

*Notable Recent and Pending Federal and Texas Criminal Cases*

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## Introduction

This past year has seen significant developments in criminal jurisprudence. The following cases and issues represent one lawyer's view of important recent precedents and what we may expect in the future.

## Federal

### 1. *Hudson v. Michigan*, 126 S. Ct. 2159 (2006).

Since the landmark case of *Mapp v. Ohio*, 376 U.S. 643 (1961), the “exclusionary rule” has functioned to remedy and discourage violations of individuals' rights by state law enforcement officers by preventing evidence obtained by constitutionally offensive means from being introduced in a criminal prosecution. Following *Mapp*, in the context of the Fourth Amendment, an unreasonable search or seizure has almost necessarily mandated suppression of the tainted evidence.

This past term, the Supreme Court – in a significant opinion authored by Justice Scalia – determined that violations of the Fourth Amendment's “knock-and-announce” requirement do not implicate the exclusionary rule.<sup>1</sup> The opinion seems to have three lines of reasoning justifying its conclusion. The first is that the social costs of the exclusionary rule (i.e. suppression of material evidence in a criminal prosecution) substantially outweigh the deterrent effect of the rule in knock-and-announce violations. Second, there now exist other means of deterring police actions that violate individual rights, including civil rights suits and civilian review boards. Finally, there is a substantially attenuated causal connection

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In *Wilson v. Arkansas*, 115 S.Ct. 1914 (1995), Justice Thomas, writing for a unanimous Supreme Court, held that the “[t]he common law ‘knock and announce’ principle forms a part of the reasonableness inquiry under the Fourth Amendment,” however delaying entry for 15 seconds was later held sufficient to satisfy the knock-and-announce requirement in *United States v. Banks*, 530 U.S. 31 (2003).

between the failure to announce entry and the recovery of evidence once inside.

*Hudson* is perhaps more disturbing for what it portends than what it holds. For many readers, the Court's opinion foretells a future where constitutional rights are not substantively eroded by the Court's holdings, but rather striped of what may be the only truly effective means of judicial enforcement. If the exclusionary rule does not function to enforce a right, does the right practically exist? Will police and executive policy makers truly be deterred from constitutionally offensive conduct by the threat of a civil rights lawsuit? And, what other constitutional rights will the Court deem unworthy of the severity of the exclusionary rule?

2. *United States v. Gonzalez-Lopez*, 126 S.Ct. 2557 (2006).

In *Gonzalez-Lopez*, the Supreme Court held that denying a defendant his counsel of choice in a criminal prosecution created a *per se* violation of his Sixth Amendment right to counsel. The defendant in the case faced federal drug charges in Missouri, and he retained counsel from California. The District Judge denied California counsel entry into the case *pro hac vice*, and the defendant proceeded to trial with another attorney. The Supreme Court – in another opinion authored by Justice Scalia – easily concluded that trial court erred in denying the defendant his counsel of choice where the Government conceded that *the Sixth Amendment guarantees the defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds.*<sup>2</sup> The question before the Court then became, did

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In *Wheat v. United States*, 486 U.S. 153 (1998), the Supreme Court had held that a federal trial judge had discretion to deny a defendant his choice of counsel where there was a potential conflict of interest, even though all the parties waived any such conflict. Moreover, the Supreme Court has held that pretrial disqualification of one's counsel of choice is not appealable before trial and final judgment. See *Flanagan v. United States*, 465 U.S. 259

the defendant have to show he was prejudiced by the deficient representation of the substitute counsel? The Court answered that the deprivation of a defendant's counsel of choice pervades the entire trial and even the pretrial proceedings, and as such, a harm analysis would be speculative, futile, and unnecessary. "We have little trouble concluding that erroneous deprivation of the right to counsel of choice, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'" 126 S.Ct. 2557, 2564.

3. *Parker v. District of Columbia*, 478 F.3d 370 (C.A.D.C. 2007)

Last Spring, the Court of Appeals for the District of Columbia Circuit became the first federal appeals court to strike down a ban on firearm possession. In *Parker*, the D.C. Circuit reviewed a challenge by various residents to the gun control laws of the District of Columbia, some of the most restrictive in the nation. After disposing of issues of standing, the court addressed a substantive question of constitutional law that has divided citizens, scholars, and federal courts for many years: Does the Second Amendment create an individual right to gun ownership or a collective right calculated to ensure the operation of state militias? The D.C. Circuit answered that question by holding "that the Second Amendment protects an individual right to keep and bear arms." 478 F.3d 370, 395. The court then concluded that the challenged D.C. gun control laws placed too great a restriction on the individual Second Amendment right and were accordingly unconstitutional.

Last November, the Supreme Court granted certiorari to review *Parker*.<sup>3</sup> If the Court reaches a decision on the merits, it will be the Court's first opinion since 1939 directly addressing the scope of the Second Amendment.<sup>4</sup>

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(1984).

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*Parker v. District of Columbia*, (07-335) is actually a cross-petition by a group of five D.C. citizens held to not have

4. *Brendlin v. California*, 127 S. Ct. 2400 (2007)

In *Brendlin*, the Supreme Court finally confirmed that a passenger in a vehicle has standing to challenge a police stop of that vehicle. In doing so, the Court eschewed the legal fiction that a passenger is not detained during a traffic stop because law enforcement is only stopping the driver. The test employed is a familiar one: Would a reasonable person, as passenger of a vehicle stopped by police, have believed he or she was free to terminate the encounter with police? The Court answered in the negative, and noted what every lay person already knows:

“[T]he passenger will expect to be subject to some scrutiny, and his attempt to leave the scene would be so obviously likely to prompt an objection from the officer that no passenger would feel free to leave in the first place.” 127 S.Ct. 2400, 2407.

Of course, the Supreme Court was hardly charting new territory here. “Our conclusion comports with the views of all nine Federal Courts of Appeals, and nearly every state court, to have ruled on the question.” 127 S.Ct. at 2407-08. Nevertheless, it is refreshing when the application of a “reasonable person” standard comports with the thinking of an actual reasonable person.

5. *Wright v. Van Patten*, \_\_ S.Ct. \_\_, 2008 WL 59980 (2008).

Is a defendant whose defense attorney appears by speakerphone at his no-contest plea to reckless homicide in state court deprived of his Sixth Amendment right to counsel? In *Wright*, Supreme Court held that an attorney's appearance by speakerphone is not a per se violation of a defendant's right to counsel. The actual physical presence of counsel is not what is meant by the right to have counsel present at adversarial proceedings. Thus, the Court

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standing in the Circuit Court of Appeals decision. The actual appeal by the District of Columbia from the D.C. Circuit's opinion is styled *District of Columbia v. Heller*, (07-290).

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In its order granting certiorari, the Court framed the issue in the case as follows: “Whether the following provisions — D.C. Code secs. 7-2502.02(a)(4), 22-4504(a), and 7-2507.02 — violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?”

held, a claim of this kind would be analyzed under the standard of *Strickland v. Washington*, 466 U.S. 668 (1984), which requires a showing that the defendant was actually prejudiced by the deficient performance of counsel.

6. Pending "Enemy Combatant" Cases

*Boumediene v. Bush* (06-1195) and *Al Odah v. U.S.* (06-1196).

Our federal government's actions in the war on terror have generated no small amount of litigation concerning the limits of our Constitution's protections and processes. In *Rasul v. Bush*, 542 U.S. 466 (2004), the Supreme Court decided that Guantanamo prisoners may not be wholly denied the right to bring habeas corpus actions by the declaration of the executive. Since that case, the Detainee Treatment Act (DTA) has been passed, providing standards for the treatment of enemy combatants but stripping the federal courts of habeas corpus jurisdiction in their cases. The Court then decided *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006), holding that the DTA did not invalidate already filed cases and that the President's military commissions scheme did not pass constitutional muster. The Military Commissions Act has been passed by Congress and was signed into law by the President.

Two cases are presently pending review before the Supreme Court which challenge the constitutionality of detentions in the war on terror and the processes available to review those detentions. The issues presented by those cases are as follows:

(a) *Boumediene v. Bush*, (06-1195):

(1) Whether the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600, validly stripped federal court jurisdiction over habeas corpus petitions filed by foreign citizens imprisoned indefinitely at the United States Naval Station at Guantanamo Bay.

(2) Whether Petitioners' habeas corpus petitions, which establish that the United States government has imprisoned Petitioners for over five years, demonstrate unlawful confinement requiring the grant of habeas relief or, at least, a hearing on the merits.

(b) *Al Odah v. U.S.* (06-1196)

- (1) Did the D.C. Circuit err in relying again on *Johnson v. Eisentrager*, 339 U.S. 763 (1950), to dismiss these petitions and to hold that petitioners have no common law right to habeas protected by the Suspension Clause and no constitutional rights whatsoever, despite this Court's ruling in *Rasul v. Bush*, 542 U.S. 466 (2004), that these petitioners are in a fundamentally different position from those in *Eisentrager*, that their access to the writ is consistent with the historical reach of the writ at common law, and that they are confined within the territorial jurisdiction of the United States?
- (2) Given that the Court in *Rasul* concluded that the writ at common law would have extended to persons detained at Guantanamo, did the D.C. Circuit err in holding that petitioners' right to the writ was not protected by the Suspension Clause because they supposedly would not have been entitled to the writ at common law?
- (3) Are petitioners, who have been detained without charge or trial for more than five years in the exclusive custody of the United States at Guantanamo, a territory under the plenary and exclusive jurisdiction of the United States, entitled to the protection of the Fifth Amendment right not to be deprived of liberty without due process of law and of the Geneva Conventions?
- (4) Should section 7(b) of the Military Commissions Act of 2006, which does not explicitly mention habeas corpus, be construed to eliminate the courts' jurisdiction over petitioners' pending habeas cases, thereby creating serious constitutional issues?

## Texas

7. *Abdygapparova v. State*, \_\_ S.W.3d \_\_, 2007 WL 3005280 (Tex. App. - San Antonio 2007, pet. filed).

*In an opinion which should be read by all Texas trial judges, prosecutors, and defense attorneys, the Fourth Court of Appeals held that a the actions of a trial judge in passing notes back and forth with a prosecutor during trial “abused her judicial requirement of absolute impartiality” and deprived the defendant of her right to a fair and impartial trial. On this basis, the Court of Appeals reversed the defendant’s capital murder conviction and life sentence.*

*During voir dire, the trial judge and counsel for the State exchanged several informal ex parte notes commenting on, among other things, the defendant’s ability to communicate in English with her lawyer, the length of voir dire, the defense’s potential preemptory strikes, the prosecution’s use of a PowerPoint presentation, and the hair coloring of one member of the venire.*

*“This is an unfortunate case in which the trial judge failed to exercise appropriate caution and failed to maintain an attitude of impartiality throughout the trial. The trial judge’s ex parte communications with the prosecutor suggest there was, at a minimum, a ‘chumminess’ between the prosecutor and the trial court from which the jury could interpret that the trial court was ‘taking sides.’” 2007 WL 3005280 \*13.*

*The ex parte interactions between the trial judge and the prosecutor in the presence of the jury resulted in a violation of the defendant’s due process right to an impartial judge. Moreover, this violation amounted to structural error warranting reversal without harm analysis.*

*The State has filed a petition for discretionary review with the Court of Criminal Appeals. If the court grants review, its opinion could set forth high law defining the boundaries of conduct and interaction between trial judges and the prosecutors they work with nearly every day.*

8. *Cannon v. State*, \_\_S.W.3d \_\_, 2007 WL 3010417 (Tex. Crim. App. 2007).

This is a case of a misdemeanor DWI defendant represented by counsel who openly refused to effectively represent him at trial. Defense counsel had filed a motion to recuse the trial judge based on alleged personal attacks by the judge upon counsel at a separate trial. Counsel also filed a motion for continuance based on the need for a defense expert at trial. The trial court denied both motions, and defense counsel declared he was not ready for trial and could not effectively represent his client or participate in the trial. The trial proceeded anyhow, and – true to his word – counsel did not cross-examine any of the State’s witnesses, make objections, or offer any arguments on the merits of the case. Counsel’s only meaningful assistance in the case came by his motion for a directed verdict (denied) and bringing a sentencing error to the trial court’s attention.

On appeal, the defendant claimed ineffective assistance of counsel due to his attorney’s refusal to participate in the trial. The Fifth Court of Appeals affirmed the defendant’s conviction, holding that the defendant could not point to any specific errors of counsel that could not be explained by a potential defense strategy.

The Court of Criminal Appeals granted discretionary review and held this to be one of those rare cases where the record on direct appeal is sufficient to show ineffective assistance by trial counsel. The court held that counsel’s boycott of the proceedings demonstrably denied the defendant his Sixth Amendment right to effective assistance of counsel. In such a situation, the court held, prejudice to the defendant is legally presumed.

“Defense counsel, although physically present in the courtroom at all the requisite times, effectively failed to subject the prosecution’s case to meaningful adversarial testing. By his refusal to participate, counsel effectively abandoned his role as advocate for the defense and caused the trial to lose its character as a confrontation between adversaries.”

Although the defendant would receive a new trial, his trial counsel may not fare so well as a result of the opinion. In addition to reversing the judgment and remanding the case, the Court of Criminal Appeals also directed its clerk to forward a copy of the opinion issued to the Chief Disciplinary Counsel of the State Bar to take such actions “as they may deem appropriate.”

9. *Herrera v. State*, \_\_\_ S.W.3d \_\_\_, 2007 WL 4146707 (Tex. Crim. App. 2007)

Incarceration may not always be equivalent to custody for the purposes of *Miranda* and Article 38.22 suppression purposes. That was the recent holding of the Court of Criminal Appeals *Herrera*. In that case, the defendant was arrested and detained overnight on an outstanding warrant. The next morning, an investigator went to the jail and interviewed the defendant about his involvement in a gang fight unrelated to the outstanding warrant for which he was arrested. The investigator did not provide any of the warnings or obtain any of the waivers required by *Miranda* or Article 38.22 of the Code of Criminal Procedure. The trial court denied the defendant’s eventual motion to suppress the statements elicited by the investigator.

The Court of Criminal Appeals affirmed the judgment of the trial court, holding that the defendant had failed to show he was in “custody” during the interrogation even though it was undisputed that he was incarcerated. The court drew a distinction between the offense for which the defendant was incarcerated (the outstanding warrant) and the subject matter of the interrogation (the gang fight). “[W]e refuse to equate incarceration with ‘custody’ for purposes of *Miranda* when an inmate is questioned by a state agent about an offense unrelated to the inmate’s incarceration...”

The legal lesson to be learned from *Herrera* is that, for *Miranda* purposes, where a defendant is in held in jail on an offense other than the one for which he is being interrogated, the record must still reflect that a reasonable person would not feel free to leave that interrogation. The

practical lesson is never to assume you are in custody just because you are incarcerated.

#### 10. The Fetus as an “Individual” in Capital Murder Offenses

In 2003, the Texas Legislature changed the definition of “individual” in the Penal Code<sup>5</sup> to include a fetus at any stage of gestation. This means that the knowing or intentional killing of an unborn child will now amount to murder. Moreover – because the killing of more than one person will qualify as capital murder – intentionally or knowingly causing the death of a pregnant woman and her unborn child constitutes capital murder. The inevitable challenges to the constitutionality of defining a fetus a human being in the context of criminal homicide have begun to be received and decided by the Court of Criminal Appeals.

**(a) *Lawrence v. State*, \_\_ S.W.3d \_\_ 2007 WL 4146383 (Tex. Crim. App. 2007).**

*Lawrence* was the first constitutional challenge to the inclusion of unborn humans in the Penal Code’s definition of “individual” to reach the Court of Criminal Appeals. Although *Lawrence* was a capital murder case, the defendant was sentenced to life in prison rather than the death penalty. The statute and resulting indictment were challenged on three grounds, each of which was overruled by the court in affirming the conviction and sentence.

First, the defendant alleged that the indictment was void for vagueness because it would be scientifically impossible to determine the viability of the fetus and whether it would be carried to term. The court dismissed this contention, holding that, because the statute applies to unborn children at all stages of development, there is no ambiguity as to what conduct is proscribed. Defendant’s second contention, that he did not receive notice by the indictment presented, was rejected for the same reasons.

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“Individual’ means a human being who is alive, including an unborn child at every stage of gestation from

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fertilization until birth.” Tex. Penal Code § 1.07(a)(26).

Finally, the defendant averred that the charged offense violated the substantive aspect of the Due Process Clauses of the Constitution as interpreted by the line of cases beginning with *Roe v. Wade*, 410 U.S. 113 (1973). The Court of Criminal Appeals held that nothing about the circumstances of the offense implicates a woman's liberty interest in choosing to terminate her pregnancy. Thus, the constitutional protections of due process are not triggered by the statute:

“In the absence of a due process interest triggering the constitutional protections of *Roe*, the Legislature is free to protect the lives of those whom it considers to be human beings. This is a policy decision that is properly reserved to the democratic process, and should not be subject to judicial second-guessing.” 2007 WL 4146383.

**(b) *State v. Estrada*, 226<sup>th</sup> District Court (Honorable Sid L. Harle presiding)**

On February 7, 2007, a Bexar County jury took an hour and fifteen minutes to convict Adrian Estrada, a former youth pastor, of the murder of his 17 year old girlfriend and her unborn child. A few days later, the same jury deliberated for three hours before sentencing Estrada to death. What sets Estrada's case apart from the 12 other Texas defendants sentenced to death in 2007 is that the younger of his two victims – the one that made his offense death penalty eligible – was not even born yet. Estrada's case is now on direct appeal to the Court of Criminal Appeals, and it is believed to be the first appeal from a death sentence. Although most of the traditional constitutionality questions regarding the statute's validity have been answered by *Lawrence*, death is always different, and the United States Supreme Court is more likely to grant review the Court of Criminal Appeals' decision in a death case.

11. *Blacklock v. State*, 235 S.W.3d 231 (Tex. Crim. App. 2007)

The Court of Criminal Appeals recently addressed an important outstanding issue of post-conviction DNA testing under Chapter 64 of the Code of Criminal Procedure. Chapter 64 provides a separate and independent post-conviction procedure by which a defendant may move the convicting court for forensic DNA testing of biological material. There are several

circumstantial requirements that must be met before the trial court may order the requested testing. One of these requirements is that the court must find that “identity was of is an issue in the case.” Tex. Code Crim. Pro. art. 64.03(a)(1).

In *Blacklock*, the trial court denied the defendant’s motion for forensic DNA testing based on findings that the he had failed to show that identity was an issue. The courts of appeals affirmed that judgment, because the victim had testified at trial that she knew the defendant and he was the one who robbed and sexually assaulted her. The Court of Criminal Appeals reversed, holding that the defendant had shown by a preponderance of the evidence that identity was an issue because exculpatory DNA test results would establish the defendant’s innocence.

“The language and legislative history of Article 64.03(a)(1)(B) make it very clear that a defendant, who requests DNA testing, can make identity an issue by showing that exculpatory DNA tests would prove his innocence. This applies even when a defendant has pled guilty, thereby conceding the issue of identity at trial.” 135 S.W.3d 231, 232-233.

Thus, it would seem from the court’s opinion in *Blacklock* that one moving for Chapter 64 forensic testing can show his right to such testing (on the issue of identity) by properly pleading a circumstance by which exculpatory DNA results would establish his actual innocence.

12. *Smith v. State*, 277 S.W.3d 753 (Tex. Crim. App. 2007).

The scope of a federal trial court’s discretion in sentencing has become a complex and hotly litigated issue in recent years.<sup>6</sup> However, it seemed settled by statute that a Texas trial judge was afforded little discretion in considering extraneous misconduct, not proven beyond a reasonable doubt. However, a recent case from the Court of Criminal Appeals has called this progeny into question.

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<sup>6</sup> See *Gall v. United States*, 128 S.Ct. 586 (2007) (Holding that a federal district judge had discretion to sentence a defendant to probation even where the applicable United States Sentencing Guidelines did not permit probation for the offense.); see also *Kimbrough v. United States*, 128 S.Ct. 558 (2007) (Holding that a district judge did not abuse

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his discretion in departing downward from the applicable Sentencing Guidelines range based on his disagreement with the 100-to-1 ratio for crack vs. power cocaine sentences.)

The defendant in *Smith* was indicted for capital murder of a child younger than six but pleaded guilty to the reduced charge of reckless injury to a child. Pursuant to 42.12 § 9 of the Code of Criminal Procedure, the trial court ordered the preparation of a presentence investigation (PSI) report. The PSI was the only evidence the State introduced at the sentencing phase of the trial, and the report was never actually admitted into evidence. The defendant objected that the PSI contained references that the victim had sustained injuries weeks prior to the injury that caused her death. The defendant argued that there was no proof beyond a reasonable doubt that he inflicted those injuries. Over the objections of the defendant and the suggestions of the prosecutor, the trial court took the previous injuries into account in assessing the maximum penalty of 20 years confinement and a \$10,000 fine.

On appeal, the Fourteenth Court of Appeals held that extraneous offenses must be proven beyond a reasonable doubt before a trial court may consider them in punishment. The court reversed the judgment as to punishment, and the State sought discretionary review.

On discretionary review, the State took the position that a trial court may consider extraneous misconduct contained in a PSI even if such conduct is not proven beyond a reasonable doubt, and the Court of Criminal Appeals agreed. The court reasoned that – although Article 37.07 § 3(a)(1) Code of Criminal Procedure provides that extraneous offenses may only be considered in punishment if such offenses are proven beyond a reasonable doubt – Article 37.07 § (3)(d) allows a judge assessing punishment to consider the contents of a PSI in his or her determination. In other words, extraneous offenses not proven beyond a reasonable doubt may not be considered in punishment, unless the extraneous offenses are contained in a PSI and the defendant elects to have the trial judge assess punishment. The Court of Criminal Appeals did

prescribe some quality control on the extraneous offenses contained in a PSI, holding that there must be “some basis” for imputing the conduct to the defendant.<sup>7</sup>

“We agree and hold that a PSI does not necessarily have to establish *beyond a reasonable doubt* that the defendant is responsible for extraneous misconduct before a court may consider it in assessing punishment. However, we also hold that the PSI must provide the trial court with *some* basis from which it can rationally infer that the defendant was responsible before using it to inform its normative judgment of what punishment to assess within the statutorily prescribed range.” 277 S.W.3d 753, 759 (emphasis in original).

Employing this newly divined test, the court concluded that, although the trial court could consider extraneous offenses in the PSI, there was no basis which would support a reasonable inference that the defendant actually committed the extraneous conduct.

### *From the Texas Court of Criminal Appeals to the U.S. Supreme Court.*

13. *Ex parte Medellin*, 223 S.W.3d 315 (Tex. Crim. App. 2006).

*The Medellin case is one that stands at a fascinating juncture of federal, state, and international law. Medellin is a Mexican national who was convicted of capital murder and sentenced to death in Texas his participation in the gang rape and murder of two teenage girls. During the pendency Medellin's federal habeas corpus petition, the International Justice Court (IJC) issued an opinion (Avena) holding that the United States had violated the Vienna Convention by failing to advise detained Mexican nationals of their right to consult with the Mexican consular. The IJC's opinion directed the courts of the United States to review the convictions and sentences of Mexican nationals denied such rights. President Bush then issued a memorandum directing state courts to give effect to the IJC's decision.*

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“We think it obvious that it would violate due process for a trial court to consider evidence of extraneous misconduct, even contained in a PSI, if there was no evidence from any source from which it could be rationally inferred that the defendant had any criminal responsibility for that extraneous misconduct.” 277 S.W.3d 753, 764.

*The Court of Criminal Appeals first held that Medellin's claims under the IJC decision were procedurally defaulted because they were not raised below. More significantly, the court went on to hold that it was not bound by the unilateral declaration of the President directing the court to give effect to a foreign tribunal. "We hold that the President has exceeded his constitutional authority by intruding into the independent powers of the judiciary." 223 S.W.3d 315, 335.*

**14.** Certiorari granted: *Medellin v. Texas*, 127 S.Ct. 2129 (2007).

The Court of Criminal Appeals' decision ran against the will of the federal executive (who happened to be the former executive of Texas) in a contest that was sure to end up in the U.S. Supreme Court. The Court did indeed grant certiorari to review the case decide the intertwined issues of state, federal, and international supremacy. The issues are framed by the Court as follows:

(a) Did the President of the United States act within his constitutional and statutory foreign affairs authority when he determined on Feb. 28, 2005, that the states must comply with the United States' treaty obligation to give effect to the Avena judgment of the International Court of Justice in the cases of the 51 Mexican nationals named in that March 2004 judgment?

(b) Are state courts bound by the Constitution to honor the undisputed international obligation of the United States, under treaties duly ratified by the President with the advice and consent of the Senate, to give effect to the Avena judgment in the cases that the judgment addressed?