

CJ 8101 Decisionmaking, Discretion and Policy in Criminal Justice

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Tuesdays, 10:00-12:30

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Description

Crime and justice might most usefully be understood as the two main components of “criminal justice,” making up a broad social problem area of study. Criminological theory and the operation of criminal justice, how we understand crime and what we do about crime (society’s response to crime), are inextricably linked. This course focuses on what “we” do about crime, in this case the “we” being society’s formal apparatus responding to crime. Even this emphasis can be understood as a subset of actions, problems and issues that are dealt with formally and informally under the heading of “security” or maintaining social order. The focus of this course selectively focuses on examining what we do about crime, why and how we do what we do, and the problems, issues and implications facing those efforts.

In particular, this course focuses on “decisionmaking” or on the exercise of discretion that shapes decisionmaking on many levels. On a broader level we can think about decisionmaking in criminal justice as involving the formulation of policy—for example, by laws, legislature, and administrative decisionmaking—which boils down to the exercise of discretionary authority to make of decisions (rules) about decisions that will be made by the many criminal justice actors: How should police be deployed? When should force be employed? How should judges decide at various stages of proceedings? What penalties should be affixed to various criminal acts? How does a parole board make liberty decisions for persons who have been convicted and confined? Etc. On a second, narrower level, this focus on the exercise of decisionmaking discretion involves the actions of individual actors and understanding the body of decisions made by key actors at the various stages of the criminal process which amount to the implementation of criminal justice, within the guidelines, standards, laws or rules how criminal justice is actually done. In short, at the broad rule-making level as well on on the level of the individual justice actor, the exercise of discretion is key in translating available guidance into everyday action.

This course examines criminal justice as a problem of the exercise of discretion in decisionmaking by key actors, both in the formulation of policy designed to govern its operation and in the decisions made by different actors involved in different stages of the criminal process. The nature of discretion and its exercise in criminal justice form the fundamental problem examined by this course.

The scope of inquiry of this course is potentially vast, ranging from decisions of offenders to engage in crime and victims to invoke the criminal justice system, to the actions of self-help citizen organizations, police officers, prosecutors, defense counsel, judges, jurors, corrections and treatment personnel, among others. Moreover, the substance of the course is also concerned with the problems arising from the exercise of discretion in justice and how such decisionmaking is, could be or should be guided—again, potentially involving decisions that are made about how decisions should be made by such entities as courts, legislatures at all levels,

presidents, governors and mayors, judicial, police and corrections leaders, prosecutors and agency administrators of various types. By necessity, we will focus selectively on examples of the exercise of discretion in a variety of areas and on issues that emerge across specific criminal justice functions.

To begin consideration of these topics, the course will consider a particular justice problem (one of many possible illustrations), wrongful execution, from which key issues and problems associated with justice discretion will be identified. The course will then examine the nature of justice decisions generally, discussing a number of central themes and developing a framework for assessing decisions and their consequences. With this background, the course then turns selectively to key issues as illustrated by particular decision stages and policies. A major thrust of the course is to focus on areas in which social science research has addressed decisionmaking itself and has provided some evidence of its efficacy. In addition, examples of efforts designed to alter or improve decisionmaking--the point of many criminal justice "policy" reforms--will be considered.

Course Format

This course is a required core seminar in which students prepare readings for each class so that they will be able to identify issues and discuss important questions that are presented in the readings and through discussion. The course requires a mid-term, a final and a "position" paper. The topic for the paper will be the student's choice as approved by the professor (see attached description). Hopefully the paper can be used as an opportunity to develop or build on an area of interest relevant to later course and graduate program requirements.

Readings will be assigned on a weekly basis (see Blackboard), with the following outline as a guide (subject to adjustment). Texts suggested for purchase (subject to updating) include Radelet et al., In Spite of Innocence; M. Gottfredson and D. Gottfredson, Decisionmaking in Criminal Justice; McCoy, Politics and Plea Bargaining; Packer, The Limits of the Criminal Sanction (recommended, find used); K. Hawkins, The Uses of Discretion (recommended); Tonry, Malign Neglect; Zimring and Hawkins, Incapacitation; Walker, Taming the System; and Cole et al., The Criminal Justice System: Policies and Politics. (Feel free to search for used texts to save costs. Most are in paper.) See the attached list for further suggested (not necessarily required) readings for this course. For those new to the study of criminal justice, it might be helpful to purchase an undergraduate introductory criminal justice text for useful background, or perhaps even to sit in on an undergraduate overview course. *NOTE: No need to freak out; we will focus on readings selectively as the class progresses, sometimes meaning we may not read all those listed for discussion. NB: The syllabus is subject to revision.*

Course Outline

Class I *Introduction: Discretion as the Core Problem in Criminal Justice*
9/1/09

Class II *Example: Wrongful Execution*
9/8/09 Reading: Radelet et al., In Spite of Innocence; Weigend (Is the Criminal Process about Truth, 2003)

Class III *Some Background: Themes in Justice Decisionmaking*

9/15/09 Reading: Pound (1906[1956]; 1912-1913); Gottfredson and Gottfredson (1988: Ch 1 and Ch 10); Hawkins (The Uses of Discretion: 11-46); Pound, Individualization of Justice, 1938)

Recommended: Hawkins (On Legal Decision-Making, 1986), Pound (Criminal Justice in America, 1930)

Class IV
9/22/09

Perspectives on Discretion

Reading: Walker (Taming the System, 1994); Pound (Enforcement of Law, 1908)
Deadline: Position Paper Topic Approved

Class V
9/29/09

Selectivity of Processing or Disproportionality?

Reading: Packer (Two Models of Criminal Process, 1964); Wickersham Commission, 1931; Hindelang, ("Race and Involvement in Crime," 1978); Blumstein (On the Racial Disproportionality of United States Prisons Populations, 1982, Revisited, 1993); Tonry, Malign Neglect (1995)

Class VI
10/6/09

The Victim as Gatekeeper of the System

Reading: Gottfredson and Gottfredson (Chapter 2); Hanna ("No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions," 1996); Mills ("Killing Her Softly," 1999/2000)

Class VII
10/13/09

Policing the Boundaries

Reading: Gottfredson and Gottfredson (Chapter 3); Goldstein (On Police Discretion, 1960); Binder and Meeker (Arrest as a Method to Control Spouse Abuse); Fyfe (Police Use of Deadly Force); Banks (Beyond Profiling, 2003/2004)

Recommended: Erikson (On the Sociology of Deviance, 1966); Sherman & Wiseburd (Hot Spots, 1995)

Class VIII
10/20/09

MIDTERM

Class IX
10/27/09

Classification and Prediction in Criminal Justice

Reading: Underwood (Law and the Crystal Ball); Miller and Morris (Predictions of Dangerousness); Gottfredson D (Prediction and Classification, 1989); Sechrest (Classification for Treatment);

Recommended: Brennan (Classification: An Overview, 1987); Glaser (Classification for Risk, 1987); Goldkamp (Prediction in Criminal Justice Policy Development, 1987); Moore (Purblind Justice: Normative Issues in the Use of Prediction in the Criminal Justice System)

Class X
11/3/09

Bail/Pretrial Release and Detention: a Non-punitive Liberty Decision?

Reading: Gottfredson and Gottfredson (Chapter 4); Foote (Compelling Appearance in Court, 1954); Ervin (intro to Angel); Angel et al. (Preventive Detention, 1971); Goldkamp, ("Risk and Race at Pretrial Release, handout); Goldkamp (Questioning the Practice of Pretrial Release, 1983; Bail in Encyclopedia, 2001); Goldkamp and Vilcica, Judicial Discretion and the Unfinished Reform Agenda.

Recommended: Goldkamp (Two Classes of Accused, 1979; Danger and Detention, 1985; Personal Liberty and Community Safety, 1995)

Class XI

Prosecution and Adjudication

11/10/09 Reading: Gottfredson & Gottfredson (Chapter 5); Misner (Recasting Prosecutorial Discretion, 1996); Moley (The Vanishing Jury, 1928; Politics and Criminal Prosecution, 1929, Chapter 8); McCoy (Politics and Plea Bargaining)

Recommended: Alschuler (The Prosecutor's Role in Plea Bargaining, 1968); Miller (Domination and Dissatisfaction: Prosecutors as Sentencers, 2003); LaFree (Adversarial and Nonadversarial Justice: A Comparison of Guilty Pleas and Trials, 1985)

Class XII
11/17/09 *"Punishing" the Guilty: Death and Rebirth of Rehabilitation (Treatment)*
Reading: Blumstein et al (NAS, The Rehabilitation of Criminal Offenders, 1978); Martinson (What Works?, 1974); Palmer (A Critique of Martinson, 1975); Cullen & Gendreau (From Nothing Works to What Works, 2001); Goldkamp (The Drug Court Response, 1999/2000); Harris (In Search of Common Ground, 2005); Beeley, Abolishing Parole, 1931.

Recommended: Allen ("Criminal Justice, Legal Values and the Rehabilitative Ideal" in Cole et al., 2003; The Decline of the Rehabilitative Ideal, 1981); Gendreau & Ross (Revivification of Rehabilitation, 1987); Antonowicz & Ross (Essential Components of Successful Rehabilitation); Hoffman (Therapeutic Jurisprudence., 2001-2002); Epstein (Procedural Justice: Tempering the State's Response to Domestic Violence, 2001-2002); Hanna (The Paradox of Hope: The Crime and Punishment of Domestic Violence, 1998)

No Class
11/24/09 No Class-Calendar Adjustment/Thanksgiving

Class XIII
12/1/09 *Incapacitation or Removal: the Practical Solution?*
Reading: Zimring and Hawkins (Incapacitation, 1995); Blumstein (Criminal Careers and Career Criminals, 1986, selection); Gottfredson and Hirschi (Science, Public Policy and the Career Paradigm, 1988);

Recommended: Auerhahn (Selective Incapacitation, Three Strikes, and the Problem of Aging Population, 2002); Gottfredson & Hirschi (True Value of Lambda, 1986); Kovandzic et al. (Striking out as Crime Reduction Policy: the Impact of 'Three Strikes' Laws on Crime Rates in U.S. Cities, 2004); Vitiello (Three Strikes: Can We Return to Rationality?, 1997); Zimring et al (Democracy: Three Strikes and You're Out in California, 2001)

PAPER DUE

Class XIV
12/8/09 *Deterrence, Desert in Sentencing Reform: Two Competing Belief Systems*
Reading: Bentham (On Morals and Legislation - Selection); von Hentig (The Limits of Deterrence, 1938); Nagin (Criminal Deterrence Research, 1998); Blumstein et al. (NAS, Deterrence and Incapacitation, 1978); Blumstein (Sentencing Reforms, 1985); von Hirsch (Commensurability and Crime Prevention, 1983); Vera Institute (2004, 2005)

Recommended: Blumstein et al (Research on Sentencing, 1983); Bedau (Death is Different); Cook (Research in Criminal Deterrence, 1980); Von Hirsch (On Doing Justice: the Choice of Punishment, 1976)

Class XVI FINAL EXAM
12/15/09

CJ 403: Position Paper

The position paper identifies an innovation, strategy or intervention in criminal justice, past or present, proposed or actual, that addresses significant issues or problems relating to decisionmaking, discretion or policy in some rational way. (This leaves very wide latitude in your choice of topic, ranging from executive, legislative, administrative, or on the level of the individual actor.) You are asked to develop a position on the policy proposed drawing from literature on the topic, analyzing the issues and problems confronted and the implications of the approach. A position paper presents arguments in favor of or against the policy, past or proposed innovation or practice supported by evidence from the literature. [Note: argument based on analysis and assessment of the issues and the literature is very different from merely explaining your opinion. Your unsupported opinion is not asked for. Instead, you are analyzing your topic and drawing on evidence to form conclusions about impact, efficacy, adverse consequences and its overall sense.]

In developing your position, analyze the problem and related issues, assemble and integrate available literature to provide evidence in support of your developing position. What literature or experience in the field addresses the problem in question? How does this lead you to taking a position one way or another. (Thus, the position paper is a research paper, not an op-ed piece.)

Note: the text of the paper should not exceed 15 pages double spaced, excluding references and footnotes. Thus, the assignment requires concise organization and writing. Your argument should be documented using proper citations and references to the sources relied on—which should reflect research beyond that available in class. The position paper topic must be approved in class no later than 9/22/09. **THE PAPER IS DUE ON 12/1/09.**

Suggested Reading:

Allen, F. A. The Decline of the Rehabilitative Ideal. New Haven and London: Yale University Press, 1981.

Alschuler, A. "The Role of the Prosecutor in Plea Bargaining," 36 Univ. of Chicago Law Review 50 (1968).

Angel et al. "Preventive Detention: an Empirical Analysis," 6 Harvard Civil Rights-Civil Liberties Law Review 300-395 (1971)

Auerhahn, K. "Selective Incapacitation and the Problem of Prediction," 37 Criminology 702, 1999).

Auerhahn, K. Selective Incapacitation and Public Policy, Albany: SUNY Press, 2003.

Banks. "Beyond Profiling: Race, Policing, and the Drug War," Stan. L. Rev., 56: 572, 2003-2004

Bentham. The Principles of Morals and Legislation, New York: Prometheus Books, 1781, reprint edition, 1988

Binder and Meeker. "Arrest as a Method to Control Spouse Abuse," in Buzawa and Buzawa (eds.) Domestic Violence: The Changing Criminal Justice Response, Westport CT: Auburn House, 1992.

Blumstein et al. (eds.) Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates, Washington, D.C.: National Academy of Sciences, 1978

Blumstein et al. (eds.) Criminal Careers and "Career Criminals", Washington, D.C.: National Academy of Sciences Press, 1986

Blumstein et al. (eds.) Research on Sentencing: The Search for Reform, vols. I and II: Washington, D.C. National Academy of Sciences, 1983

Blumstein. "On the Racial Disproportionality of United States' Prison Populations," 73/3 Journal of Criminal Law and Criminology 1259, 1982

Blumstein. "Racial Disproportionality of U.S. Prison Populations Revisited," 64/4 University of Colorado Law Review 743, 1993

Blumstein. "Sentencing Reforms: Impacts and Implications," 68 Judicature 129 (1984-1985)

Brennan. "Classification: An Overview of Selected Methodological Issues," in D. Gottfredson and M. Tonry (eds.) Prediction and Classification, 9 Crime and Justice 203, 1987

Cohen. Incapacitation as a Strategy for Crime Control: Pitfalls and Possibilities, in Morris and Tonry (eds.) 5 Crime and Justice 1, Chicago: University of Chicago Press, 1983

Cook. "Research in Criminal Deterrence," 2 *Crime and Justice* 211, Chicago: University of Chicago Press, 1980

Crutchfield et al. "Analytical and Aggregation Biases in Analyses of Imprisonment: Reconciling Discrepancies in Studies of Racial Disparity," 31/2 *Journal of Research in Crime and Delinquency* 166, 1994

Cullen & Gendreau. "From Nothing Works to What Works; Changing Professional Ideology in the 21st Century," *Prison Journal*, 81 (3): 311, 2001

D'Alessio and Stolzenberg, "The Impact of Sentencing Guidelines on Jail Incarceration in Minnesota," 33/2 *Criminology* 283, 1995

Epstein, D. "Procedural Justice: Tempering the State's Response to Domestic Violence," 43 *Wm and Mary L. Rev.* 1843, 2002

Erikson. "On the Sociology of Deviance," in Farrell and Swigert (eds.), *Social Deviance* 32, 1975

Foote. "Compelling Appearance in Court: Administration of Bail in Philadelphia, 102 *University of Pennsylvania Law Review* 1031, 1954.

Fyfe. "Police Use of Deadly Force: Research and Reform," 5/2 *Justice Quarterly* 165, 1988.

Gendreau and Ross. "Effective Correctional Intervention: Bibliotherapy for Cynics," 25 *Crime and Delinquency* 463, 1979

Gendreau and Ross. "Revivification of rehabilitation: Evidence from the 80's," 4 *Justice Quarterly* 349, 1987

Glaser. "Classification for Risk," in D. Gottfredson and M. Tonry (eds.) *Prediction and Classification*, 9 *Crime and Justice* 249, 1987

Goldkamp, J. S. "The Drug Court Response: Issues and Implications for Justice Change." *Albany Law Review*, 63, 923-961, 2000

Goldkamp, J. S. Prediction in Criminal Justice Policy Development. 1987. In D. M. Gottfredson & M. Tonry (Eds.), *Prediction and Classification*. Chicago: University of Chicago Press.

Goldkamp, J. S. "Danger and Detention: A Second Generation of Bail Reform." 1985. *Journal of Criminal Law and Criminology*, 76(1), 1-74.

Goldkamp, J. S. Two Classes of Accused: A Study of Bail and Detention in American Justice. 1979. Cambridge: Ballinger Publishing Company.

Goldkamp, J. S. "Bail." 2001. In R. Hagan et al. (Eds.), *Encyclopedia of Crime and Justice* (pp. 93-101). New York: MacMillan.

Goldkamp et al. Personal Liberty and Community Safety, New York: Plenum Press, 1995

Goldkamp. “Questioning the Practice of Pretrial Detention: Some Empirical Evidence from Philadelphia.” 74/4 Journal of Criminal Law and Criminology 1556, 1983

Goldkamp, J.S. and E.R. Vîlcică. “Judicial Discretion and the Unfinished Agenda of American Bail Reform: Lessons from Philadelphia’s Evidence-based Judicial Strategy.” 36 Studies in Law, Politics and Society (Spring, 2009)

Goldkamp, J.S. and E. R. Vîlcică. “Targeted Enforcement and Adverse System Side Effects: the Generation of Fugitives in Philadelphia. Criminology (Vol. 46, Issue 2, 2008).

Goldstein. “Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice, 69/4 The Yale Law Journal 543, 1960

Gottfredson, D. “Prediction and Classification in Criminal Justice Decision Making,” 9 Crime and Justice 1, Chicago: University of Chicago Press, 1987

Gottfredson M. and D. Gottfredson. Decisionmaking in Criminal Justice, New York: Plenum Press, 1988

Gottfredson M. and Hirschi. “Science, Public Policy and the Career Paradigm,” 26/1 Criminology 37, 1988

Gottfredson M. and Hirschi. “The True Value of Lambda Would Appear to Be Zero,” 24 Criminology 213, 1986

Greenwood and Abrahamse. Selective Incapacitation, Report prepared for the National Institute of Justice, Santa Monica: RAND, 1982

Hanna, C. “No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions,” 109 HLR 1849, 1996.

Hanna C. “The Paradox of Hope: The Crime and Punishment of Domestic Violence,” 39 Wm and Mary L. Rev. 1505, 1998

Harris. “In Search of Common Ground: The Importance of Theoretical Orientations in Criminology and Criminal Justice,” Criminology & Public Policy, 4 (2): 311 (2005)

Hawkins, K.(ed.) The Uses of Discretion, London: Oxford University Press, 1992

Hindelang, “Race and Involvement in Crime,” 43 American Sociological Review 93-109, 1978

Hindelang. Victimization in Eight American Cities. Cambridge, Mass.: Ballinger Press, 1979

Hoffman. “Therapeutic Jurisprudence, Neo-Rehabilitationism, and Judicial Collectivism: The Least Dangerous Branch Becomes Most Dangerous,” 29 Fordham Urb. L.J. 2063, 2001-2002

Hogarth. Judgment and Choice. Chicago: John Wiley and Sons, 1991

Kovandzic et al. “Striking out as Crime Reduction Policy: the Impact of ‘Three Strikes’ Laws on Crime Rates in U.S. Cities,” 21 Just. Q. 207, 2004

Kovandzic et al. “Unintended Consequences of Politically Popular Sentencing Policy: The Homicide Promoting Effects of Three Strikes in U.S. Cities (1980-1999),” 1 Criminology & Pub. Pol’y 399 (2001-2002)

LaFree. “Adversarial and Nonadversarial Justice A Comparison of Guilty Pleas and Trials”_ 23 Criminology 289 (1985)

Martinson. “What Works? Questions and Answers about Prison Reform.” 35 The Public Interest 22, 1974

Martinson. “New Findings, New Views: A Note of Caution Regarding Sentencing Reform,” *Hofstra Law Review*, 7, 243-258, 1979

Marvell and Moody. Determinate Sentencing and Abolishing Parole: the Long Term Impacts on Prisons and Crime, 34/1 Criminology 107, 1996

McCoy. “Determinate Sentencing, Plea Bargaining Bans, and Hydraulic Discretion in California,” 9 Just. Sys. J. 256, 1984

McCoy. Politics and Plea Bargaining, Philadelphia: University of Pennsylvania Press, 1993

Mills, L. “Killing Her Softly: Intimate Abuse and the Violence of State Intervention,” 113 Harv. L. Rev. 550, 1999-2000

Miller, M. “Domination and Dissatisfaction: Prosecutors as Sentencers.” 56 *Stanford Law Review* 1211, 2004.

Misner, R. “Recasting Prosecutorial Discretion,” 86/3 **Journal of Criminal Law and Criminology** 717, 1996.

Moley, R. “The Vanishing Jury,” 2 S. Cal. L. Rev. 97, 1928.

Moley, R. Politics and Criminal Prosecution. New York: Minton, Balch & Co., 1929

Moore. “Purblind Justice: Normative Issues in the Use of Prediction in the Criminal Justice System,” in Blumenstein et al., (eds.) Criminal Careers and “Career Criminals.” Washington, D.C.: National Academy of Sciences Press, 1986

Morris and Miller, “Predictions of Dangerousness,” in Tonry and Morris, eds. 6 Crime and Justice , Chicago: University of Chicago Press, 1985

National Commission on Law Observance and Enforcement (Wickersham Commission).

Report on Criminal Procedure. (1931).

Nagin. "Criminal Deterrence Research at the Outset of the Twenty-First Century." 23 *Crime & Just.* 1, 1998

Packer. The Limits of the Criminal Sanction, Stanford, CA: Stanford University Press, 1968

Palmer. "Martinson Revisited: A Critique of Martinson." 12/2 *Journal of Research in Crime and Delinquency* 133, 1975

Palmer. "Programmatic and Nonprogrammatic Aspects of Successful Interventions: New Directions for Research." *Crime and Delinquency*, 41, 100-131, 1995

Pound. "The Administration of Justice in the Modern American City," 26 *HLR* 302, 1912-1913

Pound. Criminal Justice in America, Brown Univ. Press, 1930

Pound. "The Causes of Popular Dissatisfaction with the Administration of Justice." 40 *Am. L. Rev* 729, 1906, reprinted with new intro in 8 *Baylor L. Rev.* 1, 1956.

Pound. "Enforcement of Law." 20 *Green Bag* 401, 1908.

Pound. "Individualization of Justice." 7 *Fordham L. Rev.* 153, 1938

Pound & Frankfurter (eds.). Criminal Justice in Cleveland. Cleveland: The Cleveland Foundation (1922).

Radelet, Bedau, and Putnam. In Spite of Innocence, Boston: Northeastern University Press, 1992.

Rossman et al. "Massachusetts' Mandatory Minimum Sentence Gun Law: Enforcement, Prosecution and Defense Impact." 16 Criminal Law Bulletin 150.

Sechrest . "Classification for Treatment," in Gottfredson and Tonry (eds.) Prediction and Classification, 9 *Crime and Justice* 293, 1987.

Sechrest et al. The Rehabilitation of Criminal Offenders. Washington, D.C. National Research Council, National Academy of Sciences, 1979

Sherman & Wiseburd. "General Deterrent Effects of Police Patrol in Crime Hot Spots." 12 *Just. Q.* 625, 1995

Skolnick and Fyfe Above the Law. New York: Free Press, 1993.

Speckart and Anglin. "Narcotics and Crime: An Analysis of Existing Evidence for a Causal Relationship," 3 *Behavioral Sciences and the Law* 259

Tillman, The Prevalence and Incidence of Arrest, 1990, Report for Bureau of Criminal

Statistics, California Department of Justice, Division of Law Enforcement, 1987

Tonry, Malign Neglect, London: Oxford University Press, 1995.

Underwood. “Law and the Crystal Ball: Predicting Behavior with Statistical Inference and Individualized Judgment.” 88 Yale Law Journal 1408 (1979).

Vera Institute. “Aggravated Sentencing: Blakely v Washington – Practical Implications for State Sentencing Systems.” 2004

Vera Institute. “Beyond Blakely: Implications of the Booker Decision for State Sentencing Systems.” 2005

Vitiello, M. “Three Strikes: Can We Return to Rationality?” 87 J. Crim. L. & Criminology 395, 1996-1997

Von Hentig. “The Limits of Deterrence,” 29 Am. Inst. Crim. L. & Criminology 555, 1938-1939

von Hirsch. Doing Justice: the Choice of Punishments. New York: Hill and Wang, 1976

Von Hirsch. “Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and Their Rationale.” 74 J. Crim. L. & Criminology 209, 1983

Weigend, T. “Is the Criminal Process about Truth?” A German Perspective,” 26 Harv. J.L. & Pub. Pol’y 157, 2003.

Walker. Taming the System. New York: Oxford University Press, 1993

Williams. “Process and Prediction: A Return to a Fuzzy Model of Pretrial Detention.” 79 Minn. L. Rev. 325, 1994-1995.

Zimring and Hawkins. Incapacitation. London: Oxford University Press, 1995

Zimring et al. Punishment and Democracy: Three Strikes and You’re Out in California. Oxford Univ Press, 2001