

AALS Criminal Justice

Section Newsletter

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Chair's Message

Meghan Ryan
(Southern Methodist
University Dedman
School of Law)

Dear Friends,

It has been a busy year for the Criminal Justice Section, and we are looking forward to ringing in the new year with you in San Diego in January! I am happy to report that the winner of our Section's Junior Scholar Paper Award is John Rappaport of the University of Chicago Law School for his paper titled *Criminal Justice, Inc.* Our first runner-up is Lauryn Gouldin from Syracuse University College of Law for *Defining Flight Risk*,

and our second runner-up is Jordan Blair Woods from the University of Arkansas School of Law for *Routine Traffic Stops and Violence Against the Police*. The selection committee enjoyed reading all of the papers, so thank you for submitting your work. Now, we are looking forward to our annual meeting in January, where we will have some exciting events. Our flagship panels are *Juveniles, Incarceration, and the Constitution: A Conversation* and *Terry at Fifty: On the Books and On the Ground*. We will also be holding our annual joint luncheon with the Evidence Section and our works-in-progress session during which some of our more junior members will be presenting their work on which more senior scholars will comment. As usual, a Section happy hour is also in the works. Thank you for a wonderful year, and we look forward to seeing you in San Diego in 2018!

Announcements

On April 12-13, Texas Tech School of Law will host the 2018 Criminal Law Symposium on the subject of capital punishment. The Keynote speaker is Erwin Chemerinsky (U.C. Berkeley). There are three panels: The first panel is: Are There Good Reasons for Retaining Capital Punishment? The moderator is Jack Nowlin (Texas Tech), and the panelists are: Ron Allen (Northwestern), Paul Cassell (Utah), David Gray (Maryland), Joshua Marquis (Oregon District Attorney). The second panel is: Are There Good Reasons for Abolishing Capital Punishment? The moderator is Joshua Dressler (Ohio St.), and the panelists are: Arnold Loewy (Texas Tech), Patrick Metzger (Texas Tech), Susan Rozelle (Stetson), Mike Vitiello (McGeorge). The third panel is: How is the Supreme Court likely to

resolve this question? The moderator is Danny Boggs (U.S. Ct. of Appeals—6th Circ. Judge) and the panelists are: Jack Boger (UNC), Sam Kamin (Denver), Lee Kovarsky (Maryland), Linda Malone (William and Mary).

On November 6, the Criminal Justice Program at Vanderbilt University Law School sponsored its tenth annual roundtable, with papers from Devon Carbado (UCLA), Morgan Cloud (Emory), Joseph Hoffmann (Indiana), Thea Johnson (Maine), Sara Mayeux (Vanderbilt), and Ryan Scott (Indiana), and commentary from Gabriel Chin (UC Davis), Janet Hoeffel (Tulane), John Rappaport (Chicago), Margo Schlanger (Michigan), Jenia Turner (SMU), and Nancy King, Terry Maroney, Rob Mikos, Ed Rubin and Chris Slobogin from Vanderbilt.

Member News

Awards, Appointments, Promotions, Publications, & Other Notable Achievements. (Book Notes follow Member News in a separate section.)

DePaul Emeritus Professor John F. Decker

published in 2017 the latest edition of *ILLINOIS DECISIONS ON SEARCH AND SEIZURE 2017* (ISBA 2017).

Susan Bandes, Distinguished Research Scholar at the Center for Policing Equity and Centennial Professor of Law Emeritus, DePaul University College of Law has engaged in the following activities.

Presentations: Susan spoke to the Colorado Judicial Conference in September on the topic of remorse in judicial sentencing. She presented “Remorse and Criminal Justice” at a faculty workshop at Loyola Law School, Chicago in November. Also in November, she presented “Fighting the War on Drugs One Police Brutality Case at a Time” at the 2017 Legal Forum symposium entitled *Law in Urban Institutions 10 Years After THE WIRE*, at the University of Chicago Law School.

Publications (forthcoming): The University of Chicago Legal Forum will publish a symposium issue including the papers from the conference on THE WIRE, including Susan’s paper on THE WIRE and police brutality. Susan’s review of Carol

Steiker’s and Jordan Steiker’s book *Courting Death: The Supreme Court and Capital Punishment*, is forthcoming in the *Michigan Law Review* Book Review Issue.

Teaching: Susan will teach a short course on Law and Emotion at the University of Miami Law School in February. **Other professional**

activities: Susan, with Jill Hunter and Jody Madeira, has organized a Collaborative Research Network (CRN) on Law and Emotion for the Law and Society Association (LSA). The CRN will present a full slate of panels at the upcoming LSA annual conference in Toronto. In November, Susan attended the ALI Members Consultative Group Meeting on Principles of the Law: Policing, which took place in Philadelphia. **Moves and**

announcements: Susan took emeritus status at DePaul Law School in July. She began a part time position as Distinguished Research Scholar at the Center for Policing Equity at the end of August.

Professor John Q. Barrett, St. John’s University School of Law, recently published two lectures on the Nuremberg

trials: *The Nuremberg Trials: A Summary Introduction*, 39 LOYOLA INT'L & COMP. L. REV. 336-50 (2017), based on a lecture delivered at the March of the Living International, Raoul Wallenberg Centre for Human Rights, & Jagiellonian University symposium in Krakow, Poland, in May 2016; and *Legacies of Nuremberg*, in PROCEEDINGS OF THE TENTH INTERNATIONAL HUMANITARIAN LAW DIALOGS 63-77 (Am. Soc. of Int'l Law, Studies in Transnational Legal Policy No. 49, Mark David Agrast & David M. Crane, eds., 2017), based on a lecture delivered in Nuremberg, Germany, in September 2016.

Shima Baradaran Baughman, University of Utah, S.J. Quinney Law School, is pleased to report that she was named a Presidential Scholar at the University of Utah (one of five chosen from all of the departments across campus for excellence in research and scholarship). She participated in the Boston University Misdemeanor Machinery Conference and will have a piece in the *Boston University Law Review* called, *The Misdemeanor Bail*

Problem (forthcoming 2018).

Jeffrey Bellin, University Professor for Teaching Excellence, William & Mary Law School, is pleased to announce that his essay *Reassessing Prosecutorial Power Through the Lens of Mass Incarceration* is forthcoming in volume 116 of the *Michigan Law Review*, and his article *The Silence Penalty* is forthcoming in volume 103 of the *Iowa Law Review*.

Bennett Capers, Brooklyn Law School, has been enjoying his visit at Boston University School of Law (Fall 2017), where he has been teaching Evidence and a seminar called "Race, Gender, and Crime." His recent and forthcoming publications include *Criminal Procedure and the Good Citizen*, __ COLUM. L. REV. __ (forthcoming, 2018), as well as a few book chapters and symposium essays. One of his highlights last spring was co-teaching a course with his colleague Jocelyn Simonson using the Netflix documentary *Making a Murderer* as its centerpiece.

Professor Martha-Grace Duncan, Emory

University Law School, gave a speech at Harvard Law School on October 16th of this year. Her talk, "What Not to Do When Your Roommate is Murdered in Italy," was sponsored by the Harvard Women's Law Association, the Harvard Italian Law Association, and the Harvard Journal of Law and Gender. In addition, Professor Duncan's article, *What Not to Do When Your Roommate is Murdered in Italy: Amanda Knox, her "Strange" Behavior, and the Italian Legal System*, is currently being published on line, in four parts, by the *Harvard Journal of Law and Gender*. Based on years of research in Italy and Seattle, the article can be found by Googling Harvard Journal of Law and Gender and simply clicking on the main heading. Or you can use the following link: <http://harvardjlg.com/creative-content/>. She also spoke at Law and Society in Mexico City on June 22. Her topic was "Morbid Laughter, Proper Tears: The Demand for 'Correct' Emotions in Criminal Law."

Andrew Guthrie Ferguson, UDC David A. Clarke School of Law had three articles published in

2017, *The “Smart” Fourth Amendment*, 102 CORNELL L. REV. 547 (2017), *Policing Predictive Policing*, 94 WASH. U. L. REV. 1113 (2017), and *The Miranda App: Metaphor and Machine*, 97 B.U. L. REV. 935 (2017) (with Richard Leo) (symposium essay). He also published a book chapter *Big Data Surveillance: The Convergence of Big Data and Law Enforcement* in the CAMBRIDGE HANDBOOK OF SURVEILLANCE LAW (2017).

Cynthia Godsoe, Brooklyn Law School, recently published several articles, including *Redrawing the Boundaries of Relational Crime*, 69 ALA. L. REV. 100 (2017) and *Redefining Parental Rights: The Case of Corporal Punishment*, 32 CONSTIT. COMM. 281 (2017) (symposium issue on the Constitution of the family). She has a book chapter and another symposium article coming out shortly—*Parental Love and Purposeful Violence*, in THE POLITICIZATION OF SAFETY (Jane Stoeber ed., NYU Press 2018) and *Participatory Defense: Humanizing the Accused & Ceding Control to the Client*, 69 MERCER L. REV.

(forthcoming 2018) (symposium issue on disruptive defense). She also signed an amicus brief with The Human Trafficking Pro Bono Legal Center to the Ohio Supreme Court regarding trafficked minors and state Safe Harbor Laws (Sept. 2017), and taught a new seminar this fall on sex crimes. Thanks to the members of this committee, Margo Kaplan, Cortney Lollar, and Corey Rayburn Yung, who so helpfully shared their materials with me.

Russell Gold, Wake Forest School of Law, has recently published three articles. “*Clientless*” *Lawyers*, 92 WASH. L. REV. 87 (2017), and “*Clientless*” *Prosecutors*, 51 GA. L. REV. 693 (2017), compare prosecutors and class counsel and consider what the civil and criminal systems can learn from each other regarding holding these types of lawyers accountable. *Civilizing Criminal Settlements*, 97 B.U. L. REV. 1607 (2017) (co-authored with Carissa Byrne Hessick and F. Andrew Hessick), considers how criminal law could improve the plea-bargaining system by

drawing on lessons from the civil system.

Paul Litton, Associate Dean, University of Missouri School of Law, has published, this Fall, *Crime, Punishment, and Causation: The Effect of Etiological Information on the Perception of Moral Agency* (with Philip Robbins) in *Psychology, Public Policy, & Law*. He also published, *The Mistaken Quest for a Control Test: For a Rationality Standard of Sanity in THE INSANITY DEFENSE: MULTIDISCIPLINARY VIEWS ON ITS HISTORY, TRENDS, AND CONTROVERSIES*; and he has a forthcoming piece, *Traumatic Brain Injury and a Divergence Between Moral and Criminal Responsibility* in a *Duquesne Law Review* Symposium on Traumatic Brain Injury and the Law.

Michael J. Zydney, Mannheimer Professor of Law, and Associate Dean for Faculty Development, Salmon P. Chase College of Law recently published *The Coming Federalism Battle in the War over the Death Penalty*, 70 ARK. L. REV. 309 (2017), (invited symposium submission). He also co-authored

an *amicus curiae* brief (with Ilya Somin) in *Trump v. Int'l Refugee Assistance Proj. and Trump v. Hawaii*, Nos. 16-1436, 1540, U.S. Supreme Court (filed Sept. 18, 2017), in support of Respondents. The brief, joined by six scholars of constitutional law, argues that (1) the constitutional text, original understanding, and precedent all indicate that the Bill of Rights constrains federal power over immigration as it does with any other federal power and (2) the Establishment Clause in particular uniquely forbids the federal government from enacting policies based on religion.

Professor Paul Marcus, William & Mary School of Law, recently participated in a symposium hosted by the George Washington University School of Law, *The Challenge of Crime in a Free Society*. He presented a paper [co-authored with Mary Sue Backus of the University of Oklahoma] on the glaring problems with the right to counsel for poor people. Marcus, joined by 6 law students, continued the *Law and Literature* class at the Virginia regional jail. The

most recent book in the class was Ernest Gaines' *A Lesson Before Dying*.

Ion Meyn, Assistant Professor, University of Wisconsin Law School, has published a new article in the Fordham Law Journal, *Why Civil and Criminal Procedure Are So Different: A Forgotten History*. The article provides new insights into the origin story of federal criminal procedure. The article reveals that the first draft produced by the advisory committee proposed that criminal disputes be governed by *civil* procedure - including the right to request documents and conduct depositions. The full committee, however, rejected that proposal. The paper provides various theories as to why this occurred.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3070478

Professor Eric J. Miller, Loyola Law School, Los Angeles, published *On Behalf of the Community*, FORDHAM URB. L.J. CITY SQUARE (2017). In addition, his article, *A Fair Cop and a Fair Trial* will be published in OBSTACLES TO FAIRNESS IN CRIMINAL PROCEEDINGS: INDIVIDUAL

RIGHTS AND INSTITUTIONAL FORMS (John Jackson & Sarah Summers, eds. ____ (forthcoming 2018); a *Book Review: Breaking Windows as Corrective Justice: Impure Resistance in Urban Ghettos* ____ TULSA L. REV. ____ (2018); and *It Gets Worse Before It Gets Better: Victims' Duties to Resist Injustice* in JOTWELL Oct. 4, 2017. Professor Miller delivered a number of talks and papers, during the past year, including *In Harm's Way: The Moral Dangers of Policing*, at the Law and Humanities Conference, hosted by Cardozo School of Law, New York, NY, and *Off The Books: Judicial Policy-Making In Low-Level Criminal Courts*, at Washington University in St. Louis School of Law.

Alexandra "Sasha" Natapoff, U.C. Irvine, published *A Stop is Just a Stop: Terry's Formalism*, OHIO ST. J. CRIM. L. 113 (2017), and *Misdemeanors*, in ACADEMY FOR JUSTICE, A REPORT ON SCHOLARSHIP AND CRIMINAL JUSTICE REFORM (Erik Luna ed., 2017).

Michael L. Perlin, Esq., Professor Emeritus of Law, New York Law

School, Founding Director, International Mental Disability Law Reform Project, and Co-founder, Mental Disability Law and Policy Associates recently published a chapter, *The Right to Treatment*, has been published in THE SAGE ENCYCLOPEDIA OF ABNORMAL AND CLINICAL PSYCHOLOGY 2897 (Amy Wenzel, ed. 2017). His chapter, *The Insanity Defense: Nine Myths That Will Not Go Away*, has been published in THE INSANITY DEFENSE: MULTIDISCIPLINARY VIEWS ON ITS HISTORY, TRENDS, AND CONTROVERSIES 1 (Prof. Mark D. White, ed.; Praeger, 2017). His article, with Alison Lynch, "Toiling in the Danger and in the Morals of Despair": Risk, Security, Danger, the Constitution, and the Clinician's Dilemma, has been published at 5 INDIANA J. L. & SOC'L EQUALITY 409 (2017). His article, with Lynch, "Life's Hurried Tangled Road": A Therapeutic Jurisprudence Analysis of Why Dedicated Counsel Must Be Assigned to Represent Persons with Mental Disabilities in Community Settings, has been published at 35 BEHAV. SCI. & L. 353 (2017). His article, with Lynch, "Had to be Held

down by Big Police": A Therapeutic Jurisprudence Perspective on Interactions between Police and Persons with Mental Disabilities, has been published at 43 FORDHAM URBAN L.J. 685 (2016). His chapter, *Dignity and Therapeutic Jurisprudence: How We Can Best End Shame and Humiliation*, will be published in HUMAN DIGNITY DISCOURSES, PRACTICES, TRANSFORMATIONS: ESSAYS ON DIGNITY STUDIES (Chipamong Chowdhury et al eds., Dignity Press) (2017). His article, "Your Old Road Is/ Rapidly Agin'": International Human Rights Standards and Their Impact on Forensic Psychologists, the Practice of Forensic Psychology, and the Conditions of Institutionalization of Persons with Mental Disabilities, will be published in a forthcoming issue of the Washington University Global Studies Law Review. His article, "Have You Seen Dignity?": The Story of the Development of Therapeutic Jurisprudence, will be published in a forthcoming issue of the University of New Zealand. Law Review. His article, with Lynch, "She's Nobody's

Child/The Law Can't Touch Her at All": Seeking to Bring Dignity to Legal Proceedings Involving Juveniles, will be published at 56 FAM. CT. REV. ____ (2018). His article, with Naomi Weinstein, "Who's Pretending to Care for Him?" How the Endless Jail-to-Hospital-to-Street-Repeat Cycle Deprives Persons with Mental Disabilities the Right to Continuity of Care, will be published in WAKE FOREST J. L. & POL'Y (2018). His article, with Lynch, "My Brain Is So Wired": Neuroimaging's Role in Competency Cases Involving Persons with Mental Disabilities, will be published in BOSTON U. PUB. INT. L. J. (2018). His article, with Cucolo and Lynch, Sex, Sexuality, Sexual Offending and the Rights of Persons with Mental Disabilities (with Prof. Heather Ellis Cucolo & Alison J. Lynch, Esq.) has been published as part of a solicited mental disability law symposium at 6 LAWS 20 (2017). His article, with Meghan Gallagher, Why a Disability Rights Tribunal Must Be Premised on Therapeutic Jurisprudence Principles, has been published at 10 PSYCHOLOGICAL INJURY & L. (2017). His article, with

Prof. Eva Sezli (Arizona State U.), *Commentary on Article 14 of the Convention on the Rights of Persons with Disabilities*, will be published in COMMENTARY ON UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (Oxford University Press, 2017) (Ilias Bantekas, Michael A. Stein & Dimitris Anastasiou co-editors). His article, with Gallagher, “*The Pain I Rise Above*”: *How International Human Rights Can Best Realize the Needs of Persons with Trauma-Related Mental Disabilities*, will be published in the *Florida Journal of International Law* (2018). His article, “*Who Will Judge the Many When the Game is Through?*”: *Considering the Profound Differences between Mental Health Courts and “Traditional” Involuntary Civil Commitment Courts*, will be published in the *Seattle University Law Review*. He presented portions of this paper at as part of a “Critical Issues in Forensic Psychology” workshop at the annual meeting of the Forensic and Correctional Psychology Interest Section of the Wisconsin Psychological Association, Madison, WI, June 16, 2017, and to the biennial

Congress of the International Academy of Law and Mental Health, Prague, Czech Republic, July 12, 2017. At the same meeting in Prague, he presented another paper, “*I’ve Got My Mind Made Up*”: *How Judicial Teleology in Cases Involving Biologically Based Evidence Violates Therapeutic Jurisprudence*. That paper will be published in a forthcoming issue of the *Cardozo Journal of Equal Rights & Social Justice*. He was named an Honorary Lifetime President and a member of the current Board of Trustees of the new International Society for Therapeutic Jurisprudence.

Ellen S. Podgor, the Gary R. Trombley Family White-Collar Crime Research Professor, received the ABA Criminal Justice Section's Raeder-Taslitz Award, an award that is "given to a law professor whose excellence in scholarship, teaching or community service has made a significant contribution to promoting public understanding of criminal justice, justice and fairness in the criminal justice system, or best practices on the part of lawyers and judges." The award is

named after Myrna Raeder, a revered professor at Southwestern Law School who was a passionate advocate for recognition of the special needs of women in the criminal justice system and on the impact that criminal penalties like incarceration could have on women and their families," and Andrew ("Taz") Taslitz, who served on the faculties of Howard Law School and then Washington College of Law at American University, and had served as chair of the ABA's Criminal Justice Magazine and was a brilliant scholar and writer on important issues in criminal justice.

Laurent Sacharoff, University of Arkansas School of Law, published *Who Should Own Police Body Camera Videos?*, 95 WASH. L. REV. 267 (2017), co-authored with Sarah Lustbader. The article argues we should take police body camera videos out of police control entirely and place them with a neutral, third-party agency.

Wadie E. Said. Professor of Law, University of South Carolina School of Law, will publish his article, *Limitless Discretion in the Wars on*

Drugs and Terror, in Vol. 89 of the *University of Colorado Law Review*. In addition, Professor Said was recently elected to membership in the American Law Institute.

Member Book Notes

Susan Bandes, Distinguished Research Scholar at the Center for Policing Equity and Centennial Professor of Law Emeritus, DePaul University College of Law will co-edit, with Jody Madeira, Emily Kidd-White and Kathryn Temple, *THE HANDBOOK ON LAW AND EMOTION* for Edward Elgar's research handbook series.

Shima Baradaran Baughman, University of Utah, S.J. Quinney Law School, Her book, *THE BAIL BOOK: A COMPREHENSIVE LOOK AT AMERICA'S CRIMINAL JUSTICE SYSTEM* (Cambridge University Press) will be distributed December 2017. She recently published with Paul Robinson and Michael Cahill, the Fourth Edition of *CRIMINAL LAW: CASE STUDIES AND CONTROVERSIES* (Aspen 2017).

Jeffrey Bellin, University Professor for Teaching Excellence, William & Mary Law School, is pleased to announce that his all-new Hearsay volume for the "Wright & Miller" Federal Practice & Procedure Treatise is now in print. It is styled *WRIGHT & BELLIN, FEDERAL PRACTICE & PROCEDURE, VOLUME 30B*.

Bennett Capers, Brooklyn Law School, is co-editing with Devon Carbado (UCLA), Angela Onwuachi-Willig (UC Berkeley) and Robin Lenhardt (Fordham) the forthcoming book *CRITICAL RACE JUDGMENTS: REWRITTEN U.S. COURT OPINIONS ON RACE AND LAW*.

Eric M. Freedman, Siggie B. Wilzig Distinguished Professor of Constitutional Rights, Maurice A. Deane School of Law at Hofstra University, published *MAKING HABEAS WORK: A LEGAL HISTORY* (NYU Press, 2018).

Andrew Guthrie Ferguson, UDC David A. Clarke School of Law He has spent the Fall semester promoting his new book, *THE RISE OF BIG DATA POLICING: SURVEILLANCE, RACE, AND*

THE FUTURE OF LAW ENFORCEMENT (2017).

Eric J. Miller, Loyola Law School, Los Angeles, along with co-editor Tamara Rice Lave, U. Miami Law School, will publish a collection of essays by 23 authors, entitled *THE FUTURE OF POLICING IN AMERICA: SECURITY, DIGNITY, DEMOCRACY* (Cambridge University Press 2018)

Michael L. Perlin, Esq., Professor Emeritus of Law, New York Law School, Founding Director, International Mental Disability Law Reform Project, and Co-founder, Mental Disability Law and Policy Associates has published the 2017 edition of his treatise, with Prof. Heather Ellis Cucolo, *MENTAL DISABILITY LAW: CIVIL AND CRIMINAL* (3d ed. Lexis Law Publishing), has been published. The third edition of his casebook, *MENTAL DISABILITY LAW: CASES AND MATERIALS*, with Cucolo and Lynch, has been published (Carolina Academic Press 2017).

Wadie E. Said, Professor of Law, University of South Carolina School of Law, will publish, in late

December, the paperback
version of his
book, CRIMES OF TERROR:
THE LEGAL AND POLITICAL
IMPLICATIONS OF FEDERAL
TERRORISM
PROSECUTIONS (OUP),
with an updated preface.

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*This newsletter was
compiled by Eric J.
Miller, AALS Criminal
Justice Section
Secretary, Loyola Law
School, Los Angeles.*