since 1992.

The report also stated that the white population in the United States has declined in more than half of the counties since the year 2000. Thus there are now many communities where minorities are in fact in the majority. Minorities in the year 2007 made up more than half the population in 302 of the nation's counties. The study also reported large increases in the Hispanic and Asian populations in the United States. Arizona, Texas and California were listed as the three states that have gained the most minorities since the year 2000. The growing Hispanic influence is clearly demonstrated in the report by the fact that in more than a quarter of the 1,800 counties that gained in population from the year 2000 to 2007, Hispanics were the group that provided at least half of the overall gains.

The Census report specifically concluded that the non-Hispanic white population will drop below 50% of the population before the year 2042. This will occur, according to the report, because non-Hispanic whites, who currently make up two-thirds of the population, are getting older, dying off faster, and are producing fewer children than other groups. It was further projected that within 40 years, the white population will number approximately 203 million in a nation whose population will be approximately 440 million.

The black population, which has increased rapidly in the past, is projected to increase only by one percentage point by the year 2050, comprising 15% of the population, only a slight increase from the 14% which currently exists. The aging population will see a dramatic increase, going from 5% at the current time to 9% of the population, or 51 million, by the year 2050.

The population increases and changes have a significant impact on economic and social policies in our nation and on the legal system in general. Attorneys should be aware of these changes as they occur.

Traffic Deaths Decline

The U.S. Department of Transportation recently issued a report on traffic fatalities in the United States for the year 2007. The report concluded that happily, traffic deaths in the United States declined to their lowest level since 1994. In 2007, 41,059 people were killed in traffic accidents, a decline of more than 1,600 from 2006, representing an approximately 4% reduction. The report attributed the decline to safer vehicles and more aggressive law enforcement. The states which reported the largest percentage decline in traffic fatalities were California, South Dakota and Vermont.

Although automobile deaths declined, the report did find that motorcycle deaths continued to rise, accounting for more than 5,000 deaths in 2007, for an increase of nearly 7.5%. The Department attributed the increase in motorcycle fatalities to the fact that the gas crisis is forcing more people to use motorcycles or scooters as alternative means of transportation.

Legal Services to Indigent Criminal Defendants

Although the push for a state agency for criminal defense services has been put on hold, a lawsuit that was recently instituted by various legal groups challenging the county-based system of providing counsel to indigent defendants has been allowed to proceed. The lawsuit in question involves 20 plaintiffs from five different counties and was initiated by the New York Civil Liberties Union. The lawsuit claims that the present system violates the defendant's conditional right to legal representation. The lawsuit alleges that in many counties the number of assigned counsel is inadequate, and that often defendants are appearing in court without any representation. The lawsuit also advocates the creation of an independent statewide commission to set guidelines and standards for the operation of indigent legal services throughout the state.

The lawsuit, which was pending in Albany County Supreme Court, survived a motion brought by the state to dismiss. Justice Eugene P. Devine concluded that the various plaintiffs had standing to commence the matter, and that the matter should proceed within the legal system.

The New York Civil Liberties Union indicated that it was pleased with Justice Devine's ruling and indicated that it hoped that the state would move forward to repair and improve what it called a broken indigent defense system.

Various leaders in the state Assembly and several legal organizations have continued to express support for the creation of a state-funded defense services agency and have vowed to continue to press for its creation. We will continue to monitor any progress regarding the situation.

The United States Is Not the Richest Nation

A recent study conducted by the Center for American Progress, a Washington, D.C., think tank, has revealed that despite what may be the common expectation, people in the United States are not the richest in the world. Using the standard of the median household income, the report found that several nations have a higher income than families in the United States. The median household income in the United States for the year 2007 was just over $50,000 per year. Switzerland has a higher median income of $62,000 per year, and both Luxemburg and Norway have median household incomes which are higher than those in the United States. The report also focused on the number of millionaires in the various countries, and although the United States is still in the forefront of this group, the number of millionaires in 2007 in the nations of China, Russia and India grew at a faster rate than in the United States, evidently reflecting the rapid industrial growth of those nations during the last few years. On a positive note, the study found that people from other countries still view the United States as the land of opportunity and wish to come here in great numbers.

First Military Tribunal Decision Leads to Interesting Results

In early August, a six-member military tribunal issued its decision and sentence with respect to Salim Hamdan, who had served as a former driver for Osama bin Laden. Hamdan was convicted of providing material support for terrorists operations by virtue of being bin Laden's driver and bodyguard. He was acquitted, however, of conspiracy with respect to the bombings of U.S. embassies and the September 11 attacks. Based upon his conviction, the defendant was sentenced to a term of 66 months. Since he has already served most of this time, it is expected that he will be released and deported to Yemen by January 2009.

Prior to the defendant's conviction, Hamdan's case has been the subject of repeated litigation and rulings from the U.S. Supreme Court, which eventually lead to the Court's decision regarding the Guantanamo detainees in June 2008. The eventual outcome of the Hamdan case was somewhat a surprise, with government prosecutors obtaining much less than they expected, and civil libertarians having to admit that a military trial would not necessarily result in a severe conviction or a harsh sentence. The future of military tribunals with respect to the remaining Guantanamo detainees in still somewhat unclear, based upon the possibility of review by the federal courts. We will continue to monitor the situation.

Judicial Pay Increases and Raises for Court Personnel Frozen

Because of the sharp economic downturn in the State of New York and the resulting drop in revenues, the prospects for any judicial pay increases have been put on hold. Further, because the contracts of certain judicial employees of the Office of Court Administration require that salaries be tied to judicial increases, the salaries of non-judicial court workers making $115,000 or more are similarly frozen until the Governor and Legislature act on the judicial increases. When and if judicial pay raises are granted, retroactive payments will be made to cover the period in which salaries were frozen.

The lawsuit commenced by several judges against the Governor and the Legislature regarding judicial pay increases was argued in early September before the Appellate Division, Third Department. This case was the first of three pay-raise suits that are now in the court system. The main case, which was commenced by the Office of Court Administration, recently received a favorable decision from the trial court, but an appeal to the Appellate courts is pending. The OCA case is known as *Kaye vs. Silver*, which involves the appeal of a ruling made by Supreme Court Justice Edward H. Lehner. The case heard in the Appellate Division, Third Department, is *Maron vs. Silver,* and that Court recently dismissed the Judges' lawsuit. A third case involving a suit commenced by several family court judges is *Larabee vs. Governor*. This case is pending in the Appellate Division, First Department.

Despite Current Economic Reports, 2007 Census Figures Indicate Slight Improvement in U.S. Quality of Life

Recent figures released by the U.S. Census Bureau indicate that in the year 2007, wages for working Americans increased, the poverty rate was basically unchanged and the number of people without health insurance decreased. It was reported that the median household income in 2007 was $50,233, a 1.3% increase from 2006. The number of persons below the poverty level remains stationary, at approximately 12.5% of the population. The number of persons without health insurance fell, however, by more than 1 million, from 47 million in 2006 to 45.7 million in 2007. This was the first annual decline in the uninsured population in the last eight years.

In a breakdown by gender, the study reported that earnings by men increased by 4% during the last year,

while working women saw an increase of 5%. By ethnic breakdown, it was also reported that the highest income group was Asiatic households, which had a median income of $60,103. It was also reported that the section of the country with the largest poverty rate was still the South, with a rate of 14.2%. The lowest poverty rate was in the Midwest, with a poverty rate of 11%. Due to the economic decline during the year 2008, it is uncertain whether the gains reported by the 2007 Census report will continue in the future or whether a reversal will develop.

As Deportation Increases, Criminal Law Attorneys Should Consider Deportation Consequences When Handling Criminal Cases

Because of the controversy involving illegal immigration in the U.S., the number of deportations has increased significantly since 2004. A recent report indicated that 31,000 fast-track deportations occurred in 2007, up from 5,500 in 2004. Under the fast-track procedure, illegal immigrants are urged to sign an order voluntarily agreeing to their deportation without the necessity of a hearing and as a means of avoiding possible long-term detention. In many instances, criminal lawyers are faced with the situation of a possible deportation of a client who has negotiated a guilty plea or has been found guilty after trial. Even though our criminal procedure law contains a provision requiring a defendant to be informed of the possible consequences of a plea on his deportation status, the same provision specifies that any failure to do so does not affect the validity of the plea. Many times the unexpected results of almost an automatic deportation are viewed as being more onerous than the conviction, and criminal lawyers are placed in a difficult position when claims are made by the defendant that he did not know the consequences of his plea. In light of the fast-track deportation procedure, and the greater emphasis today on deporting illegal aliens upon conviction of a crime, criminal lawyers should be aware that they have an additional responsibility to consider the deportation option in their overall representation of a criminal defendant.

Restoration of Voting Rights for Convicted Felony Offenders

In the last several years, there has been a movement among several states to restore full voting rights to felony defendants who have completed their sentences and terms of probation. Currently, 20 states restore full voting rights to defendants who have completed their sentences. Two states, Maine and Vermont, allow prisoners, parolees and probationers to vote. Thirteen states allow parolees and probationers to vote, and eight states reinstate probationers' voting rights. In Kentucky and Virginia, all felons are permanently disenfranchised from voting. Recently, Florida adopted a limited measure to restore voting rights to some defendants convicted of felonies. A recent report issued by that state indicated that at the present time, approximately 9,000 former convicts have been restored to the voter lists from a potential pool of 112,000 former convicts who are eligible to apply. With respect to the State of New York, persons who are on probation may have their voting rights restored upon proper application.

New York City Reports Racial and Ethnic Statistics Regarding Victims of Crimes

A recent report in the *New York Daily News,* based upon New York City Police Department statistics, reveals that blacks and Hispanics are more likely to be victims of crime than whites, and that black and Hispanic victims tend to be attacked by black and Hispanic criminals. Black New Yorkers in 2007 were 13 times more likely to be murdered than whites. Of 244 murders committed in the City of New York between January 1 and June 30, 2008, 64.8% of the victims were black, 23.4 were Hispanic, 7.4% were white, and 4.5% were Asian. With respect to defendants arrested for having committed murder, black defendants accounted for 64.9% of the arrests, Hispanics 27.2%, whites 7.3 percent, and Asians less than 1%. The overall conclusion of the report was that black and Hispanic minority groups in the City of New York accounted for a majority of the crime victims, as well as a majority of the crime suspects. According to the 2006 census, the racial makeup of New York City in 2006 was 34.8% white, 27.6% Hispanic, and 23.7% black.

New York State Bar Association Announces Several New Criminal Law Publications

The New York State Bar Association recently announced its product line of several new criminal law publications which involve either totally new topics or updated versions of standard texts. These publications can be ordered through the Registrar's Office of the New York State Bar Association at One Elk Street, Albany NY 12207, or by calling 1/800-582-2452, or 1/518-463-3724. These publications are listed and summarized below.

Criminal and Civil Contempt

Author: Lawrence N. Gray, Esq.

This book explores various aspects of criminal and civil contempt under New York's Judiciary and Penal Laws, with substantial focus on contempt arising out of grand jury and trial proceedings.

2006 | 278 pp. | PN: 4062 | Non-Member Price $55/ Member Price $40

Criminal Law and Practice General Practice Monograph

Authors: Lawrence N. Gray, Esq., Honorable Leslie Crocker Snyder, Honorable Alex M. Calabrese

Written by experienced prosecutors, criminal defense attorneys and judges, this book provides an excellent text of first reference for general practitioners.

2008–2009 | 188 pp. | PN: 40648 | Non-Member Price $80/Member Price $72

***Evidentiary Privileges (Grand Jury, Criminal and Civil Trials)*, Fourth Edition**
Author: Lawrence N. Gray, Esq.
A valuable text of first reference for any attorney whose clients are called to testify, this book covers the evidentiary, constitutional and purported privileges that may be asserted at the grand jury and at trial.
2003 | 326 pp. | PN: 40993 | Non-Member Price $55 / Member Price $45

***New York Criminal Practice*, Second Edition**
Editor-in-Chief: Lawrence N. Gray, Esq.
Reviewed and revised by experienced attorneys and judges, this book covers all aspects of the criminal case, including numerous practice tips, sample lines of questioning and advice on plea bargaining and jury selection.
1998; supp. 2007 | 1,234 pp. | PN: 4146 | Non-Member Price: $140 / Member Price $120

***The Practice of Criminal Law Under the CPLR and Related Civil Procedure Statutes*, Fourth Edition**
Author: Honorable Edward M. Davidowitz
The publication pulls together in an orderly, logical way the rules and provisions of law concerning jurisdiction, evidence, motion practice, contempt proceedings and article 78 and *habeas corpus* applications.
2006 | 196 pp. | PN: 40696 | Non-Member Price $50 / Member Price $43

Also of value to criminal law practitioners are two handbooks that deal with the area of appeals:

***Practitioner's Handbook for Appeals to the New York Court of Appeals*, Third Edition**
Authors: Honorable Alan D. Scheinkman; Professor David D. Siegel
The Handbook has behind it the reputable authors Alan D. Scheinkman and Professor David D. Siegel, whose combined knowledge of court proceedings guides the user from start to finish with precise details. The third edition completely updates the steps for preparing appeals to the Court of Appeals.
2007 | 230 pp. | PN: 4017 | Non-Member Price $57 / Member Price $48

***Practitioner's Handbook for Appeals to the Appellate Divisions of the State of New York*, Second Edition**
Authors: Honorable Alan D. Scheinkman; Professor David D. Siegel
This Handbook covers all aspects of taking a civil or criminal appeal to the New York State Appellate Divisions. It addresses the statutory changes, rule revisions and changes in practice that have occurred since publication of the landmark first edition.
2005 | 172 pp. | PN: 4014 | Non-Member Price $57 / Member Price $48

Judge Robert S. Smith Emerges as Dissenting Judge in New York Court of Appeals

A recent review of the activity from the New York Court of Appeals during the last few years, which was conducted by Professor Vincent M. Bonventre of Albany Law School, reveals that during the last several years the number of dissenting opinions emanating from the New York Court of Appeals has increased, and that the main dissenter seems to be Judge Robert S. Smith. In the Court session from September 2007 to July 2008, there were 29 dissenting opinions. For the past five sessions of the Court, there have been a total of 162 dissenting opinions. This compares with just 69 dissenting opinions in the five previous terms, from 1998 to 2003. The quest for unanimity, which had often been sought by Chief Judge Kaye, has broken down somewhat in the last few years. Judge Smith has written 37 dissents since his appointment to the Court in 2003, and the number of his dissenting opinions far exceeds that of the other members of the Court. Since 2003, Chief Judge Kaye issued only nine dissenting opinions. Judges Ciparick and Pigott have dissented on 12 occasions, and Judge Graffeo has dissented 12 times. The judge closest to Judge Smith in dissents is Judge Susan Read, who has dissented 28 times. In commenting upon his findings, Professor Bonventre concluded that when Judges Smith and Read joined the Court, they tended to be more independent in their thinking and not bound by any tradition fostering unanimity. A more detailed analysis of Professor Bonventre's findings can be found in the *New York Law Journal* article which appeared on page 1 of the August 25, 2008 issue.

Appellate Division, First Department, Reports Dramatic Cut in Court Backlog

In a *New York Law Journal* article dated September 25, 2008, it was reported that a statistical review of the productivity of the Appellate Division, First Department, for the period September 1, 2007 through June 30, 2008 revealed a dramatic decline in the number of days that it took the Appellate Division, First Department, to decide a calendar matter. According to the report, the average decision time was 30 days for 2,778 cases calendared and decided during the period which ended on June 30. This was less than half of the 65 days which were involved some two years ago. With respect to a breakdown of the various types of cases, it was reported that the average number of days to decide a calendared criminal matter in the 2007–2008 period was 25 days, down from 40 days during the 2005–2006 term. With respect to civil cases, the average number of days in the 2007–2008 period was 34, a decline from 79 in the 2005–2006 period.

Some credit for the improvement in the First Department's statistics was attributed to Presiding Justice Jonathan Lippman, who assumed his position in May 2007. Justice Lippman initiated new internal procedures, added additional court attorneys, and utilized his many

years of experience as a court administrator to improve the efficiency of the Court. The First Department has also seen an increase in the number of judges assigned to that Court. The current number is 18, two more than the 16 that existed in 2006.

Decline in Illegal Immigration

A new report has shed some additional light on the current controversy involving illegal immigration into the United States. The report issued by the PEW Hispanic Center based in Washington, D.C., reported that the number of illegal immigrants entering the U.S. has declined significantly in the past few years. The report estimated that as far as could be determined, there were 11.9 million illegal immigrants in the U.S. as of the end of March 2008. This was a decline of 500,000 from the estimate the Center reported a year ago.

The study attributed the current economic downturn and stronger border patrol measures as the primary reasons for the decline in illegal immigration. The study found that from the years 2000 to 2004, approximately 800,000 illegal immigrants a year entered the U.S. Since that time, the number has dropped to about 500,000 a year. The problem of illegal immigration continues to be a difficult one, and whether any comprehensive solution will be proposed in the coming years is difficult to predict. We await any further plans and proposals from our new President and new Congress and will report any new developments to our readers.

New York City Prosecutors Incur Additional Budget Cuts

We reported in our last issue that because of the worsening economic situation that has impacted governmental budgets, the final budget for New York city prosecutors, which was adopted at the end of July, reduced the total budget allocated to city prosecutors for the year 2009 by 2.7%. Thus, the total 2009 budget for all prosecutors in the City of New York was set at $249.9 million, down from $256.8 million for the year 2008.

In late September, Mayor Michael R. Bloomberg ordered a further cut in the budgets of various city agencies. Thus, an additional cut of $6.3 million was ordered, amounting to an additional 2.5% reduction. At present, the amount set for all of the prosecutors' offices in the City of New York for the year 2009 has been set at $243.6 million. Various prosecutors in the city, although expressing concerns about the budget cuts, appeared to recognize the financial crisis being faced by the city and basically indicated that they would do their best to tighten up wherever possible without sacrificing the efficiency of their offices and the safety of the citizens in the various counties.

About Our Section and Members

Barry Kamins Appointed Judge of New York City Criminal Court

We were pleased to learn that Barry Kamins, a long-time and active member of our Executive Committee, was recently appointed by Mayor Bloomberg to the New York City Criminal Court. Barry recently served a two-year term as President of the Bar Association of the City of New York. He has also served as a Past President of the Brooklyn Bar Association and was the head of its Judiciary Committee. Barry is a graduate of Rutgers Law School, and is a former prosecutor from the Brooklyn District Attorney's Office. Prior to his elevation to the Bench, he was in the private practice of law with the firm of Flamhaft Levy Kamins Hirsch & Rendeiro LLP, which he joined in 1973.

Barry is well known to the legal profession and to criminal law practitioners, being the author of a well-respected treatise on search and seizure and being a regular lecturer and writer of legal articles for many years. He is a regular contributor to our *Newsletter* and provides periodic updates on new legislation for the benefit of our readers. Even though he is busy with his new assignment, Barry has continued to provide his legislative updates and is the author of our first feature article in this issue. Barry has also served as a member of the Board of Editors of the *New York Law Journal* and a Vice-President of the New York State Bar Association. Barry Kamins is highly regarded and well-respected by members of the Bench and Bar, and we congratulate him on his elevation to the Bench. Mayor Bloomberg could not have made a better appointment.

Executive Committee Discusses Electronic Recording of Custodial Interviews

At its September 12, 2008 meeting, the Executive Committee had as its guest Schenectady County District Attorney Robert F. Carney, who discussed his office's experience with the electronic recording of custodial interviews. The District Attorney basically reported that in the two years of its operation, the program has worked very well and that all aspects of the law enforcement community, including the police departments, appear satisfied with its results. In his county, videotaping is made of all felony cases. One copy is then furnished to the D.A.'s office, and one copy is given to the defense. The stated policy of the program is defined as intended to enhance the investigative process and to assist in the prosecution of criminal cases. It is also felt that the electronic recording of custodial interviews will assist in defending against civil litigation and allegations of officer misconduct, as well as protect a person's right to counsel, the right against self- incrimination, and ultimately the right to a fair trial.

Also participating in the discussion via speakerphone was Broome County District Attorney Gerald F. Mollen. D.A. Mollen also utilizes a similar electronic-recording program in his county and concurred in the opinion that the program was useful and valuable. Both District Attorneys emphasized that the size of their counties, approximately 200,000 in population, and the limited number of felony cases made it feasible for the program to operate efficiently. During the ensuing discussion, several other speakers expressed doubt and concern as to whether a full-scale electronic recording program could practically and effectively operate in large metropolitan areas such as New York City. The two programs in Broome and Schenectady counties have basically been operating in the last several years as pilot programs supported by grants from the legislature and the New York State Bar Association. The full implementation of an electronic-recording program is still highly controversial and is still being argued and discussed. Our Criminal Justice Section has been actively involved in this issue and we will continue to report on any future developments. We thank District Attorneys Carney and Mollen for their participation at our September meeting and for providing us with valuable information regarding their individual experiences with the electronic-recording program.

Winter Annual Meeting

This year's Annual Meeting, Awards Luncheon and CLE Program will be held at the New York Marriott Marquis on Thursday, January 29, 2009. Details regarding the various programs have been mailed under separate cover. Our members are urged to attend and participate in the various programs.

New Members

We are pleased that during the last several months, many new members have joined the Criminal Justice Section. We welcome these new members and list their names on the following page.

The Criminal Justice Section Welcomes New Members

We are happy to report that during the last several months we have continued to have many new members join the Criminal Justice Section. We welcome these members and hope that they will fully participate in and enjoy our many activities. The names of the new members are listed below:

Luz Camelia Alava
Rita Altman
Ishakia Myequality Andrews
Michael J. Annibale
Leonard J. Badia
Joanna Rosett Beck
Jonathan L. Becker
Anthony Bergamo
Michael G. Berger
Bryan Blaney
Linda C. Braunsberg
Matthew E. Brooks
Stacey L. Brown
Kenneth R. Bruno
Stephen L. Buzzell
Jesus Antonio Cachaya
Steven McCann Cady
Phil James Caraballo-Garrison
Christian R. Castro
Carla Lyn Cheung
Nora E. Christenson
Julie A. Cilia
Stephen Lance Cimino
Monica M. Coakley
William C. Codd
Patrick Caston Crowley
Lawrence H. Cunningham
Linda Devereaux
Janet Marie DiFiore
Donald Stephen Domitrz
Anthony Alexander Donn
Shalom Doron
Marianna Drut-Blanch
Jonathan C. Dunsmoor
Robert F. Dwyer
Thomas Fallati
Dawn Florio
Lawrence J. Fredella
Christopher Fusco
Robert B. Garcia
Armena D. Gayle
Tanya Aisa Gayle
David M. Glenn
Lillian Eleanora Gutwein
Jonathan D. Hallett
Brett J. Harrison
George J. Hoffman
Paul Huebner
James Louis Iannone
James Saleh Irani
Sophie Anne Jensen
Peter Jones
Jonathan Michael Kiesel
Linda T. LaGueux
John J. Lavin
Jonathan Lax
Duncan R. Lee
Shamai Leibowitz
Jason Leifer
David L. Lewis
Diana J. Lewis
Lindsay Anne Lewis
Julia M. Lipez
Michael Daniel Litman
Amanda Lockshin
Thomas Bartley Luka
Henry Lung
Kevin M. Mackay
Baldwin Maull
Brad E. Mazarin
Barry B. McGoey
Kellie Ann McKenna
Patrick John McLaughlin
Kelly Meilstrup
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Terri P. Minott
Kap Misir
Ralph V. Morales
Ari Moshkovski
Anjana Nair
Tatiana Neroni
Jonathan Roy Nies
Joseph Edward O'Connor
Denise E. O'Donnell
Sara N. Ogden
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Vanessa D. Overland
John D. Pappalardo
Falguni M. Patel
Maria E. Paulsen
Saul Murray Pilchen
Patricia A. Pileggi
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William O. Purcell
Richard Ramsay
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Nicholas Robert Spampata
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Select up to three and rank them by placing the appropriate number by each.

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____ Prosecution
____ Sentencing and Sentencing Alternatives
____ Traffic Safety
____ Transition from Prison to Community
____ Victims' Rights

Please return this application to:
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Persons interested in writing for this *Newsletter* are welcomed and encouraged to submit their articles for consideration. Your ideas and comments about the *Newsletter* are appreciated as are letters to the Editor.

Publication Policy: All articles should be submitted to:

Spiros A. Tsimbinos
1588 Brandywine Way
Dunedin, FL 34698
(718) 849-3599

Submitted articles must include a cover letter giving permission for publication in this *Newsletter.* We will assume your submission is for the exclusive use of this *Newsletter* unless you advise to the contrary in your letter. Authors will be notified only if articles are rejected. Authors are encouraged to include a brief biography with their submissions.

For ease of publication, articles should be submitted on a 3½" floppy disk preferably in Word Perfect. Please also submit one hard copy on 8½" x 11" paper, double spaced.

Editorial Policy: The articles in this *Newsletter* represent the authors' viewpoints and research and not that of the *Newsletter* Editor or Section Officers. The accuracy of the sources used and the cases cited in submissions is the responsibility of the author.

NEW YORK CRIMINAL LAW NEWSLETTER

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